026651/EU XXVI. GP
Eingelangt am 15/06/18

Council of the
European Union

Brussels, 23 November 1999
(OR. en)

14313/99

FISC 269
ECOFIN 285

REPORT

From:	Code of Conduct (Business Taxation)
On:	29 November 1999
To:	ECOFIN Council on 29 November 1999
Subject:	Code of Conduct (Business Taxation)

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1. The Council and the Representatives of the Governments of the Member States, meeting within the Council, adopted on 1 December 1997 a Resolution on a Code of Conduct for business taxation in the framework of the ECOFIN Council conclusions of the same date concerning taxation policy. The Council concluded that in the spirit of comprehensiveness of approach, three areas were particularly highlighted: business taxation, taxation of savings income and the issue of withholding taxes on cross-border interest and royalty payments between companies.[1] The Resolution provides for the establishment of a Group, within the framework of the Council, to assess the tax measures that may fall within the Code. The Council subsequently confirmed the establishment of the Code of Conduct Group on 9 March 1998. The Group reported regularly on the measures assessed. These reports were forwarded to the Council for deliberation.

2. Two interim reports of the Code of Conduct Group were presented to the ECOFIN Council on 1 December 1998 and 25 May 1999 respectively (docs. 12530/98 FISC 164 and 8231/99 FISC 119).

   The present paper sets out the Group's report to the ECOFIN Council to fulfil the call of the Cologne European Council for *the discussions of the Group to be brought to a conclusion at the latest by the time of the Helsinki European Council*. [2]

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[1] The Belgian, German, French, Italian and Netherlands delegations would point out that the three areas mentioned here constitute a "package" and that the three elements of this package are indissolubly linked.

[2] The Netherlands delegation reserves their position on the report to Ecofin. The Netherlands will consider their position in the light of the proposal for the follow-up. Given the present mandate the report does not:
– contain a broad cross country review
– evaluate in depth the effects that tax measures have on business location or on other Member States, inter alia in the light of how the activities concerned are effectively taxed in the Community
– pay enough attention to the work that still has to be done. Furthermore the Netherlands regrets that elements of the report appear to suggest that Member States should aim for majority voting and pseudoharmonisation.

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Background

3. The Council and the Representatives of the Governments of the Member States, meeting within the Council**,** agreed on the scope and coverage of the Code of Conduct and established the criteria on which the Group should base its assessment of tax measures in the following terms:

   A. Without prejudice to the respective spheres of competence of the Member States and the Community, this code of conduct, which covers business taxation, concerns those measures which affect, or may affect, in a significant way the location of business activity in the Community.

   Business activity in this respect also includes all activities carried out within a group of companies.

   The tax measures covered by the code include both laws or regulations and administrative practices.

   B. Within the scope specified in paragraph A, tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this code.

   Such a level of taxation may operate by virtue of the nominal tax rate, the tax base or any other relevant factor.

   When assessing whether such measures are harmful, account should be taken of, inter alia*:*

   1. whether advantages are accorded only to non-residents or in respect of transactions carried out with non-residents, or

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2. *whether advantages are ring-fenced from the domestic market, so they do not affect the national tax base, or*

3. *whether advantages are granted even without any real economic activity and substantial economic presence within the Member State offering such tax advantages, or*

4. *whether the rules for profit determination in respect of activities within a multinational group of companies departs from internationally accepted principles, notably the rules agreed upon within the OECD, or*

5. *whether the tax measures lack transparency, including where legal provisions are relaxed at administrative level in a non-transparent way.*

4. The Code adds:

C. Member States commit themselves not to introduce new tax measures which are harmful within the meaning of this code. Member States will therefore respect the principles underlying the code when determining future policy and will have due regard for the review process referred to in paragraphs E to I in assessing whether any new tax measure is harmful.

D. Member States commit themselves to re-examining their existing laws and established practices, having regard to the principles underlying the code and to the review process outlined in paragraphs E to I. Member States will amend such laws and practices as necessary with a view to eliminating any harmful measures as soon as possible taking into account the Council's discussions following the review process.

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5. It was further agreed that the Code of Conduct Group (Business Taxation) would select and review tax measures for assessment in accordance with paragraphs E to G of the Code.

Paragraph F requires that the *assessment will take into account all the factors identified in paragraph B* and paragraph G *emphasises the need to evaluate carefully in that assessment the effects that the tax measures have on other Member States* inter alia *in the light of how the activities concerned are effectively taxed throughout the Community*.

Paragraph G also states that *Insofar as the tax measures are used to support the economic development of particular regions, an assessment will be made of whether the measures are in proportion to, and targeted at, the aims sought. In assessing this, particular attention will be paid to special features and constraints in the case of the outermost regions and small islands, without undermining the integrity and coherence of the Community legal order, including the internal market and common policies*.

Paragraph J states that *the Council notes that some of the tax measures covered by this code may fall within the scope of the provision on State aid in Articles 87 and 89 of the Treaty.* It is noted that the Commission has issued a communication on 30.11.98 (OJ 98/C 384/03) concerning guidelines on the application of the State aid rules to measures relating to direct business taxation. The Code adds that *the Council also notes that the Commission intends to examine or re-examine existing tax arrangements and proposed new legislation by Member States case by case, thus ensuring that the rules and objectives of the Treaty are applied consistently and equally to all.*

Paragraph L of the Code states that *the Council notes that anti-abuse provisions or countermeasures contained in tax laws and in double taxation conventions play a fundamental role in counteracting tax avoidance and evasion.*

The Code adds in paragraph M that it is *advisable that principles aimed at abolishing harmful tax measures should be adopted on as broad a geographical basis as possible. To this end, Member States commit themselves to promoting their adoption in third countries; they also commit themselves to promoting their adoption in territories to which the Treaty does not apply.*

In particular, Member States with dependent or associated territories or which have special responsibilities or taxation prerogatives in respect of other territories commit themselves within the framework of their constitutional arrangements, to ensuring that these principles are applied in those territories. In this connection, those Member States will take stock of the situation in the form of reports to the group…which will assess them under the review procedure described above.

6. The Council confirmed the establishment of the Code of Conduct Group on 9 March 1998 and agreed that *the Group shall meet not less than twice a year at a high level to facilitate a political orientation of the work of the group.* It also agreed that *the work of the Group shall be confidential;* and that *the reports of the Group forwarded to Council will reflect either the unanimous opinion of its members or the various opinions expressed in the course of the discussion*.

Work of the Code of Conduct Group

7. The Group met for the first time on 8 May 1998 and has subsequently met on 17 occasions. By common accord, Mrs PRIMAROLO, Paymaster General (UK) was appointed Chairwoman for a period of two years. Two Vice-Chair were designated from among the representatives of the Member States holding the current and subsequent Presidencies of the Council. They were Mr NOLZ, Director General in the Ministry of Finance (A), Mr HAUSER and Mrs HENDRICKS, Parliamentary Secretary of State to the Federal Ministry of Finances (D), Mr ARVELA, Director General to the Ministry of Finances (FIN) and Mr CARLOS SANTOS, firstly as Secretary of State for Tax Affairs, and subsequently as personal representative of the Finance Minister (P).

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8. On 16 July 1998, the Commission submitted to the Group an *Initial Indicative List of Measures that might fall under the Scope of the Code of Conduct (Business Taxation).* In order to draw up this list, the Commission used the information from Member States, material based on earlier discussions in the Taxation Policy Group and publicly available information. The Group agreed that the list provided a sensible starting point for its work, whilst noting that the list was not exhaustive and was without prejudice to its assessment of whether the measures were in fact harmful. As provided for under the Code, delegations could suggest the addition of further measures if they so wanted. Based on the information from Member States, the Commission circulated a revised list by 25 September 1998.

9. Member States with dependent or associated territories provided a list and reports on them by November 1998. A list of potentially harmful measures in these territories was compiled by the Commission in cooperation with Member States in accordance with paragraph M of the Code.

10. The Group decided to divide the initial list into the following five categories: intra group services, financial services and off-shore companies, other sector-specific regimes, regional incentives, and other measures. A further category covered dependent or associated territories.

11. It was agreed that two sub groups should be set up to make an initial examination of these five categories. These subgroups were chaired by Mrs Primarolo and one of the Vice-Chairs to the Group: initially Mr Nolz, and then Mr Kieschke, Deputy Director General to the Federal Ministry of Finances (D), representing Mrs Hendricks, and Mr Arvela, respectively. Guidance agreed by the Group stated for the sub groups that:

    — *they would ensure that the list of measures under examination is as complete as possible;*

    — *they would carry out an initial examination of the measures against the criteria in paragraph B of the Code of Conduct on a cross-country basis, in order to set out the facts and elements of evaluation;*

    — *their workings shall be confidential*

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(a) <u>Descriptions of measures in categories 1-5 of the initial list</u>

12. The Commission Services produced short summaries of the measures under consideration. It also circulated a generic background paper for information which provided an overview of the typical features of preferential tax measures for intra-group and financial service activities. The sub groups took note of this paper.

    With the assistance of the sub groups, the Group agreed the summaries as accurate and complete descriptions of the measures listed in the five categories of the initial list of potentially harmful measures. In a few cases reserves were maintained on some of the measures. (Annex A)

(b) <u>Dependent or associated territories</u>

13. Agreement was also reached on the descriptions of the measures and of the tax systems of the dependent or associated territories. (Annex A). In view of the requirements and commitments in paragraph M, Member States with dependent or associated territories have provided the reports requested on constitutional arrangements. [3]

(c) <u>Initial assessments – categories 1-5 and dependent or associated territories</u>

14. The Group also undertook an initial assessment against criteria 1 to 5 of paragraph B of the Code of the measures in categories 1-5 and dependent or associated territories. At its meeting on 14 December 1998 the Group discussed the interpretation of the criteria 1 to 5 in paragraph B of the Code. The Group considered that a literal interpretation of the criteria as set out in the Code could make some of the criteria of little or no significance. It agreed that, in addition to a literal interpretation, the Group should also take account of a wider interpretation of some of the criteria. In this and later discussions (see paragraph 24) four delegations stated that the manner in which the wider interpretation was applied to small and open economies was not acceptable.

[3] The NL delegation noted that although it is committed to ensure that the principles of the Code of Conduct are applied in its dependent or associated territories (in particular the Netherlands Antilles and Aruba), it is not possible that the Netherlands can constitutionally force Aruba and the Netherlands Antilles to apply the principles on which the Group agreed

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15. In order to assist the Group and to provide a starting point for the discussion, the Commission and the Chair provided an initial provisional assessment for these measures. The Group concluded that this initial assessment and the comments made by Member States would provide a useful basis for the next stage of the evaluation process. All the measures went forward with the exception of collective investment vehicles (see paragraph 28)

(d) Effective level of taxation – categories 1-5 and dependent or associated territories

16. The Group considered whether all the measures in categories 1 to 5 and in dependent or associated territories provide for a significantly lower effective level of taxation, including zero taxation, in accordance with paragraph B of the Code.

17. Member States were given the opportunity to present a report to the Group on their measures explaining why in their opinion the measures do not give rise to a significantly lower effective level of taxation than those levels which generally apply in the Member State in question.

18. The Group agreed that Member States who did not submit a report thereby accepted that the measures listed under their name do provide for a significantly lower effective level of taxation. In respect of the listed measures, Member States were given the opportunity of detailed technical discussions on the reports which had been submitted. The Group took the view that none of the reports was able to prove with a satisfactory degree of certainty that the measures under consideration could not at least in certain circumstances provide for a significantly lower effective level of taxation. All measures under consideration were moved forward to the next stage of assessment. [4]

[4] The Irish delegation noted that the Group did not identify for each of the individual measures the extent to which the effective level of taxation was lower than those levels which generally apply in the Member States in question.

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(e) Outermost regions and small islands – categories 1-5

19. The Group considered whether measures aimed at the economic development of outermost regions and small islands are proportionate and targeted. In accordance with paragraph G of the Code the Group paid particular attention to the special features and constraints of outermost regions and small islands. Member States were given the opportunity to present a report to the Group on their own measures explaining why in their opinion their measures should be considered in proportion to, and targeted at, the economic development sought.

20. The Group took note of the written reports presented by two Member States on specific measures listed under their names.

21. Two delegations reminded the Group that outermost regions and small islands constitute a special case which is part of the wider general provision of paragraph G of the Code concerning regional development. One of these delegations referred to the Conclusions of the Rhodes European Council (2/3 December 1988) in respect of islands.

(f) Additional measures

22. Paragraph F of the Code of Conduct provides that any Member State may request the opportunity to discuss and comment on a tax measure of another Member State that may fall within the scope of the Code. Some Member States have accordingly made use of this provision. Bearing in mind that the Code was established on 1 December 1997, that measures have been under detailed consideration since the middle of 1998, and the tight timetable of the Group's work during 1999, the Group decided in January 1999 to call a halt temporarily to the notification of such additional existing measures.

23. A list of additional measures which had been notified by Member States by 31 January 1999 was circulated. Following the same procedure for these measures as for the assessment of the measures on the Commission's initial list

– descriptions were agreed as accurate and complete (Annex A);

– an initial assessment was made against the criteria 1-5 in paragraph B;

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– Member States were invited, if they so wished, to submit reports on why in their opinion the measures do not provide for a significantly lower effective level of taxation, including zero taxation, in accordance with paragraph B of the Code

– Member States were invited, if they so wished, to submit reports on why in their opinion their measures in relation to outermost regions and small islands should be considered in proportion to, and targeted at, the economic development sought, in accordance with paragraph G sub paragraph 2.

All measures under consideration were moved forward to the next stage of assessment.

(g) Thematic papers

24. The Group also discussed significant issues and themes, based on short discussion papers, prepared by the Chair and the Commission Services to assist the Group in the evaluation process. These papers concern small and medium-sized enterprises, regional measures, timing differences, small economies, holding companies and sector specific measures (shipping and audiovisual).

(h) Studies

25. The Group requested the Commission to provide two studies. The Commission presented a cross-country review of the tax treatment of holding companies in the Member States to assist the Group in the evaluation process

26. The Commission appointed consultants to undertake a comparative study across Member States of administrative practices in taxation. Member States presented a number of comments on that study. The Group took note that the capacity of national authorities, whatever their level, to take account of individual cases varies among Member States and may have an influence on the location of business activity within the Community, even though this capacity may not give rise to an identifiable measure or practice that can be described and assessed by the Group. At this stage the Group decided to add four measures to the list of potentially harmful measures and to move them into an accelerated assessment process.

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(i) Scope of the Code

27. The Group proposed and the Commission agreed that certain issues regarding the scope of the Code, such as zero general rates or no business taxation, related guarantees and tax credits which are calculated on the basis of employment related liabilities, should be considered further in the Taxation Policy Group in the framework of the review procedure laid down in paragraph N of the Code. Some Member States were of the opinion that such tax credits fall within the field of business taxation. The Group noted in the statements for the Council minutes of 1 December 1997 concerning taxation policy certain Member States and the Commission consider that special tax arrangements for employees could come within the Code and that this question should be discussed further in the Taxation Policy Group.

28. The Group agreed to leave out of account for the time being the assessment of collective investment vehicles and to refer the point of principle to the Taxation Policy Group.

(j) Outcome of work

29. The Group has considered the list of potentially harmful tax measures in order to assess whether they affect or may affect in a significant way the location of business activity in the Community. In accordance with paragraph H the Group has based its evaluation on the preparatory work outlined in sections (a) to (i) of this report. Measures which have been found to have features which under the provisions of the Code the Group considered to be harmful have been given a positive evaluation, as denoted by a "V", and the results are summarised at Annex B. [5] [6]

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[5] As a general remark, the Luxembourg and the Netherlands delegations recall that the Code of Conduct covers business taxation and concerns those measures which affect, or may affect, in a significant way the location of business activity in the Community.
Given this scope of the Code, the Luxembourg and the Netherlands delegations cannot but stress that they have serious difficulties in sharing the asymmetrical approach taken and consisting in the fact that positive evaluations have largely been given only to measures relating to intra group services and financial services and offshore companies.

[6] The Netherlands delegation stated that, although substantial progress has been achieved especially on the identification of harmful measures a lot of work remains to be done. Therefore, this report cannot be seen without a follow-up. This was already foreseen in paragraph N of the Code.
In this second phase inter alia guidelines have to be developed in the light of the Group's work for assessing which measures should be withdrawn, amended or adapted and to what extent, to eliminate those features which are harmful. Other future work would be a monitoring process including the evaluation of any new tax measures of Member States. In this process due regard should be given to the overall competitiveness of the EU, the transparency of the tax systems of Member States and the overall and specific effective tax rates of Member States to create a level playing field.

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30. The Group has given a positive evaluation to 66 measures. Where unanimity was not achieved the report reflects the broad consensus and alternative views are shown in the notes as appropriate. References to "the Group" should be construed in that way. Similar measures have been considered together in order to ensure a consistent approach. The measures given a positive evaluation are listed at Annex C. A few measures have characteristics which require them to be considered in more than one group. Paragraphs 31 to 59 provide an explanation of the particular features of the six broad groups which were taken into account by the Group in making the evaluations. [7]

(i) Financial services, group financing and royalty payments

31. The Group assessed a range of measures covering activities related to the provision of financial services to third parties, intra group financing and the provision or licensing of intangible property in return for royalty payments. It recognised that the activities within this sector were potentially highly mobile.

32. Measures relating to financial services have been given a positive evaluation where they are aimed in whole or in part at providing exemptions or reduced levels of tax to such business. The Group gave eight measures a positive evaluation. (B1, B2, B6 [8], D17, F38, F46, F65, F67). [9]

33. The assessment of measures relating to intra-group financing activities involved similar considerations. But some of these measures also raise transfer pricing issues similar to those considered in the intra-group services category or issues involving the level of tax deductible reserves, similar to those considered in the insurance category.

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[7] The NL delegation was of the opinion that they could not accept the new criteria and features that have been used for identifying the measures that affect or may affect in a significant way the location of business activity in the Community. These criteria and features are not based on the criteria of the Code of Conduct itself. By using these new criteria and features the Group goes beyond its mandate that was received from the Council. In short, the NL delegation cannot agree to using criteria which have not been discussed in depth and would in effect lead to pseudo-harmonisation.

[8] The Portuguese delegation has asked paragraph 32 to be amended by the addition of the sentence "based exclusively on the assessment against criteria of paragraph B of the Code" in order to clarify that measure B6 was not assessed under the provisions of paragraph G of the Code. In fact, no Member State has expressed its opinion either on the concept of proportionality in relation to measure B6 foreseen in paragraph G of the Code, or on the assessment of measure B6 in face of the outermost condition of Madeira, or on the contents of the report presented by Portugal on this matter and, consequently, it is not possible to assume that this global silence on this subject would, in any circumstance, mean that measure B6 was duly assessed in the ambit of paragraph G of the Code.

[9] See footnote 7.

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34. A positive evaluation has been given to group financing measures which provide for a significantly lower effective level of tax taking particular account of whether some or all of the following features are present:

- they provide for a reduced nominal rate of tax
- they provide fixed margins for pass-through financing without a regular review of those margins against normal commercial criteria
- they allow the creation of substantial reserves which are in excess of the real underlying risks and which reduce taxable profits
- or they permit the profits to be allocated between a Head Office and a branch in a formulaic way contrary to the arm's length principle that can lead to a reduced effective rate of tax for the company as a whole.

35. The Group gave six measures a positive evaluation. (A10, B1, B3, B4, B5, Z2) [10] [11]

36. Measures relating to royalty payments have been given a positive evaluation where they provide for a significantly lower effective level of tax taking particular account of whether some or all of the following apply

- they provide a specific exemption or a reduced nominal rate of tax for royalty income
- taxable profits are calculated using fixed margins
- it is not clear that there is a regular review of margins against normal commercial criteria.

37. The Group gave two measures a positive evaluation. (A12, A15). [12] [13] [14]

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[10] See footnote 7.

[11] The NL delegation reminded the Group of the acknowledgement in the Council Resolution of 1 December 1997 of *the need to consolidate the competitiveness of the European Union and the Member States at international level* and the passage in paragraph G of the Code of Conduct in which the Council *emphasises the need to evaluate carefully … the effects that tax measures have on other Member States, inter alia in the light of how the activities concerned are effectively taxed throughout the Community* (the NL delegation noted that this evaluation has barely been done by the Group). As a result of these considerations the NL delegation was of the opinion that it is justified to have tax measures for intra-group financial services which counteract beneficial tax systems of third countries outside the EU. That is why the NL delegation does not agree with a positive evaluation of measure B4.

[12] See footnote 7.

[13] Some delegations considered C14 should be found harmful.

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(ii) Insurance, reinsurance and captive insurance

38. The Group considered a number of measures relating to the taxation of insurance activities. Many of the same considerations apply to insurance activities as to other financial activities.

39. Measures have been given a positive evaluation where it appears that the level of tax effective reserves which is permitted may be in excess of the real underlying risks; or where there is an exceptionally long deferral of taxation on insurance profits; or where there is a special regime of exemption or reduced rate or fixed base taxation for certain types of business. The Group also noted that some of the exempt and offshore company measures and of the financial services, group financing and royalty payments measures that have received positive evaluations can be used by companies carrying on insurance or reinsurance business. [15]

40. The Group gave ten measures a positive evaluation. (B7 [16], B8, B12, B13, F23, F32, F42, F43, F48, F63)

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[14] The NL delegation is of the view that A15 is equivalent to C14.

[15] See footnote 7.

[16] The Luxembourg delegation, notably in the light of para B of the Code (effective level of taxation, five criteria) does not agree with the positive evaluation of measure B7.
Provisions for fluctuations, which reflect the underlying risks of reinsurance business are compulsory from a prudential point of view and, even more, are partly based on Community legislation.
It is a largely accepted principle in taxation that such provisions are taken into account for the determination of taxable profit. The impact of these provisions is a tax deferral, as it is with all provisions, not the least those which got a negative evaluation under the Code. In the case where the risks do not materialize the provisions are reintegrated in the taxable profit.
The Luxembourg delegation insists for the case to be reconsidered not the least in relation to the results of the discussions on the effective level of taxation and to the evaluation against the five criteria listed in para B of the Code, where the measure got a "V" under criterion B3 interpreted at the time as an absence of a legal requirement for employment. As far as the criteria 1b and 2b are concerned, the Luxembourg position is well known (see FISC 211/98 ADD 1) and reflected in para 14 of the present report. It has also to be noted that the group did not, neither in this case, nor - it is fair to say - in almost all the other cases, evaluate this measure in the light of how the activities concerned are effectively taxed throughout the Community (para G sub-paragraph 1 of the Code).
In Annex B the "V" has to be changed to an "X" and the measure B7 has to be taken out of Annex C.

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(iii) Intra group services

41. The Group considered a number of measures relating to the transfer pricing of intra group services. The internationally accepted standard for transfer pricing is the arms length principle, as set out in the OECD's Transfer Pricing Guidelines of 1995. To prevent a multi national enterprise from shifting profits between countries by under or overvaluing transfer prices, the arms length principle envisages that taxable profits on cross-border transactions between associated enterprises should be computed as if the transaction had been between parties acting at arm's length.

42. The generally preferred method in the OECD Guidelines for determining arm's length profits is the so-called comparable uncontrolled price method. This involves comparing the price charged for services transferred in a controlled transaction to the price charged for services transferred in a comparable uncontrolled transaction. But, as there may not always be comparable transactions, the Guidelines also recognise the use of the so-called cost plus and resale minus methods. These involve looking at whether the mark up or margin on a transaction is an arm's length one.

43. Most of the intra group service measures that were considered by the Group provided for the use of the cost plus and resale minus methods. In evaluating the potentially harmful intra-group service measures, the Group paid close regard to whether the measures conformed to the OECD Guidelines. In the case of cost plus and resale minus measures, the Group took particular account in its evaluation of whether some or all of the following features are present:

- they are used in circumstances where a comparable uncontrolled price might reasonably be obtained

- it is not clear that there is always an individual examination of the underlying facts of the particular case or that the mark-up or margin is reviewed regularly against normal commercial criteria

- there is a requirement for the company concerned to be part of an international group

- there is a reduction in the expense base taken into account for the purposes of determining taxable income.

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44. The Group gave a positive evaluation to 13 measures (A1, A2 [17], A3, A4, A5, A6, A7, A8, A9, AAM19, E1, E3, Z3). [18] [19] [20]

(iv) Holding companies

45. The Group considered that the assessment of measures relating to holding companies was particularly complex and difficult and also raised a number of wider issues. A range of views were expressed. In reaching its evaluation the Group took note of the general background paper prepared by the Commission Services and its cross-country review of holding companies. It also took note of a discussion paper presented by the Chair.

46. The measures that the Group considered in this category related primarily to the holding of shares. Some holding companies hold other assets, such as patents or licences. But the Group considered such activities with intra group service activities or with measures relating to financing or royalties.

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[17] The Belgian delegation has the opinion that the evaluation of this regime should be marked by an "X" and not by a "V", taking into consideration the fact that the elements which are reproduced in the column "Features" do not correspond with the reality.

Indeed:

– the "cost plus" is applied to the total amount of the costs. The following are in particular included in the base for the computation of this "cost plus": personnel costs (contrary to the coordination centres regime and the service centres regime) and should the occasion arise, the financial charges (contrary to the coordination centres regime);
– the goal of the "cost plus" is only to ensure that the amounts invoiced by the distribution centres contain a normal profit. This is to avoid that the distribution centre does not grant abnormal or benevolent advantages to the members of the group to which the centre belongs;
– the sole rate of 5% of this "cost plus" is justified through the fact that the activities performed by distribution centres are very limited. The authorised activities are enumerated in a limitative way in a circular organising this regime;
– in the framework of this regime, the "cost plus" does not allow to obtain the taxable net profit. On the contrary, the taxable net profit is obtained through the application of all the rules concerning the corporate income tax;
– there is no obligation imposed on these distribution centres to belong to a multinational group.

[18] See footnote 7.

[19] Concerning point 44 of the Report, the Spanish delegation proposes the following addition to the present drafting: "Spain indicates that measures A4 and A5 are being judged by the Spanish courts. Therefore, this delegation asks to leave these measures apart without any assessment until there is a verdict in domestic courts".

[20] The Netherlands does not agree that A8 and Z3 receive a positive evaluation. As Z4 (UK: cost plus) did not receive a positive evaluation, A8 and Z3 should get the same treatment because of the similar way the OECD guidelines are incorporated in the regulatory framework.

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47. The Group noted that there can be commercial reasons why a multi national enterprise may have a particular holding company within its corporate structure. But the Group also noted that many holding companies are set up wholly or mainly for tax planning reasons. In particular, holding companies may be used as a tax efficient holding point for profits or as a tax efficient conduit. Holding companies that are tax-driven normally have little or no economic substance, and may be no more than brass plate companies. They are therefore potentially highly mobile, and business taxation measures can have a significant effect on their location in the Community.

48. The Group considered a number of measures that exempt dividends received from subsidiary companies. These measures are often referred to as participation exemptions. The Group has given a positive evaluation to measures that allow the exemption of foreign source dividends in circumstances in which the profits giving rise to the dividends have been taxed at a significantly lower level in the source country than they would have been if they had arisen in the Member State. Such measures allow income from tax havens and other harmful regimes to be received tax free in the Member State. In cases where participation exemptions are combined with an appropriate controlled foreign company legislation, the measures have not been given a positive evaluation. [21] [22] [23] [24] [25]

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[21] The Irish delegation could not agree that any evaluation criterion under the Code should take account of the level of taxation applied in another country. The Code is explicit in providing that the benchmark is the level of tax generally applying in the Member State. The fact that participation exemption regimes do not fit easily within the criteria in the Code is not a justification for coming up with entirely new criteria that go far beyond the Code.

[22] The Danish delegation is of the opinion, that the analysis and final assessment of the holding company measures is incomplete and lacking in consistency. The Danish delegation cannot accept the evaluation of the Danish holding regime AAM21, since a general holding regime without ringfencing is outside the code.
Furthermore is the evaluation not carried out in a consistent manner. In the same way as France, Germany, and Finland, Denmark does not tax dividends from foreign subsidiaries, but has a CFC-taxation for protection against harmful effects of low tax jurisdictions. The overall effects of the holding regimes of these countries are similar to that of the Danish.
On that background it is unacceptable to Denmark, that the holding regimes of these countries are not listed as harmful measures, while the Danish holding regime is listed as harmful.
Either general holding regimes as the Danish measure AAM21 are to be taken of the list or - if the member states agrees on an interpretation that goes beyond the code - the just mentioned systems are to be included.

[23] The Netherlands delegation states that paragraph 48-51 are outside the scope of the code and that the subject should be referred to the Tax Policy Group.

[24] The Netherlands and Belgian delegations note that until now there has not been an adequate discussion on the quality of CFC legislation and are of the opinion that therefore this cannot be the basis for the evaluation in this stage but such a discussion may form part of future work of the Group.

[25] The Luxembourg delegation reserves its position on the last sentence of paragraph 48 given its ambiguity.

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49. As well as receiving dividends from subsidiaries, holding companies make capital gains and losses on the sale of subsidiaries. In some Member States such capital gains are exempt, in others they are taxable (with credit given for foreign taxes) and in others special rates apply.

50. The Group considered whether or not a positive evaluation should be given to measures that exempt capital gains. Some Member States felt that such an evaluation should be given, as they considered that measures of this kind affect the location of holding companies in the Community. Some other Member States felt that the evaluation of such measures was outside the scope of the Code.

51. The Group concluded that a positive evaluation should be given to asymmetrical measures where gains are exempt but losses are tax deductible. In relation to measures where both gains and losses are exempt the Group noted Paragraph L of the Code regarding the use of anti-abuse provisions in Member States to counteract tax avoidance and evasion.

The Group gave seven measures a positive evaluation (A13, A14 [26], A17, AAM2b, AAM21 [27], E7 [28], EAM9 [29]). [30]

(v) Exempt and Offshore Companies

52. The Group considered a range of measures which provide for the partial or complete exemption from tax of corporate profits or certain categories of profits including those arising from offshore activities. In giving a positive evaluation the Group took particular account of whether a measure provides for such an exemption in circumstances in which some or all of the following features are present

[26] The NL delegation was of the opinion that there exist two schools of thought with regard to holding companies in the EU. One school favours the exemption method, the other favours the credit method. The criteria of the Code of Conduct prescribe in no way a choice between these two different schools. Both systems are an acceptable way of treating the parent-subsidiary relation. If the existence of these two different schools leads to frictions bilateral solutions or unilateral measures are the way to solve these frictions. That is why the NL delegation does not agree with a positive evaluation of measure A14.

[27] See footnote 22.

[28] The Irish delegation disagrees with the positive evaluation given to measure E7 for the following reasons. First, it is a relatively minor measure which has minimal effect on the location of business. Second, the Group concluded that the measure was not harmful by reference to each of the five criteria in paragraph B of the code.

[29] The Austrian delegation notes that the authors of the report concerning administrative practices in the Member States state that they are not aware of any abuse of the provision concerned. Nevertheless Austria is prepared to issue guidelines on the use of the discretionary powers.

[30] See footnote 7.

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- the benefits are restricted to companies with non-resident shareholders
- no business with local residents is permitted or no business undertaken with local residents qualifies for the exemption
- the measure is targeted at mobile capital

The Group gave 8 measures a positive evaluation. (B11 [31], B12, F28, F37, F45, F56, F62, F66) [32]

53. Measures in relation to offshore companies have been given a positive evaluation on the basis that they have similar characteristics to the exempt company measures without providing for a complete exemption from tax. In some cases the rate of tax suffered is designed to counter controlled foreign company rules in the country of the parent company. There are 6 measures to which the Group gave positive evaluations. (B13, F20, F27, F40, F47, F61) [33]

(vi) <u>Miscellaneous measures</u>

54. A number of measures considered by the Group and given a positive evaluation do not fit into the broad groups above.

55. There are two measures in relation to informal capital which the Group has given a positive evaluation on the grounds that they permit a deduction for the notional cost of capital. (E2 [34], E4) [35] [36]

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[31] The GR delegation considered that measure B11 was not harmful as it raises the same kind of issues as Z1.

[32] See footnote 7.

[33] See footnote 7.

[34] The Belgian delegation has the opinion that the evaluation of this regime should be marked by an "X" and not by a "V".
Indeed, this regime concerns the treatment to be applied in Belgium to abnormal or benevolent advantages granted to a Belgian company by foreign companies that belong to the same group. It is clear that these unjustified profit transfers toward the Belgian company have to be taxed in the State of residence of the foreign enterprises which are at the origin of these transfers. The absence of a taxation of these unjustified transfers of profits in Belgium avoids *ab initio* any economic double taxation and has to be judged in accordance with internationally accepted rules (article 9 of the model tax convention of the OECD and the European arbitration convention of 23 July 1990).
As emphasised by one delegation, the solution for the problems that could arise by the Belgian and Dutch regimes has to be found in the area of the exchange of information and not in the condemnation of a regime that is nothing more than the application of internationally accepted rules on tax law on specific cases.

[35] See footnote 7.

[36] The NL delegation was of the opinion that the informal capital doctrine is one of the (logical) elements of a parent-subsidiary relation. The informal capital doctrine assures that prices between the parent and the subsidiary are at arm's length. Provided that there is transparency it is possible to reach a normal overall tax level. That is why the NL delegation does not agree with a positive evaluation of measure E4.

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56. Two measures providing for free zones have been given a positive evaluation on the basis that they apply a reduced rate of tax to certain categories of activity that are permitted within the area. (F24, F30) [37]

57. Two measures have been given a positive evaluation because they apply a lower rate of tax to certain categories of activity. (C24, C25)[38]

58. One measure has been given a positive evaluation because it can permit a reduction of up to 100% in the tax base. (CAM25) [39]

59. The Group gave two measures a positive evaluation because they provide a substantial reduction in the tax base, through the creation of reserves for future investment. (CAM58, CAM59)

vii) Other

60. The Group found that the remaining measures should be given a negative evaluation on the grounds that in its assessment they do not affect to a significant extent the location of business activity in the European Community. There are three measures (F25, F31, F41) which have not been assessed for the reasons given in the assessment table (Annex B). B10 and F68 have not received a positive assessment since they do not exist as separate measures. B10 is part of measures B12 and B13 and F68 is part of measure F61. [40]

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[37] See footnote 7.

[38] The Irish delegation does not agree that C24 should be given a positive evaluation for the following reasons. First, it was accepted up to recent times as a general measure and not as State aid. Second, it is being phased out over an agreed period (State aid E/2/98 Ireland O.J. pages C395/19-22 18 December 1998). Third, the Group concluded that the measure was not harmful by reference to any of the 5 criteria in paragraph B of the Code. The Irish delegation asked the Group to note that measure C25 will, from 1 January 2000, no longer apply a lower rate that the generally applicable rate.

[39] The Spanish delegation disagrees with the positive evaluation given to the measure CAM25, for the following reasons:
- first, it is an incentive for re-investment, on effective, non-mobile activities;
- second, the final effects remain balanced, since the reduction in the base that the measure provides is mitigated by a tax rate of 40% (normally 35%), more limited depreciation and less flexible relief for losses.

[40] See footnote 5.

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61. The Group took account of the acknowledgement in the Council Resolution of 1 December 1997 of *the need to consolidate the competitiveness of the European Union and the Member States at international level*. In its discussion the Group recognised the great importance of this issue to its assessment of certain of the measures related to the shipping industry. The Group agreed that shipping was a global market and that the Community faced strong global competition.

62. Opinion was divided between members of the Group as to whether or not such shipping measures should be found harmful. Some Member States considered that these measures should not be found harmful and that the application of the rollback provision in Paragraph D of the Code would have a detrimental effect on EU based shipping business and on the competitiveness of the EU and Member States at an international level. Others thought that the measures should be assessed as harmful but that in its deliberations the Council should take account of the issues of competitiveness by requiring rollback only if wider international action was taken on similar measures. [41]

(viii) <u>General comments on individual measures</u>

63. The Group noted that, in relation to A7, B1, B3, C24 and D17, these measures are being phased out.

64. In relation to B2, the Group took note that this measure was not, as yet, operational, that the benefits would apply for 5 years and that the total funds available for the measure are capped at approximately 33 million ECU.

65. The Group acknowledged that the positive assessment given to B6 related only to the financial services activities permitted within Madeira and further noted that this had no application in the Azores. The benefits are time-limited and available until 2011. [42]

[41] The Italian, Finnish and Swedish delegations consider that the crosses for the shipping regimes should be replaced by ticks. They consider those regimes harmful by reference to the criteria set out in the Code.

[42] See footnote 8.

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66. The Group gave special consideration to F71 in the name of Montserrat, an island in the Eastern Carribean and a United Kingdom Overseas Territory. As a result of severe volcanic activity since 1995, the population has more than halved and normal economic activity has all but ceased. Normal conditions are unlikely to be restored for at least 10 years. The Group decided that, in these exceptional circumstances, the measure is not harmful but the assessment should be reviewed, if appropriate, when normal conditions are restored.

67. There were a range of measures used to support the economic development of particular regions (other than those concerning outermost regions and small islands, paragraph 19-21). Some of these measures grant full or almost full exemption from corporate tax for a long period of time, up to ten years. One question was whether these measures are in proportion to the aims sought. The Group took note that the negative evaluations in these cases do not mean that the Group has concluded that similar measures (tax holidays) introduced in the future might not be considered harmful.

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68. This report has been submitted to the ECOFIN Council as required by the Cologne European Council.

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ANNEX A

Descriptions of Listed Measures

i) Member States

A001	Co-ordination Centres	Belgium
A002	Distribution Centres	Belgium
A003	Service Centres	Belgium
A004	Basque Country Co-ordination Centres	Spain
A005	Navarra Co-ordination Centres	Spain
A006	Headquarters and Logistic Centres	France
A007	Co-ordination Centres	Luxembourg
A008	Cost Plus Ruling	Netherlands
A009	Resale Minus Ruling	Netherlands
A010	Intra-Group Finance Activities	Netherlands
A011	Holding Companies (ETVE)	Spain
A012	Royalty Income - Patents	France
A013	1929 Holding Companies	Luxembourg
A014	Holding Companies	Netherlands
A015	Royalties	Netherlands

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A016	International Headquarters Companies	United Kingdom
AAM002b	Holdings (Schachtelbegunstigung - Intra-Group Relief)	Austria
AAM008	Private Foundations (Stiftungen)	Austria
AAM010	Holdings	Belgium
AAM019	Control- and Co-ordination Centres of Foreign Companies in Germany	Germany
AAM020	Holding Companies	Germany
AAM021	Holding Companies	Denmark
AAM052	Holding companies with shareholdings in foreign companies.	France
AAM108	Application of the parent company/subsidiary system to resident companies with share capital (commonly known as SOPARFI).	Luxembourg
AAM114	Holding Companies (SGPS)	Portugal
B001	The International Financial Services Centre (Dublin)	Ireland
B002	Trieste Financial Services and Insurance Centre	Italy
B003	Luxemburg Finance Companies	Luxembourg

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B004	International Financing Activities	Netherlands
B005	Finance Branch	Netherlands
B006	Madeira and Sta Maria (Azores) Free Zones	Portugal
B007	Provisions for fluctuations in reinsurance	Luxembourg
B008	Aland Islands Captive Insurance	Finland
B009	Foreign Insurance Companies	Sweden
B011	Offices of Foreign Companies under the Law 89/67	Greece
BAM006	Certain Exemptions from Corporation Tax	Austria
BAM017	Provisions for fluctuation in insurance and re-insurance	Germany
BAM023	Banks and Finance Entities	Spain
BAM031	Business share capital companies (Law 2367/1995, Article 5)	Greece
BAM034	Long Term Loans in Foreign Currency	Greece
BAM044	Finance Centres	France
BAM061	Provisions for risks relating to medium and long term credit operations carried out by banks and credit institutions.	France

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BAM062	Technical provisions for insurance and reinsurance undertakings.	France
BAM082	Incentives for the restructuring of the Banking Sector	Italy
BAM093	Tax Deduction for Interest on Additional Capital Contributions from Foreign Head Offices to Italian PE	Italy
BAM096	Exemption of Income on Government Securities	Ireland
BAM098	Non-resident Companies	Ireland
BAM118	Reinsurance companies	Portugal
BAM123	Independent investment managers	United Kingdom
C001	Scheme for early depreciation of vessels	Denmark
C002	Shipping Regime - Tonnage Tax	Germany
C003	Ship Management Offices (Law 89/67 and 378/68)	Greece
C004	Shipping Regime (Law 27/75)	Greece
C005	Shipping Regime	France
C006	Shipping Regime (Tax regime for shipping companies)	Italy
C007	Shipping Regime	Netherlands

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C008	Shipping Regime	Portugal
C009	Ice-Class Investment Allowance	Finland
C010	Rollover Relief on Disposal of Ships	United Kingdom
C012	Supplementary staff assigned to scientific research and export management	Belgium
C013	Tax Credit for Research	France
C014	Research and Technical Development	Ireland
C015	Credits for Investments in Energy Saving Equipment	Netherlands
C016	Research and Development Expenses	Portugal
C017	Calculation of Net Revenue	Greece
C018	Audiovisual Investment Certificates	Luxembourg
C019	Film Industry	United Kingdom
C020	Investment Deductions	Belgium
C021	Special Depreciation and Allowances - Agriculture and Forestry	Germany
C022	Incentives for Mining Enterprises	Spain
C023	Mining taxation	Ireland
C024	10% Manufacturing Rate	Ireland
C025	Petroleum Taxation	Ireland
CAM007	R&D Allowance	Austria

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CAM015	Investor model/Film funds	Germany
CAM016	Rules for Self-generated Intangibles	Germany
CAM024	Relief for Investments in Films and Audiovisual Productions	Spain
CAM025	Investigation and Exploitation of Hydrocarbons	Spain
CAM027	Shipping	Spain
CAM040	Accelerated Depreciation for Purchases of Software	France
CAM041	Accelerated Depreciation for Energy-Saving Equipment	France
CAM042	Accelerated Depreciation for Environmental Protection	France
CAM046	Deduction of Cooperative Dividends	France
CAM048	Tax Exemption of Capital Gains on the Sale of Securities of Companies Established by Special Agreement to Promote Industry, Business and Agriculture	France
CAM049	Exemption from Corporation Tax for the Oil Storage Agency	France

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CAM050	Corporation Tax Exemption for Agricultural Cooperatives	France
CAM058	Provisions for Renewal of Mineral Reserves	France
CAM059	Provisions for Renewal of Oil and Gas Reserves	France
CAM063	Press	France
CAM065	Special Depreciation Rules for the Audiovisual Sector	France
CAM070	Business and Industrial Real Estate Companies	France
CAM071	Companies Authorised to Provide Energy-Saving and Heat Recovery Financing (SOFERGIE)	France
CAM073	Exceptional Depreciation for Participating Interests in Companies Financing Non-Industrial Fishing (SOFIPECHE)	France
CAM077	Securities in Innovation Financing Companies (SFI)	France
CAM080	Incentives for Scientific Research	Italy
CAM094	Film	Ireland
CAM097	Investments in renewable energy projects	Ireland

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CAM10 1	Tax Exemption for Profit/Gain from the occupation of woodlands	Ireland
CAM10 6	Depreciation of equipment and tools used solely for scientific or technical research operations.	Luxembourg
CAM10 7	Shipping Regime	Luxembourg
CAM11 0	Film Industry	Netherlands
D001	Employment (T) Zones	Belgium
D002	Incentives for Investment in Certain Regions	Belgium
D003	Re-conversion Zones	Belgium
D004	Enterprise Zones	Denmark
D005	Special Depreciation - Business Investment in Former GDR and West Berlin	Germany
D006	Investment Grants - Equipment in Former GDR and West Berlin	Germany
D007	Tax Advantages - Commercial Investment in FRG/GDR Border Area	Germany
D008	Canary Islands REF	Spain
D009	Basque Country - Start Up Relief	Spain
D010	Navarra - Start Up Relief	Spain
D011	Regional Development Companies	Spain
D012	Corsica Incentive Regimes I, II, III	France
D013	Tax Free Zones - ZFU	France

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D014	Enterprise Zones	France
D015	Overseas Départements (OD)	France
D016	Nord-Pas de Calais - Privileged Investment Zone	France
D017	Shannon Airport Zone (SAZ)	Ireland
D018	New Investments - Buildings in Run-down Urban Areas	Ireland
D019	Accelerated Depreciation of new buildings in certain regions	Netherlands
D020	Accelerated Depreciation; Investments in Developing Regions	Finland
D021	Enterprise Zones	United Kingdom
D022	SMEs in Northern Ireland	United Kingdom
DAM022	50% Profit Exemption in Ceuta & Melilla	Spain
DAM043	Exceptional Depreciation for Buildings Constructed under Urban and Rural Planning Arrangements	France
DAM086	Regional Incentives South of Italy Mezzogiorno	Italy
DAM115	Industrial Free Zones	Portugal
E001	US Foreign Sales Companies Ruling	Belgium
E002	Informal Capital Ruling	Belgium
E003	US Foreign Sales Companies Ruling	Netherlands
E004	Informal Capital Ruling	Netherlands

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E005	Foreign Business Operations Relief	Denmark
E006	Benefice Mondial and Benefice Consolide	France
E007	Foreign Income	Ireland
E008	Newly Created Companies	France
E009	Tax Holidays for New Businesses	Luxembourg
E010	Special Depreciation for SMEs	Germany
E011	Incentives for SMEs	Spain
E012	Micro and Small Enterprises	Portugal
E013	Special Scheme for Accelerated Depreciation	United Kingdom
E014	Scheme for Early Depreciation of Certain Assets	Denmark
E015	Incentives for Investment. (Law 2601/98 ex 1892/90)	Greece
E016	Investments Tax Credits	Spain
E017	Special Depreciation Arrangements for Assets Intended for Environmental Protection and Energy Saving, and for Assets Adjusting Work Places for Disabled Workers	Luxembourg
E018	Investment Allowance	Netherlands
E019	Tax Incentives for Contractual Investment	Portugal
E020	Tax Credit for Investment	Portugal
E022	Rollover of Capital Gains	Germany
E023	Reinvested Capital Gains	Portugal

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E024	Small Islands Income Tax Reduction	Greece
E025	St Martin and St Barthelemy	France
E026	Mutual Funds / Portfolio Investment Companies	Greece
E027	Venture Capital Funds and Companies	Spain
E028	Venture Capital Companies	France
E029	Participation Fund Companies	Austria
E030	Investment Companies	Sweden
E031	Limits on Taxes on Commercial Income	Germany
E033	Representative Office	Spain
E034	Tax Credits for Job-creating Investment	France
E035	Tax Credits for Staff Training Costs	France
E036	Listed Companies - Reduced Rates	Italy
E037	SGII Companies	Portugal
E038	SCR, SDR and SFE Companies	Portugal
EAM004	Investment Allowance	Austria
EAM009	Tax Exemptions	Austria
EAM011	Investment Funds	Belgium

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EAM033	Large Scale Productline Investments Financed with Foreign Capital	Greece
EAM035	National Infrastructure	Greece
EAM045	Tax Credit for Membership of a 'groupement de prevention agree'	France
EAM051	Exemption from Corporation Tax on takeover of ailing companies	France
EAM053	Legal Persons Liable for Corporation Tax whose Objects are to Transfer Use and Benefit of Movable or Immovable Property to its Members Free of Charge	France
EAM054	Distribution by Certain Companies of Capital Gains Arising on Liquidation	France
EAM055	Provisions to Cover Price Increases	France
EAM056	Provision for Setting up Foreign Branches	France
EAM057	Provision for Employee Start-Up Loans	France
EAM060	Provisions for Risks Relating to Medium-Term Credit Transactions by Firms Carrying Out Works or Selling Abroad	France
EAM064	Regime for Long-Term Capital Gains on FCPR and SCR Securities	France

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EAM066	Carryover of Losses on Merger (Consent)	France
EAM067	Deferred Taxation in the Event of Merger and Partial Asset Transfer	France
EAM068	Authorised Telecom Financing Companies	France
EAM069	Investment Companies	France
EAM074	Reduced rate of 19% on Reinvested SME Profits	France
EAM078	Dual Income Tax	Italy
EAM083	IRAP Exemptions	Italy
EAM085	Regime for small and medium-sized enterprises	Italy
EAM088	Special Depreciation Regime	Italy
EAM089	Special Regime for Investment Funds	Italy
EAM090	Substitute Tax Regime for Corporate Reorganisations	Italy
EAM091	Tax Advantages for Certain Trade and Commercial Activities	Italy

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EAM10 0	Specified Collective Investment Undertakings	Ireland
EAM10 3	Investment Funds	Luxembourg
EAM10 9	Venture Capital Investment Certificates	Luxembourg
EAM11 2	Accelerated Depreciation	Portugal
EAM11 6	Investment Funds	Portugal
EAM12 1	Tax Allocation Reserve of 20%	Sweden
EAM12 2	Scientific research allowances	United Kingdom
Z001	Measure aimed at determining the level of taxation of foreign companies operating in Belgium, without legal personality or probative accounts.	Belgium
Z002	Finance Branches	Luxembourg
Z003	Non-standard rulings (including Greenfield-rulings)	Netherlands
Z004	Cost Plus Rulings	United Kingdom

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ii) European territories for whose external relations a Member State is responsible under Article 299.4 of the EC Treaty

A017	Gibraltar 1992 Companies	UK: Gibraltar
B010	Captive Insurance Companies	UK: Gibraltar
B012	Exempt (offshore) Companies and Captive Insurance	UK: Gibraltar
B013	Qualifying (offshore) Companies and Captive Insurance	UK: Gibraltar
C011	Shipping and Aviation	UK: Gibraltar
E021	Development Incentives	UK: Gibraltar

iii) Dependent or Associated Territories

F001	Deduction for Investment in Mineral Processing	Greenland
F002	Surcharge Exemption for Raw materials Concession Holders	Greenland
F003	-	Faroe Islands
F004	Temporary exemption for agriculture, fisheries and craft industries	New Caledonia
F005	Legal certainty	New Caledonia
F006	Limited taxation on certain rental income.	New Caledonia
F007	Temporary exemption for the hotel and tourist industry.	New Caledonia
F008	Deduction for productive investment.	New Caledonia

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F009	Share in the subscribed capital of certain companies.	New Caledonia
F010	Exemption for investment.	French Polynesia
F011	Exemption from trading tax and allowances	Wallis and Futuna Islands
F012	-	French Southern & Antarctic Territories
F013	Temporary exemption from corporation tax	Mayotte
F014	Deductions for productive investments	Mayotte
F015	Share in the subscribed capital of certain companies	Mayotte
F016	Temporary Exemption for Certain Sectors	Saint-Pierre and Miquelon
F017	Partial Exemption from Distribution Tax	Saint-Pierre and Miquelon
F018	Deduction for Productive Investment	Saint-Pierre and Miquelon
F019	Share in the Subscribed Capital of Certain Companies	Saint-Pierre and Miquelon
F020	Offshore Companies	Netherlands Antilles
F021	New Businesses	Netherlands Antilles

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F022	Mutual Funds	Netherlands Antilles
F023	Captive Insurance	Netherlands Antilles
F024	Free Zones	Netherlands Antilles
F025	Rulings	Netherlands Antilles
F026	Shipping and Air Transport	Netherlands Antilles
F027	Offshore Companies	Aruba
F028	Exempt Companies (AVVs)	Aruba
F029	Tax Exemptions and Holidays for New Businesses	Aruba
F030	Free Zones	Aruba
F031	Rulings	Aruba
F032	Captive Insurance	Aruba
F033	Shipping and Air Transport	Aruba
F034	-	East Timor
F035	Offshore Banking	Macao

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F036	-	Anguilla
F037	Exempt Companies	Bailiwick of Guernsey (including Alderney)
F038	International Loan Business	Bailiwick of Guernsey (including Alderney)
F039	Unit Trusts and Collective Investment Funds	Bailiwick of Guernsey (including Alderney)
F040	International Bodies	Bailiwick of Guernsey (including Alderney)
F041	Captive Insurance	Bailiwick of Guernsey (including Alderney)
F042	Offshore Insurance Companies	Bailiwick of Guernsey (including Alderney)

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F043	Insurance Companies	Bailiwick of Guernsey (including Alderney)
F044	-	Sark
F045	Tax Exempt Companies	Bailiwick of Jersey
F046	International Treasury Operations	Bailiwick of Jersey
F047	International Business Companies	Bailiwick of Jersey
F048	Captive Insurance Companies	Bailiwick of Jersey
F049	Tax Exemption Guarantee	Bermuda
F050	-	British Antarctic Territory
F051	-	British Indian Ocean Territory
F052	Arising and Remittance Basis	British Virgin Islands
F053	1% Rate	British Virgin Islands
F054	"Pioneer" Industry Exemption	British Virgin Islands

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F055	Exemption for new hotels	British Virgin Islands
F056	International Business Companies	British Virgin Islands
F057	Tax Exemption Guarantee	Cayman Islands
F058	Tax Holidays	Falkland Islands
F059	Free Depreciation and Balancing Charges on Ships	Isle of Man
F060	Special Depreciation for Tourist Premises	Isle of Man
F061	International Business Companies	Isle of Man
F062	Exemption for Non-resident Companies	Isle of Man
F063	Exempt Insurance Companies	Isle of Man
F064	Tax Holidays for Industrial Undertakings	Isle of Man
F065	International Loan Business	Isle of Man
F066	Offshore Banking Business	Isle of Man
F067	Fund Management	Isle of Man
F068	Exempt Public Companies	Isle of Man
F069	Film Industry Tax Credits	Isle of Man
F070	Reduced Tax Rate for Industrial and Offshore Companies	Montserrat
F071	International Business Companies	Montserrat
F072	Tax Holidays for Approved Enterprises	Montserrat

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F073	Exemption for new hotels	Montserrat
F074	-	Pitcairn Island
F075	Tax Holidays	St Helena and dependencies
F076	150% Deductions	St Helena and dependencies
F077	-	South Georgia & South Sandwich Islands
F078	Tax Exemption Guarantee	Turks and Caicos Islands
F079	-	UK Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus

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Member States

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A001 Co-ordination Centres **Belgium**

Conditions Attached

The co-ordination centres (Belgian incorporated companies or branch offices of foreign companies) may carry on financial and administrative co-ordination activities of multinational businesses. However, corporate groups of the credit, banking and insurance sectors (as defined by the Belgian Income Tax Code) are precluded from creating a co-ordination centre.

A co-ordination centre must form part of a multinational group, with consolidated capital and reserves of at least BF 1,000,000,000 and a turnover of at least BF 10,000,000,000. A group includes all companies in which the common shareholdings (either direct or indirect) represent at least 20% of the share capital. In order for the group to be considered as multinational, all of the following conditions must be met:

- The net equity of the group located outside the country of origin of the group should amount to at least BF 500 million or at least 20% of the consolidated net equity of the group.

- As of the beginning of the second calendar year preceding the co-ordination centre's application (and without interruption) the group must have a subsidiary in at least four different countries other than the country of origin of the group (branch offices do not qualify as subsidiaries in this respect).

- The group must realise at least BF 5,000,000,000 or at least 20% of its consolidated turnover outside its country of origin.

The co-ordination centre may conduct only a number of authorised activities, which should be limited to intra-group transactions. Therefore the group concept is relevant not only in respect of meeting the criteria of size, but also to determine the scope of the authorised activities. As to the nature of the authorised activities, they can be divided into two groups:

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1. Activities of preparatory and auxiliary nature; including sales promotion and advertising, collection and dissemination of information, scientific research, and relations with national and international government institutions.

2. Activities going beyond the “preparatory and auxiliary” concept; including, insurance and re-insurance, the centralising of financial operations (for example, re-invoicing, factoring, financial leasing and financing) the hedging of foreign exchange risks and the centralising of accounting, administration and data processing.

None of the activities of the co-ordination centre should be extended to the activities that constitute the commercial operations of the group. All activities of the co-ordination centre should be carried out for the sole benefit of the other members of the group, i.e. the co-ordination centre should never render services to third parties.

The co-ordination centre may not acquire shares in other companies, nor can it issue loans represented by securities or commercial bills of exchange with a term exceeding one year. An exception, however, may be introduced by a Royal Decree for securities in foreign currencies placed abroad, provided that these securities are not subscribed by private persons resident in Belgium or by non-profit organisations taxable in Belgium.

The co-ordination centre must employ in Belgium at least ten full-time employees, who are subject to the Belgian social security system, within two years from the commencement of its activities.

Finally, the co-ordination centre should be approved as such by the Belgian authorities following the filing of a special application request with the Belgian Ministry of Finance.

Tax Benefits

Belgian co-ordination centres are liable to corporate income tax at the normal (40.17%) rate, but (instead of the actual profits as shown in its financial statements) only on a notional tax base determined as a percentage of certain operating costs incurred by them. Certain items, such as personnel costs, financing costs and taxation are excluded from this base.

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The percentage depends on the mark-up charged to the affiliated group companies and on the type and nature of the co-ordination centre's activities. In the absence of objective criteria, the mark-up percentage will be fixed at 8 per cent.

Incorporation of a co-ordination centre is exempt from the capital registration tax of 0.5 per cent. The co-ordination centre is not liable to pay immovable prepayment (an income tax on the deemed net rental income of the property) on Belgian real estate owned by it.

A special annual tax of BF 400,000 per employee is payable, however with a maximum of BF 4,000,000.

All payments of dividends, interests and royalties made by the co-ordination centre are exempt from the Belgian withholding taxes. Interest paid to individuals or legal entities subject to tax in Belgium will not benefit from this exemption. The credits for interest and dividends from the co-ordination centre are restricted to the extent that the loans or paid-up share capital are used by the co-ordination centre or a group member to finance investments in new tangible fixed assets or capitalised research and development expenditure in Belgium. Additionally, the rights to use the new tangible fixed assets should not be transferred to parties other than Belgian members of the group.

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A002 Distribution Centres **Belgium**

Conditions Attached

The regime is available for existing or newly incorporated Belgian companies (or a Belgian branch of a foreign corporation). There are no minimum employment or turnover requirements but to qualify for the tax benefits provided for in the relevant Tax Circular, the distribution centre must be a part of a group of companies.

The allowed activities of a distribution centre are restricted to comprise the exercise of the following:

- The purchase of raw materials and supplies, finished products and merchandise in their own name or in the name and for the account of the group for which they are destined,
- The storage, management and packaging of raw materials and supplies, finished products and merchandise,
- Receiving orders from non-members of the group as well as drawing up and sending order confirmations without the acceptance of the orders by the distribution centre,
- The sale and/or transport and delivery of the raw materials and supplies, finished products and merchandise to companies of the group,
- The transport and delivery of the raw materials and supplies, finished products and merchandise to non-members of the group for the account of the companies within the group,
- Preparation and distribution of invoices, taking into account that, as far as sales to non-members of the group is concerned, invoices must be drawn up in the name and for the account of the members of the group who have purchased the goods from the distribution centre,
- Performing financial, banking, VAT, customs, excise and administrative formalities related to the permitted activities.

This list is not exhaustive as other activities can be accepted when applying for the special distribution centre status.

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Tax Benefits

In principle, a distribution centre is subject to the ordinary corporate income tax regime (chargeable at 40.17%) but the prices charged to affiliated companies are regarded as being at arm's length in so far as its turnover is 105% or more of all costs borne by it, except for:

- The purchase price of raw materials and supplies, finished products and merchandise which are sold during the taxable period,

- The non-deductible Belgian income taxes,

- Other disallowed expenses,

- The reserves, provisions and reserve funds which are to be considered as taxable reserves,

- The cost of services which, within the framework of the allowed activities of the distribution centre, are rendered to the centre by third parties, on the condition that these services are invoiced by the third party at a normal price, and thus to include a normal profit margin.

The Belgian central tax authorities grant the treatment under the special regime upon an application filed with them. The tax benefits for qualifying Belgian distribution centres are granted for a period of five years and this five-year period can be extended.

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A003 Service Centres **Belgium**

Conditions Attached

Eligible entities are Belgian resident companies, which form part of a group of companies and carry on

a) activities of a preparatory or auxiliary nature,

b) provision of information to customers,

c) contributing in a passive way to sales operations, and

d) activities of an intermediary with respect to the sales of goods and services by the group.

Service centres may only take a limited enterprise risk in respect of these operations.

Tax Benefits

The tax base of a service centre is generally determined according to the normal corporate income tax rules (chargeable at 40.17%). However, it will be accepted that centres acting on behalf and in the name of the companies of the group have charged to affiliated companies for the services rendered at arm's length in so far as the total turnover of the centre is no lower than, either:

a) certain operating costs not contributing in an active way to sales plus a minimum profit, depending on the range of activities actually carried out by the centre (cost-plus method); or

b) the profit margin of the centre related to the activities implying an active intervention in sales operations, determined upon the nature of the intervention and the risk taken by the centre (resale minus method).

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A004 Basque Country Co-ordination Centres **Spain**

Conditions Attached

Basque Country co-ordination centres are entities, whose activities consist of management, direction, supervision and centralisation of transactions and services within an international group of companies.

The equity and annual turnover of the group, to which the co-ordination centre belongs, must exceed certain limits (Ptas 1,250,000,000 and Ptas 8,000,000,000, respectively). At least 25% of the equity must relate to the group members, which are non-resident in Spain, and at least 25% of the group turnover must stem for the business operations of the foreign group members.

The equity and turnover of the co-ordination itself must be at least Ptas 600,000,000 and Ptas 1,000,000,000, respectively. Additionally, the co-ordination centre must also meet the minimum employment criteria (8 full time employees).

A prior approval (recognition of the co-ordination centre status) by the local tax administration is required. The approval is granted for maximum period of five years and it may be renewed.

Tax Benefits

The normal tax rate in the relevant region is 32.5% (the standard corporate income tax in Spain is 35%).

The tax base is calculated in accordance with two alternative methods to be chosen by the taxpayer; the normal method (accounting profit) or the simplified method: 25% of all operating expenses (except financial expenses).

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A005 Navarra Co-ordination Centres **Spain**

Conditions Attached

Navarra co-ordination centres are entities, whose activities consist of management, direction, supervision and centralisation of transactions and services within an international group of companies.

The equity and annual turnover of the group, to which the co-ordination centre belongs, must exceed certain limits (Ptas 1,250,000,000 and Ptas 8,000,000,000, respectively). At least 25% of the equity must relate to the group members, which are non-resident in Spain, and at least 25% of the group turnover must stem for the business operations of the foreign group members.

The equity and turnover of the co-ordination itself must be at least Ptas 600,000,000 and Ptas 1,000,000,000, respectively. Additionally, the co-ordination centre must also meet the minimum employment criteria (8 full time employees).

A prior approval (recognition of the co-ordination centre status) by the local tax administration is required. The approval is granted for maximum period of three years and it may be renewed.

Tax Benefits

The normal tax rate in the relevant region is 32.5% (the standard corporate income tax in Spain is 35%)

The tax base is calculated in accordance with two alternative methods to be chosen by the taxpayer; the normal method (accounting profit) or the simplified method: 25% of all operating expenses (except financial expenses).

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A006 Headquarters and Logistic Centres **France**

Conditions Attached

The regime is eligible for foreign and French multinationals and granted by virtue of an advance ruling. The eligible activities of a headquarters and logistic centre consist of typical headquarters administrative activities (e.g. management, control and co-ordinating functions for a group of companies) and logistic activities (e.g. stocking, labelling, packaging, distribution of products and corresponding administration for the enterprises of the group).

Tax Benefits

Headquarters and logistic centres are liable to income tax at the normal rate (41.66%) but the tax base is fixed to a certain percentage of its accounted operating expenses. This percentage is determined by taking into account the nature of the activities and their operational structure, in order for it to reflect the taxable profit that would have been accounted in an uncontrolled situation.

Generally, this percentage is equal to 6-10% of the operating expenses incurred by the headquarters and logistic centre and it may be revised if there has been a change in the nature of activities or in the operational structure.

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A007 Co-ordination Centres **Luxembourg**

Conditions Attached

Rulings are accorded on case-by case basis for Luxembourg resident companies with a multinational character whose sole purpose is rendering services to and for the sole benefit of companies or undertakings of a (foreign) multinational.

The group must be established by one or more companies participating in with at least 25% of the capital of one or more companies and the group companies must have been incorporated in at least two countries others than Luxembourg. The ultimate parent company may not be resident taxpayer in Luxembourg but of an another country and liable to profits tax corresponding with the Luxembourg corporate income tax in its country of residence.

Note: The tax circular on the basis of which such rulings have been granted from 1989 has been repealed as from February 1996.

Tax Benefits

The Co-ordination centres are, like any other companies, liable to all Luxembourg taxes (the normal corporate tax rate, including municipal business tax, is approximately 37.45%). However, the profit of a co-ordination centre is determined on the basis of cost plus at least 5% of the deductible expenses relating to authorised services.

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A008 Cost plus ruling **Netherlands**

Conditions attached

(see also the annexed note from the Dutch delegation: *Ruling Practice in The Netherlands - General remarks*)

Profit allocation and determination on the basis of a cost-plus calculation is limited to situations concerning preparatory and auxiliary activities between related parties (Publication by the Tax Administration of April 25th, 1985). Certain head office or distribution activities may be eligible for this type of profit determination. According to the publication, an overall condition is that a third party price for the services rendered cannot be found and that the actual cost-plus percentage to be used by the taxpayer is based on indications found in the market for similar situations. The aforementioned administrative publication states that the cost-plus percentage should be no lower than 5% for the most simple activities. Depending on circumstances such as the risk involved or the nature of the labour required, the actual percentage will vary between 5 - 15% in order to mirror what is found between non-related parties.

No cost-plus calculation is possible if the activity at hand is considered to be core-business. In the case of distribution centres no cost-plus calculation is possible if the activity includes buying and reselling, dealing more than incidentally with third parties, or more than simple assembly activities.

A ruling as described above can be obtained confirming the applicability of the cost-plus method and the agreement that the remuneration for services is at arm's length with the appropiate cost-plus percentage. The ruling is valid for a four year period and may be renewed.

Tax consequences

In order to be considered as dealing at arm's length the tax payer should at least show a profit consisting of a fixed percentage of all operating expenses, including financing expenses (including the deemed cost of equity) and including non-deductible costs. Only disbursements are excluded from the basis over which the mark-up is being taken. If, for whatever reason, the taxpayer charges a higher percentage for his services, this will be taken in account in calculating the profit.

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Extraordinary profits or losses (fire, theft) not connected to the normal operation will have to be included in the profit calculation.

The tax on the profit, including the profit calculated on the cost plus basis, is levied at the standard corporate income tax rate of 35%.

Annexed Note from the Dutch Delegation

Ruling practice in The Netherlands - General remarks

Certainty in advance

In The Netherlands Corporation Income Tax is levied by way of assessment after the filing of the yearly tax return. This means that certainty about the tax liability only will be obtained a considerable amount of time after the fiscal year has ended. There are however circumstances in which a corporate or private person has a valid interest in obtaining certainty in advance about the tax consequences of their specific situation. It is a long standing tradition of the Netherlands' Tax Administration to provide certainty in advance to taxpayers regarding their possible future tax situation.

The codification of this tradition has been laid down in the Adminstrative Publication of July 21st, 1995. This means that every taxpayer - be it a private or a corporate person - has the right to acquire an advance opinion from the taxinspector; so in The Netherlands certainty in advance about tax consequences is a legally constituted right of every (potential) taxpayer. Certainty in advance will be given within the bounds of Netherlands' Tax Law, Jurisprudence and Administrative Policy which in itself cannot extend beyond the scope of Netherlands' Tax Law. Neither the Minister, nor the Central Tax Authority or the tax inspector has discretionary power in the application of the Tax Laws. No certainty will be given - the publication states - if the taxpayer tries to exploit the boundaries of what is possible within that framework. The legal consequences of certainty in advance does not differ from the ex-post assesment on the basis of a tax return.

The need for certainty in advance exists especially in the situation of a corporate business entity which deals with related parties in other countries. In these situations a correct transfer price for goods or services rendered is essential for determining the tax liability. In that case the tax payer has a valid interest to know beforehand if he will be considered to be dealing at arm's length. Certainty in advance regarding these situations has - in the Netherlands - long since been indicated with the English word "ruling".

Ruling or no ruling: tax consequences are the same

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A ruling does not constitute a tax treatment which deviates from what is possible under Netherlands' Tax Law. The same corporate tax rate of 35% applies. And as described above the ruling is only given within the framework of the general Netherlands' Tax Laws, the jurisprudence of The Netherlands' Supreme Court and Administrative Policy. Part of that policy is that in cases of transfer pricing or more generally speaking dealing with related parties the tax-inspector strictly adheres to the OECD guidelines. The applicability of various types of rulings or their elements, e.g. the percentage, are not negotiable. This goes for standard situations which have developed over the years as well as for new developments.

The advance ruling does therefore in no way differ from the ex-post assesment on the base of a tax return. The only difference being that on the basis of well described facts certainty about the tax consequences of a transaction or a business operation is given beforehand. The certainty is only valid as long as the actual facts are in accordance with those mentioned in the taxpayers request.

Tax payers without a ruling who find themselves in the same position as other taxpayers who have obtained a ruling are free to file their tax returns on the same basis. They will be assessed equally. The taxpayer with a ruling will be audited periodically as any other tax-payer.

A ruling concerns itself with the correct transfer price for goods or services rendered. Any other circumstance which would normally afflict the profit of the entity will be taken into account when calculating the taxbale profit. The same goes for legal provisions which exclude certain costs from deduction for tax purposes.

Administrative Publication

As mentioned above no certainty in advance will generally be given when the taxpayer tries to exploit the boundaries of what is possible within the framework of Tax Law, Jurirprudence and Policy. But apart from that no ruling is possible if the Tax Inspector has indications that it will be contrary to the good faith governing the relation with Tax Treaty partners.

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All types of rulings have been published in the Administrative Publication of February 15th, 1995. This publication also states that apart from what could be called standard situations some non-standard situations will require an individual approach ("Maatwerk"). However it speaks for it self that these specific situations will have to be dealt with within the same boundaries described above. In fact this means that standard models will be adapted to the specific situation however without deviating from Law, Jurisprudence, Administrative Tax Policy and OECD guidelines.

Coordination and Control

To ensure the strict and uniform application of the above mentioned principles the processing of the requests for a ruling has since 1990 been centralized within one unit of the Tax administration (Rotterdam). This also goes for requests that have been filed with other tax-inspectorates. (Administrative Publication July 6th, 1995). In this way coordination and equal treatment is guaranteed. All the more so, because decisions of the Rotterdam unit are checked on a regular basis with the central Tax Authority.

Duration

A ruling normally concerns itself with a four-year period. It may be renewed repetetively if the facts of the case are still the same and general Tax Policy concerning the type of activity hasn't changed. If so, amendments may have to be made or - apart from a two year grandfathering - no renewal takes place.

A ruling does not guard against changes in Tax Law. If the law provisions concerned are changed then either the ruling will not apply anymore or it will from that day on be applied in conformity with the changed provisions.

Exchange of information

When in doubt whether or not some international tax consequences stem from accepted differences in tax systems, the Netherlands' Tax Administration will consider whether the other Tax Administration should be informed or ensures that this is being done by the taxpayer. The Netherlands' Tax Admininstration will cooperate with every request for information from other Tax Administrations (including the providing of the text of the ruling).

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Opinion European Commission

The European Commission has studied the mentioned Administrative Policy Publication of 1995 concerning all types of rulings and found no grounds for any element of State Aid.

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A009 Resale minus ruling **Netherlands**

Conditions Attached (see also the annexed note to measure A008)

Profit determination on the basis of a resale minus calculation is limited to situations concerning preparatory and auxiliary activities which also have a selling character and take place - at least on one side - between related parties.

This type of group activities, for example marketing activities not being the selling activity itself, may be eligible for this type of profit determination. According to the relevant Dutch administrative publication an overall condition is that a third party price for the services rendered can not be found and that the actual resale minus percentage to be used by the taxpayer is based on indications found in the market for similar situations. Depending on circumstances such as the risk involved or the nature of the labour required, the actual percentage will vary between 1-3% in order to mirror what is found between non-related parties. No resale minus calculation is possible if the activity at hand is considered to be core-business.

A ruling can be obtained from the tax-inspector confirming the applicability of the resale minus method and the agreement that the remuneration for services is at arm's length with the appropiate resale minus percentage. The ruling is valid for a four year period and it may be renewed.

Tax consequences

The ruling confirms that the company deals at arm's length if at least a fixed percentage of the sales proceeds is used in calculating the price for the intercompany services. If, for whatever reason, the taxpayer charges a higher percentage for his services, this will be taken in account in calculating the profit.

Extraordinary profits or losses (fire, theft) not connected to the normal operation will have to be included in the profit calculation.

The tax on the profit, including the profit calculated on the resale minus basis, is levied at the standard corporate income tax rate of 35%.

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A010 Intra-Group Finance activities **Netherlands**

Conditions Attached

(see also the annexed note to measure A008)

This concerns the situation wherein a finance company borrows funds from affiliated parties (or third parties) and re-lends them to affiliated parties. The profit can be determined as a spread calculated over the borrowed amount, provided that the finance company does not bear any currency or debtor risk. According to the relevant Dutch administrative publication an overall condition is that a third party price for the services rendered cannot be found and that the actual spread to be used by the taxpayer is based on indications found in the market for similar situations. Depending on whether the company is borrowing from affiliated or third parties, the spread to be used will start at 1/8% or 1/4% (see table below).

Tax consequences

The ruling confirms that the finance company deals at arm's length if at least the spread is reported as income. Based on what is found in the market two sliding scales are applied, one for fund raising within the group or through commercial paper (begins with net 1/8%) and another for fund raising with third parties (begins with net 1/4%). See tables below. If, for whatever reason, the taxpayer charges a higher percentage for his services, this will be taken in account in calculating the profit. The tax is levied on the profit calculated on the interest spread basis at the standard corporate tax rate of 35%.

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Scale for borrowing within the group and relending within the group		
If the money borrowed is more than (NLG)	but not in excess of (NLG)	the % applying to that bracket is
0	1,000,000,000	1/8
1,000,000,000	3,000,000,000	3/32
3,000,000,000		1/16

Scale for borrowing from third parties and relending within the group		
If the money borrowed is more than (NLG)	but not in excess of (NLG)	the % applying to that bracket is
0	100,000,000	1/4
100,000,000	200,000,000	7/32
200,000,000	500,000,000	3/16
500,000,000	1,000,000,000	5/32
1,000,000,000	2,000,000,000	1/8
2,000,000,000	3,000,000,000	3/32
3,000,000,000	5,000,000,000	1/16
5,000,000,000		1/32

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A011 Holding Companies (ETVE) Spain

Conditions Attached

Entities whose primary purpose is the supervision and management of 5% or more direct or indirect participations in non-resident companies may qualify for the holding company regime, provided that several conditions are met. For example, holding period of at least one year and the subsidiaries must carry on their business activities outside Spain.

It is required to have an effective presence in Spain and to develop the activity by means of an organisation with substance and personnel.

An ETVE may provide the subsidiaries with, for example, financial services. Authorisation by the relevant tax authorities is required.

Tax Benefits

The company is subject to the general corporate income tax rules and in particular to the general tax rate (35%). The particularities are related to the method of avoiding international double taxation.

Dividends, other profit distributions and capital gains obtained by a holding company from the disposal of qualifying interest are exempt from corporate income tax, applying the general rules established to avoid international double taxation in Spain. This means that the benefit only applies if:

- they come from corporate profits and not from 'passive' income
- they have been subject to tax abroad at a tax identical to or analogous to that in Spain
- they do not come from a tax haven

Distribution of profits by a holding company to non-resident, corporation or individual, shareholders (unless these are resident in a tax haven) are exempt from Spanish withholding tax on dividends, always on the condition that the profits from which they originate meet with the above requirements.

A capital duty of 1% is payable on the paid-up share capital.

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A012 Royalty Income – Patents France

Conditions Attached

Corporate income tax liable companies (industrial, commercial and agricultural enterprises) and other taxpayers, namely the inventors. The patent rights must be either included in the holder's immovable assets or acquired against consideration and held for a period of at least two years.

Tax Benefits

Royalty income on qualifying patents is taxed at a rate applicable to long term capital gains (19%). This 19% tax rate will not, however, be applied when the royalty is paid by an associated company liable to tax in France (i.e. where the paid royalty would be tax deductible in France).

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A013 1929 Holding Companies **Luxembourg**

Conditions Attached

The tax-exempt 1929 holding companies are Luxembourg resident companies whose exclusive purpose is the acquisition of participations, in any form whatsoever, in other Luxembourg or foreign companies, and the management and development of these participations.

An "ordinary" tax-exempt 1929 holding company may not pursue any commercial activity of its own, nor may it do business with the public or accept any commissions, fees or similar remuneration.

Administrative practice has led over years to various special regulations, which are applicable only to specific forms of holding companies. These include, in particular, financial holding companies which are permitted greater flexibility to manage their cash flows and to make debenture loans at group level. Under certain conditions, the financial holding companies are also allowed to finance affiliated companies even if there is not a direct interest, and acquire, manage and sell transferable securities.

A holding company with net worth in excess of LF 1,000,000,000 can opt for a status of a "Holding Milliardaire" company. Such a holding milliardaire is a 1929 company that may engage in the operations of both a standard holding company and a financial holding company.

Tax Benefits

Both ordinary and financial holding companies are only subject to capital contribution tax at a rate of 1% and subscription duty at a rate of 0.2% of the paid up value of the shares. They are not subject to any other taxes (the normal corporate tax rate, including municipal business tax, is approximately 37.45%). Tax exempt holding companies do not benefit from the provisions of the double tax treaties concluded by Luxembourg.

Basically, a Holding Milliardaire is treated the same way as any 1929 holding company. However, instead of the annual 0.2% subscription tax it is liable to a tax on payments of interest, dividends, profit sharing bonuses and directors fees at a very moderate rate.

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A014 Holding Companies **Netherlands**

Conditions Attached

(see also the annexed note to measure A008)

The Netherlands' tax legislation does not include a special holding company regime. A company with his residence in The Netherlands can get certainty in advance about the application of the participation exemption as laid down in Netherlands' Tax Law.

The tax inspector will provide advance certainty for the application of the participation exemption rules with respect to dividends received from Netherlands' or foreign subsidiaries and capital gains realised from the sale of shares of such subsidiaries.

The participation exemption can be obtained if at least 5% of the subsidiary is owned by the holding company. In all circumstances the subsidiaries concerned must be subject to corporate income tax. The participation exemption is not applicable to participations in non-resident subsidiaries, which derive the largest part of their income from passive group-company financing activities and/or passive investments. In that case dividends and capital gains are taxed at the standard corporate income tax rate of 35%. Also the parent company has to reevaluate its participation at the end of each year, the result of which is included the taxable profit and taxed with 35% (art. 28b CITA)

Tax consequences

The applicability of the participation exemption means that all dividends and capital gains are exempt from Netherlands' tax. Costs related to the exempted income (including the interest on the funding of the participation) are not deductible. To emphasize the function of the holding company the ruling will stipulate that for each foreign subsidiary the holding is financed with a minimum of 15% equity.

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The ruling confirming the application of the participation exemption rules includes the tax authorities' indication of the arm's length remuneration for managing its subsidiaries. A minimum mark-up of 25% on costs connected with that managing activity will be included in the profit calculation. If, for whatever reason, the taxpayer charges a higher percentage for his services, this will be taken in account in calculating the profit. The ruling is valid for a period of four years and may be renewed. The standard corporate tax rate of 35% is applied to the profit calculated on the cost plus mark-up basis. The standard Capital Tax of 1% is levied on capital contributions.

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A015 Royalties **Netherlands**

Conditions Attached

(see also the annexed note to measure A008)

If a Netherlands' company acts as licensee and sub-licensor between (at least on one side) related parties, the profit can be determined as a spread calculated over the royalties received, provided that the company does not have any legal and/or economic ownership of the intangible. According to the relevant Dutch administrative publication an overall condition is that a third party price for the services rendered cannot be found.

The spread to be used starts at 7% (see table below).

Tax consequences

Under this ruling the royalties received and paid by the company will be accepted as being at arm's length, in so far as the company reports an amount equal to at least 7% of the actual royalties and management fees received (the standard corporate tax rate of 35% is applied). The ruling is granted for a period of 4 years and it is renewable.

A lower percentage than 7 will apply if the amount of the royalties received in a specific accounting year exceeds NLG. 2,000,000 (see table below).

If, for whatever reason, the taxpayer charges a higher percentage for his services, this will be taken in account in calculating the profit. The ruling is valid for a period of four years and may be renewed.

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Scale for licensing activities		
If the net proceeds from royalties is more than (NLG)	but not in excess of (NLG)	the % applying to that bracket is
0	2,000,000	7
2,000,000	4,000,000	6
4,000,000	6,000,000	5
6,000,000	8,000,000	4
8,000,000	10,000,000	3
10,000,000		2

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A016 International Headquarter Companies **United Kingdom**

Conditions Attached

International Headquarter Companies (IHCs) are UK resident companies, which are, throughout an accounting period, at least 80% owned by persons who are not resident in the UK and each of them must hold at least 5% of the company. The IHC regime will be abolished from 6 April 1999.

Tax Benefits

Provided that the FID (foreign income dividend) can be matched with distributable foreign source profits, an IHC can pay it without accounting for ACT (advanced corporate income tax) or it can reclaim ACT it has accounted for unnecessarily. This opportunity removes the cash-flow disadvantage IHCs would otherwise suffer when paying dividends to foreign parents.

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AAM002 Holdings (Schachtelbegünstigung – intra-group relief) Austria

a) General (national) exemption for dividends from holdings in subsidiaries

Conditions attached

The general national exemption is applied to corporations liable to unrestricted corporation tax (i.e. corporations whose management or head office is in Austria). In the case of distribution of income from domestic subsidiaries the controlling or parent company should be a corporation within the meaning of the Law on corporation tax (KStG). There is no minimum holding period requirement or a minimum requirement as to the percentage or size of the holding. The exemption also covers income from an indirect holding and it is not conditional on an application. It is applied automatically and cannot be waived.

Tax benefits

Corporations liable to unrestricted corporation tax (i.e. corporations whose management or head office is in Austria) are exempt from tax on income from holdings in other Austrian corporations in the following cases:

- dividends or deemed dividends paid by limited companies and cooperative societies;
- reimbursements from cooperative societies (for example, in the form of refunds on purchase prices, reductions in purchase prices, refunds of expenses insofar as they are obtained through membership of a cooperative);
- payments made in respect of beneficial rights (i.e. rights to participate in profits and dividends on liquidation);
- dividends paid on jointly held capital for the purposes of the Law on credit institutions and the Law on the supervision of insurance business.

The list of exempt investment income from subsidiaries referred to in subparagraphs 1-4 of Section 10(1) is exhaustive. This exemption does not extend to profits made on the disposal of holdings or any share in the proceeds of a winding-up.

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b) <u>Tax exemptions for dividends from and capital gains on holdings in foreign limited companies (international intra-group relief)</u>

Conditions attached

In order to benefit from the exemption of income from foreign limited companies (dividends and capital gains) the following conditions must be met:

- the Austrian parent corporation must have a particular corporate form (a public limited company, private limited company, business cooperative, mutual insurance company, or savings bank);
- the foreign company must be one comparable to the Austrian company. When the parent and subsidiary directive was transposed it was decided that this condition was met by the companies listed in the annex to the Directive;
- the Austrian company's holding in the foreign company must be direct;
- the Austrian company must have a holding of at least 25% in the capital of the foreign company;
- the holding must have been held for an uninterrupted period of not less than 24 months.

In certain cases the exemption method is, on the basis of the anti-abuse provisions incorporated in the relevant legislation, not applicable but, in order to prevent double taxation of income from foreign corporations, a tax credit for foreign taxes paid is granted. Such a shift from the exemption method to credit method can take place in the following circumstances:

- the corporation's main business objective is to secure (passive) income in the form of interest in return for the provision of movable, tangible and intangible assets;
- the foreign corporation's income, regarding the determination of the basis of assessment or rate of tax, is not subject to any foreign tax comparable to Austrian corporation tax.
- it has been established that the corporation is owned principally by natural persons in respect of whom the Austrian State's right to impose income tax is not restricted in relation to other States.

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Tax benefits

Dividends paid by a foreign company to an Austrian company and capital gains on disposal of participations held in foreign limited companies are exempt in the hands of the Austrian corporation.

However, in certain cases the exemption method is, by virtue of the anti-avoidance provisions, replaced by credit method. In case of a shift from the exemption method to the credit method, the foreign tax credit is limited to the amount of Austrian taxes payable on the same income.

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AAM008 Private foundations (Stiftungen) **Austria**

Conditions attached

Private foundations are legal persons governed by the Law on Private Foundations and are subject to the special provisions of the Law on corporation tax (KStG). The foundation must, according to its form, be a private foundation for the purposes of Sections 5(11) and 13 of the 1988 Law on corporation tax. If the foundation takes the place of its creator, it is treated comparably to a natural person for tax purposes.

A foundation is generally not allowed to carry on business, agricultural or forestry activities (except as sideline activities), take over the management of a partnership or assume personal liability in a partnership. However, if the foundation discharges the business functions of the creator, it is treated for tax purposes along the lines of a limited company.

Tax benefits

The *transfer of assets to a private foundation* (at the establishment of a foundation) is regarded as a donation, subject to inheritance and gift taxation, and not as an act triggering income taxation. The gift tax on such a transfer is however, not subject to the general tariff in the Law on succession and gift taxes (ErbStG) but, under Section 8(3)(b) of the ErbStG, attracts a moderate “initial tax” of 2.5%. An additional tax at a rate of 2% is payable on the value of the transferred assets when these consist of immovable property. In order to avoid foundations being established on short-term basis, and to preclude possible evasion, the reduced tax rate of 2.5% is not final unless the fund assets remain in the foundation for a period of at least 10 years.

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For tax purposes, a private foundation is regarded as a non-transparent entity and is subject to corporate income tax at a rate of 34%. Private foundations, however, benefit from the domestic participation exemption for dividends received, capital gains tax exemption with respect to disposal of shares held in Austrian companies, exemption of foreign dividends (unless eligible for a treaty relief) and certain interest income. As a foundation is generally not allowed to carry on business, agricultural or forestry activities (except as sideline activities), take over the management of a partnership or assume personal liability in a partnership, *the income of a foundation is often exempt* or taxed at reduced rates. Important items of income that are not exempt are, for example, rental and royalty income.

Distributions to the beneficiaries of the foundations are subject to income tax (levied as a final withholding tax at a rate of 25%) at the beneficiary level. Individuals may, in certain circumstances apply for a refund of this withholding tax. For corporate beneficiaries the 25% withholding tax is treated as a prepayment on the final corporate income tax (at a rate of 34%). Thus, the exempt income of a foundation remains untaxed until it is distributed to the beneficiaries.

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AAM010 Holdings **Belgium**

Conditions attached

Belgium does not have any particular holding company regime but the general corporate income tax system provides for a partial (95%) exemption of dividends received from qualifying participations. Capital gains on disposals of shares held in companies from which the dividends would benefit from the partial exemption at the time of the disposal are exempt.

In addition to the participation threshold requirements (see below), there are two principal conditions for the exemption of dividends received (and capital gains on disposals of shares):

- the dividend distributing company must be effectively subject to corporate income tax on the profits out of which the distribution is made; and
- the recipient company has held the shares (the qualifying participation) in the dividend distributing company for a period of at least one year.

Tax benefits

Dividends received by resident and non-resident companies from Belgian or foreign companies are 95% exempt from corporate income tax in Belgium, provided the recipient corporate shareholder has held (for a period of at least one year) a participation of at least 5% of the share capital of the distributing company or a participation of which the acquisition value is at least BEF 50 million (approx. EUR 1,240,000), when the distribution is effected.

The minimum participation and holding period requirements do not, however, apply to Belgian banks or other credit institutions, insurance companies, brokerage companies or investment companies, when these are the recipients of the dividend income.

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Capital gains on disposal of shares held in companies (from which the dividends received would qualify for the 95% partial exemption) are exempt from corporate income tax in the hands of the shareholder. Capital losses on disposal of shares held in other companies are not deductible.

No withholding tax at source is levied on dividends paid to parent company resident in an EC Member State when the EC parent has held at least 25% of the share capital of the dividend distributing company for a period of at least one year.

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AAM019 Control- and co-ordination centres of foreign companies in GermanGermany

Conditions attached

The Federal Finance Ministry letter of 24 August 1984 (*Bundessteuerblatt* 1984, part I, p. 458) contains an administrative order concerning the treatment of control and co-ordination centres of foreign corporations in the Federal Republic of Germany according to the German double taxation treaties.

Section I of the letter shortly defines what is to be understood by control- and co-ordination centres of foreign companies and which activities are carried out by them. It follows from the description in the letter that the tasks undertaken by the control- and co-ordination centres are exclusively services.

In section II of the letter it is stated that control- and co-ordination centres of foreign companies are, in principle, permanent establishments in the sense of the double taxation treaties. In this context reference is however made to the fact that if the control- and co-ordination centres only carry out auxiliary activities, they do not meet the notion of a permanent establishment (as defined in the double taxation treaties).

Sections III to VI lay down - on the basis of the (limited) activities carried out by these permanent establishments - that participations or shareholdings in subsidiary-companies, loans, patents or similar comparable assets of the group head as well as the earning resulting therefrom cannot be attributed to the permanent establishments. This is because the co-ordination centres only carry out administrative tasks. Assets serving the permanent establishment have to be attributed to it. Domestic companies performing the same function may apply the same rules.

Section VII of the letter contains provisions for the required proofs and information as well as mutual assistance.

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Tax benefits

The profit of the permanent establishment is calculated following the cost-plus method with a profit supplement / surcharge (mark-up rate) of 5 - 10%.

The accuracy of the applied mark-up rate is subject to retroactive inspection by the tax authorities and there is no advance agreement between the taxpayer and the tax authorities. A mark-up rate higher than 10% can be accepted but is, in practice, not used by the taxpayers. A mark-up rate lower than 5% is not accepted, whilst a rate of between 5% and 10%, which has been derived from reviews of business practices, is not objected to by the tax authorities.

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AAM020 Holding companies **Germany**

Conditions attached

The German Corporation Tax Act (KStG) contains rules applicable to corporations subject to unlimited tax liability in Germany, which hold shares in foreign limited companies. These rules are also applicable to permanent establishments of foreign corporations (which receive foreign dividends or sell shares held in foreign companies). The conditions attached to the application of these rules are discussed in more detail below.

Tax benefits

Dividends, which a corporation with unlimited tax liability receives from a German subsidiary, are exempt from tax in the hands of the recipient corporate shareholder when:

- the profits out of which the distribution is made are dividends and capital gains received by the distributing company from shareholdings in foreign companies (i.e. foreign subsidiaries of the distributing company)

The application of these rules is not conditional on any minimum shareholding by the German corporation in the German limited company distributing the dividend.

The distributing German company must be entitled in respect of its foreign subsidiary's dividends either to inter-company tax exemption under a treaty provision or to an (indirect) imputation of the foreign company's corporation taxes under German tax law (Section 26 of the KStG).

The exemption is extended to profits from the sale of holdings in foreign limited companies when the company selling the participation is entitled, in respect of dividends of the foreign company sold, to the inter-company tax exemption under a treaty provision or to an indirect imputation of foreign taxes. Additionally, the German company must hold a participation of at least 10% in the foreign company.

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The foreign subsidiary must also be an "active" company. Any loss from such a sale used to be tax deductible. The possibility of this loss deduction has been abolished in the course of the German tax reform (Tax Relief Act 1999/2000/2002). The exemption for profits from a sale does not apply in cases, where the conditions for exemption are met by artificial means.

In case of further distribution to an individual domestic shareholder these profits are taxable in the hands of the recipient.

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AAM021 Holding companies **Denmark**

Conditions Attached

Companies acting as holding companies are subject to tax in accordance with the rules of the Danish corporate income tax legislation. The conditions attached to the exemption of dividends received and capital gains on disposal of shares held in other companies, as well as to the exemption from Danish withholding tax on dividends paid, are discussed in more detail below.

Tax benefits

Domestic and foreign dividends are exempt when received from a company in which the Danish company's stock ownership is at least 25%. In order to qualify for the exemption the shares of the subsidiary must have been held by the Danish recipient company for a continuous period of one year or more and the dividend payment must have been effected during this holding period.

However, the exemption does not apply to dividends received from foreign subsidiaries located in low tax jurisdictions (or which are otherwise subject to a low effective level of taxation) and whose activities are mainly of a financial nature, unless the Danish company has been taxed jointly with the distributing company under the Danish CFC rules:

- during the entire ownership of the shares of the distributing company, or
- during a period of at least three years prior to the dividend distribution.

Dividends paid to companies who hold at least 25% of the shares of the Danish distributing company for a continuous period of at least one year, during which the dividends are paid, are exempt from Danish withholding tax on dividends, provided that the legal form of the Danish company is either a public limited company or a private limited company.

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Capital gains realised on disposals of both domestic and foreign shares held for a period of at least three years are exempt (apart from capital gains realised on the sales of foreign financing companies located in low-tax jurisdictions). Any losses arising from disposal of such shares held in domestic or foreign companies are not deductible.

Should a Danish company realise capital gains on the sales of shares (of domestic or foreign companies) held for less than three years, the capital gains thus realised are fully taxable at the standard Danish corporate income tax rate of 32%. Losses on disposal of such shares may be set off against taxable capital gains from sales of other shares held for a period of less than three years.

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AAM052 Holding companies with shareholdings in foreign companies France

Conditions

In France, companies receiving dividends resulting from profits on which tax has already been paid by the distributing company receive a tax credit in order to avoid the double taxation of that income. When that tax has not been paid on the dividends distributed or has been paid at a reduced rate, the recipient companies nevertheless receive a tax credit but the distributing companies pay a withholding tax deducted at source equivalent to the amount of the tax credit in lieu of the corporation tax which was not paid.

The redistributions carried by holding companies of dividends from exempt foreign shareholdings (parent company/subsidiary system) would therefore normally be subject to withholding tax. To simplify, as those distributions were not derived from profits on which corporation tax was paid in France, they are not subject to withholding tax and at the same time do not entitle the shareholders to tax relief.

The recipient companies must therefore fulfil the following three conditions simultaneously:

– their sole activity must be management of a share portfolio; companies pursing other activities (commercial, industrial, craft, non-commercial or agricultural) are therefore excluded from tax relief;

– have fixed assets of which two-thirds at least are composed of holdings in companies whose registered office is situated outside France and which bestow entitlement to the parent company system;

– deduct from those holdings at least two-thirds of their paper profit excluding capital gains.

These conditions must be fulfilled on the date of distribution (payment) and at the closure of the financial years from whose profits the dividends are deemed to have been deducted.

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Tax concessions

Companies managing foreign shareholdings are exempted from withholding tax (Article 223(e) paragraphs 3-8 of the General Tax Code). Exemption does not apply to distribution of capital gains derived from the transfer of shares.

The measure does not concern: the distribution of dividends on which corporation tax has been paid, the distribution of dividends from foreign companies which do not bestow entitlement to the parent company/subsidiary system (no withholding tax as the dividends concerned are subject to corporation tax in France) or French companies bestowing entitlement (withholding tax and tax credit).

Tax credits of foreign origin attached to dividends from foreign shareholdings redistributed free of withholding tax by the holding company are transferable to their associates or shareholders only in proportion to the distributed portion of the dividends to which they are attached and provided that they apply to dividends received during financial years for which the accounts have been closed for at least five years.

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AAM108 Application of the parent company/subsidiary system to resident companies with share capital (commonly known as "SOPARFI") Luxembourg

Background information

It should be stated at the outset that no "SOPARFI" company exists either in company law or tax law. The system concerned, that of parent companies and subsidiaries, is vested in common tax law (Article 166 of the Law on Income Tax) and enables any Luxembourg company which is resident and fully subject to tax to benefit from tax relief on dividends from a major shareholding in accordance with a principle aiming at preventing the same income from being taxed several times (economic double taxation).

Conditions

To benefit from tax relief on dividends, the company distributing dividends must be subject to a tax comparable to the Luxembourg tax applied to a similar tax base or be a Luxembourg company which is resident and fully subject to tax or a resident company from another Member State to which reference is made by Article 2 of Directive EEC/90/435 of 23 July 1990 concerning the common system of taxation applicable to parent companies and subsidiaries.

The recipient company must be a company fully subject to tax in Luxembourg and must directly hold a shareholding of at least 10% or the purchase price must be at least LUF 50 million (approximately EUR 1 240 000) for a continuous period of at least 12 months.

To benefit from capital-gains-tax relief on the transfer of a direct holding, the latter must represent at least 25% of the subsidiary's capital or else the purchase price must be equivalent to at least LUF 250 million (approximately EUR 6 200 000).

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Tax concessions

The company benefits from tax relief on dividends. Capital gains from transfers of direct holdings are also tax free.

Debit interest in connection with the acquisition of major shareholdings may be deducted only for the amount exceeding the tax-free revenue to which they relate economically. When shareholdings are transferred, capital gains are exempted only if debit interest has not reduced profits from previous years.

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AAM114 Holding companies (SGPS) **Portugal**

Conditions attached

An SGPS must be organised either as a corporation or a limited liability company. Its sole purpose must consist of the management of participating interests in other companies as an indirect form of carrying on business activities. At least 70% of total investments of a SGPS must be held in companies in which the SGPS alone or together with its subsidiaries holds at least 10% of the voting right for a period of more than one year.

Tax benefits

SGPS may deduct from their taxable income 95% of incomes comprised in their taxable base corresponding to profits distributed by entities having their head-office or effective management in the Portuguese territory not subjectively exempt from IRC (corporate income tax) regardless of the percentage of their participation in the capital stock as well as the period during which such participation is held.

The positive difference between capital gains and capital losses derived by SGPS from the sale or exchange of quotas (shares held in limited companies) or shares owned by them shall not contribute to the formation of taxable profit for tax period to which it relates whenever the whole amount of the respective realisation value is, partly or wholly, reinvested in the acquisition of quotas, shares or securities issued by State up to the end of third exercise following that of its realisation: such difference shall be taxed in the exercise during which the assets object of reinvestment are alienated.

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B001 The International Financial Services Centre (Dublin) Ireland

Conditions attached

Incentives are granted to companies locating and carrying on 'relevant trading operations' in the International Financial Services Centre (IFSC) in Dublin. To qualify for these incentives the company must first obtain a certificate from the Minister of Finance licensing the proposed operations.

IFSC approved projects must be engaged in financial services activities which have substance and which contribute to the development of the IFSC. All projects approved for the Centre must commit to creating a minimum number of new jobs. At the end-1997, IFSC projects employed 4500 directly with commitments to increase this number to 6000 in the next few years. The numbers employed in individual projects range to more than 100. Brass plate operations are not approved.

There is a range of ownership and funding structures in the IFSC, arising from a variety different requirements (e.g. regulatory, prudential, commercial).

Benefits are available to financial services carried out with non-residents *("not ordinarily resident")* of Ireland.

The following is a breakdown of the origin of financial services projects establishing in the IFSC:

Ireland	EU	Non-EU
23%	37%	40%

Tax Benefits

Amongst the benefits available are

1. 10% rate of corporate income tax (instead of 32%).

2. exemption from rates (local property taxes) for ten years,

3. double deduction of rent expenses in the centre for lessees for ten years,

4. 100% write-off in first year of new building costs in the centre for owner occupiers,

5. 54% write-off in first year of new building costs in the centre for lessors and write-off of the balance at 4% per annum thereafter, and

6. 100% write-off in the first year of expenditure on new equipment.

The Advance Corporation Tax (ACT) rate for IFSC companies is 1/18. ACT will be abolished for all Irish resident companies from 6 April 1999 in line with the abolition of tax credits on dividend payments to shareholders.

In 1992, following consultation with the German authorities, Ireland introduced a measure under which the 10% rate can be effectively increased in the case of certain IFSC companies.

The purpose of this was to retain the relevant trading operations of these companies in the IFSC by ensuring that they do not come within the scope of CFC legislation which might be operative in the country of the parent company or ultimate parent company. Notices have been given only to Japanese and German companies where the rates have been set at 26% and 30% respectively.

Phasing Out of the IFSC Preferential Tax Regime

In 1987 the Commission approved the IFSC under the State Aid rules, taking account of the serious socio-economic situation in the area. Initial progress in developing the Centre was slow resulting in a number of extensions to the period during which the preferential tax regime would apply. These extensions again received Commission approval.

More recently the Commission has deemed that the preferential tax rates constitute operating aid, which cannot be reconciled with the State Aid provisions. Accordingly, agreement was reached by the Commission and the Irish authorities on the phasing out of the regime. The agreement provides for the phasing out of the 10% rate of corporation tax by end-2002. However, IFSC projects approved on or before 31 May 1998, which have a legitimate expectation to the continuation of the 10% rate until end-2005, plus a limited number of pipeline projects approved on or before 31 July 1998, will be entitled to the 10% rate until end-2005. The Commission agreement also provides for the following:

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- new projects in the IFSC, i.e. those approved after 31 July 1998, will only be eligible for the 10% rate until end-2002;
- the deadline for approving new projects at the IFSC has been brought forward by one year to end-1999, which will mean that new IFSC projects establishing after this date will be subject to the standard corporation tax rate then applying;
- a quota has been imposed on the number of new IFSC projects which can be approved in 1998 and 1999; the quota will restrict the number of new projects to 67 projects per year - this is based on the average number of projects approved in recent years.

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B002 Trieste Financial Services and Insurance Centre Italy

Conditions attached

There is a time limit of 5 years. The scheme is open to Italian residents and there are limits on the amounts of loans or investments that can be made and on the amount of tax benefits available, as well as control procedures to ensure that funds are invested in Eastern Europe.

In April 1995, the Commission agreed the measure under its State Aid procedures.

Tax benefits

Authorised financial services, subject to a number of conditions attached to the approval, and offered to Eastern European countries from a Special Financial Zone benefit from exemption from corporation tax (0% instead of 37%) and 50% reduction in local income tax (8% instead of 16%). However, ceilings are put on the total amount of tax concessions (65 billions of Lire approx. 33 million ECU) that may be given and on the total amount of investments and loans (3.5 billion ECU) that may benefit from them; the ceilings apply to the Centre as a whole. Furthermore the profits benefiting from the tax concessions should be realised within the first five years of the Centre's effective completion.

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B003 Luxembourg Finance Companies **Luxembourg**

Conditions attached

In order to qualify for this regime, the applicant must form part of an international group of companies. The group companies must have been incorporated in at least two countries others than Luxembourg.

This special treatment is granted on case-by-case basis.

NB The tax circular on the basis of which such rulings have been granted from 1989 has been repealed as from February 1996.

Tax Benefits

Finance companies are liable to normal Luxembourg taxes (the normal corporate tax rate, including municipal business tax, is 37.45%) on profits, which consist of the difference between interest receivable and interest payable less administrative expenses.

The minimum acceptable commercial profit for a Luxembourg financial company is 0.25% of the amount of loans granted, and if the financial side of the company is covered by legal security, this minimum requirement is further reduced to 0.125%. Neither the credits taken up for the funding of the loans to group members nor the interest paid on those credits have to be included for the assessment of municipal business taxes on capital and income.

Withholding taxes imposed in other countries on interest payments to the finance company may be deducted from the taxable profits of the Luxembourg finance company.

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B004 International Financing Activities **Netherlands**

Introduction

The provisions to form a risk-reserve concerning the financing activities of an international group are laid down as a general rule in the Law of 13 December 1996, Stb. 651, amending the Corporate Income Tax Act 1969 with a view to counter artificial erosion of the tax base and strengthening the tax infrastructure.

This law contains two closely connected provisions. The first provision aims at limiting the possibility to deduct interest connected with the group financing activities of internationally operating groups from the taxable corporate income in case of artificial loan schemes. This provision counters the artificial erosion of the tax base of the Dutch corporate income tax. The second provision opens the possibility of forming a risk-reserve which takes into account the substantial risks of international operations.

The provision for group financing activities of internationally operating groups is a generic measure for all sorts of companies irrespective of their size or business activities. It makes it possible for companies to form a risk-reserve for the risks connected with their international group activities. When the risks occur, the companies having a risk-reserve cannot deduct the connected costs from their taxable corporate income anymore. These costs have to be written off against the risk-reserve. Only when the risk-reserve is not large enough to cover the occurred costs, the remainder of the costs can be deducted from the taxable corporate income. For the sake of clarity it should be noted that the taxable release of the risk reserve replaces to that extent the already existing right to deduct costs and/or losses. So it concerns only the type of costs that normally would be tax deductible under Dutch tax law.

The risk-reserve can only be formed if the company is running risks with regard to international group activities. The basis of the reserve is the income from financing activities. Other business income is not eligible for this reserve. It is required that the company finances group companies which are located in at least four countries or two continents. The maximum deductible contribution to the risk-reserve is 80% of the profit from the group financing activities. It should be noted that the resulting profit is taxed with the regular rate of corporate income tax of 35% while a tax claim of in principle 35% remains on the risk-reserve.

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The intention of the Dutch parliament of implementing measures counteracting artificial erosion of the corporate tax base and evasion (limitation of the participation exemption) through foreign finance companies belonging to Dutch groups combined with the possibility of forming a risk-reserve, is to counter the movement of the Dutch international operating companies to harbour their group financing activities in financing companies in foreign countries including tax-havens. During the Parliamentary Proceedings (1996) the amount in these financing companies was estimated at 15 billion Dutch guilders. These developments lead to a loss of tax revenues for the Dutch Treasury.

Conditions Attached

Internationally operating groups have the possibility to form, on request, a reserve for the risks concerning the financing activities and the holding of participations involved in operating as an international group. Requests are dealt with by a co-ordination committee specially set up to guarantee a strict application of the law. It doesn't have any discretionary power. Neither does the Minister or the Central Administration. A model-decree is published (October 2nd, 1997). The model decree contains a number of provisions to ensure the correct application of the law in order to counter any possible abuse.

The possibility of forming a risk reserve is open to every corporate taxpayer, be it from Dutch or foreign origin, as long as the legal requirements are met.

In order for a company to form a risk-reserve it must perform financing activities for the benefit of the group. The term financing activities includes the following:

- the financing of business assets and business activities of group companies,
- the leasing (operational and financial) of assets to the group companies,
- the licensing of intangibles such as know-how, trademarks and patents to group companies,
- the factoring of trade receivables held by group companies or the financing thereof,
- the rendering of financial and administrative services to group companies,
- the acquisition of, or capital investment, in companies whether or not qualifying for the participation exemption.

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The finance activities must be aimed at companies forming part of the group as laid down in the law. A group company is defined as a company with which the Netherlands' company is associated for more than 33.33%. Shares not entitling the shareholder to a participation in the liquidation proceeds of the company are not taken into account in determining whether the 33.33% test is met.

A company applying for a risk reserve has to meet certain conditions as laid down in the law. For instance, the requirement that finance activities are performed refers to active lending and placement of funds. The entity forming a risk reserve must therefore be able to operate independently. Its officers must have the ability and authority to perform whatever is needed in this respect. The activities must be conducted exclusively from within the Netherlands, without any material interference from elsewhere. The company must be involved, other than incidentally, with the arrangement and execution of financial transactions on behalf of the group companies.

To emphasise the international character of the activities the company must conduct its financial and holding activities in at least four states, including the Netherlands, or at least in two continents. The related entities in the four countries have to contribute at least 5% each of the taxable income related to financing activities of the company. The related entities in each continent have to contribute at least 10% of the income related to financing activities. Furthermore to emphasise the international spread of the activities no more than 10% of the total capital (debt and equity) employed by the company for its financial activities may be applied, directly or indirectly, towards Netherlands' group companies. Failure to meet the conditions as laid down in the law will disqualify the company from forming a risk-reserve. Equally, failure to maintain compliance with these conditions will result in a complete, fully taxed, termination of the risk-reserve.

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Tax consequences

Given all the requirements are met, the company is entitled to form a reserve for special risks involved in operating as an international group. Set off against the profits may be a maximum of 80% of the profits obtained from the financing activities (mainly interest and royalties) and from short time portfolio investments kept with respect to possible take-overs. The amount of the eligible portfolio investments is limited by law to the least of two limits: either 25% of the net-value of the group or the sum of all existing participations and outstanding intra-group loans (Dutch participations up to a maximum of 1/9 of the foreign participations). Any other business income is excluded from the forming of the risk reserve. At the same time the yearly contribution to the reserve is limited by law to a maximum of 80% of the total taxable income (including income that is not related to financial activities). In this way a loss in other activities decreases the amount that can be set off against the profits to less than 80%.

For the purpose of the 80% rule, the taxable profit of the company is calculated before taking into account any contributions to or releases from the reserve. Also losses carried forward from previous years have to be deducted. There are no further limitations.

The finance profit (net income) is calculated after taking into account the expenses, including the interest cost and a proportional part of overhead expenses, which are associated with the finance activities. Profits exempted under the participation exemption, or under double tax relief rules (concerning branch income) are not regarded as being finance profits. Releases from the risk reserve do not count as finance profit.

As mentioned above, a company having an acquisition fund with the real (to be proven to the tax administration) intention to acquire one or more companies may within certain limits add the income from that fund to the finance profit, which forms the basis for the calculation of the contribution to the reserve. The fund which is limited as described above, should be kept in liquid assets in order for the means to be available on short notice. The acquisition should be in the form of share capital.

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The reserve can be released voluntarily or compulsorily. Deductible losses arising from risks for which the reserve was created (including the write-offs of loans, liquidation losses and operating losses through permanent establishments; by the company or by Dutch group companies) result in a compulsorily taxable release of the reserve to the extent of the write down or loss allowed. The amount of losses in excess of the reserve will be deductible in the other profits.

A direct or indirect acquisition of a Netherlands' or foreign subsidiary, or a capital contribution in such subsidiaries entitles to the deduction from the reserve an amount equal to 50% of the acquisition price or the capital contribution without immediate taxation. The acquiring company however is obliged to declare that the acquisition price has decreased by the same amount. In this way a possible liquidation loss is in fiscal terms anticipated in the time. In the case an actual liquidation loss occurs, this loss in fiscal terms will be smaller to the extent in which in respect of this risk the reserve already has been decreased. In such a case the result is an effective tax rate of 35% on the release from the reserve.

If Netherlands' Ministry of Finance deems that the activities or the residence of the subsidiary carry extraordinary risks (for example political or climatic risks), the percentage of the deduction from the risk reserve is increased to 100%. So is the deduction from the acquisition price.

A capital contribution to a group company made to meet liabilities stemming from a liability suit, which this group company can not meet itself, also entitles to a 100% release from the risk reserve. Also in that case a possible future liquidation loss will be reduced with the same amount.

A capital contribution, however, will not qualify if it is in the form of loan conversion (into share capital) or, conversion of a permanent establishment into a subsidiary. The group must hold the shares of the subsidiaries in question for a period of at least five years, unless the alienation of them is predominantly based on commercial motives.

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Voluntary termination of the risk reserve can be undertaken at any time by filing a request to this effect. This type of release must take place in five equal instalments, all subject to tax at a special rate of 10%. During the five-year period, no further contributions to the reserve will be allowed but the releases regarding capital contributions will remain possible. However a full compliance with the Netherlands substance and foreign country conditions will continue to be required during this period. Any finance income during this period will be taxed at 35% without the possibility of adding to the reserve.

Finally, a compulsory release, taxable at the full 35% corporate income tax rate, will take place when the company is no longer subject to tax in the Netherlands (liquidation or a transfer of its fiscal domicile to another country). This taxable release is excluded from the finance profits and cannot be used to create a new reserve. Equally, failing to meet either the Netherlands substance or the foreign country conditions, or to meet any of the other conditions imposed by the law will lead to a compulsory release with the same tax consequences.

In the case of a compulsory release within the five-year voluntary release period, an additional tax of 25% will be levied on all voluntarily released instalments which have been subject to the special 10% tax rate, thereby effectively raising it to 35%.

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B005 Finance Branch **Netherlands**

Conditions Attached

(see also the annexed note to measure A008)

Netherlands' finance companies whose main activity is carried out in a foreign branch will be given certainty in advance about the allocation of profits between head office and branch office. The condition being that both head office and branch office have enough substance to justify such an allocation and that the income of the branch can be considered as active income.

Tax consequences

The taxable income has to be allocated between the Netherlands head office and the foreign branch. If it is clear that the main activity is performed by the branch then generally 10% can be attributed to the Netherlands and 90% to the other country. The percentage attributed to the other country is exempt from taxation in the Netherlands as a result of the applicable rules for avoiding double taxation e.g. the applicable Tax Treaty.

The income attributed to the Netherlands is taxed at the normal rate (35%). The other part of the profits of the finance branch will be taxed according to the rules of the country involved. For example if the branch office is located in Switzerland, this will mean a maximum of 9.8% at the federal level plus a very small additional charge at the Canton level.

Under The Netherlands Unilateral Decree for the avoidance of double taxation of 1989 from 1 January 1999 the credit method will be applied to passive (finance) income, which effectively raises the tax burden to the 35% level.

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B006 Madeira and Sta. Maria (Azores) Free Zones Portugal

Conditions attached

Benefits are available to authorised financial activities carried out principally with non-residents of Portugal from the designated free zones international transport and industrial activities.

More than 2700 companies have set up in the Madeira International Business Centre, the majority in the international services sector, but it is reported that only 1500 jobs have been created directly. Current provisions, as approved by the Commission under State Aid procedures, apply up until 31 December 2011 for companies approved before 31 December 2000. After 31 December 2000 the measure will be subject to re-examination in order to decide whether the possibility of approving new companies will be extended or repealed. (A designated ultra-peripheral region).

Tax Benefits

Some of these activities are exempted from corporation tax (otherwise payable at a rate of 34%).

Equally, exemption is provided from municipal and local taxes as well as from taxes on income from patents and royalties. Interest on foreign loans and securities is not subject to withholding tax if those loans are used for investments in the Free Zone. Exemption is also granted from 'conveyance' tax, gift and inheritance tax on the acquisition of immovable property for the purpose of setting up in the zone.

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B007 Provisions for fluctuations in reinsurance **Luxembourg**

Conditions attached

Luxembourg reinsurance companies must be incorporated as public limited companies (sociétés anonymes), have a minimum share capital of LUF 50,000,000 and be committed to developing a real and autonomous activity in Luxembourg. They are subject to an annual audit by a qualified independent auditor.

Tax Benefits

Those companies which underwrite an adequate risk management programme are generally in a position to defer recognition of taxable income for a very considerable period of time, say 10 years, which may be extended by writing new policies during that period and hence, creating new provisions.

In addition to the standard (tax deductible) technical provisions for outstanding claims and reserves for unearned premiums, a Luxembourg based reinsurance company must also make a provision for claims fluctuation in accordance with article 30 of Directive 91/674 EEC on the annual accounts of insurance and re-insurance companies. This is designed to cover exceptional charges arising from claims on low frequency risks.

Such a provision (sometimes termed as the catastrophe provision) may not be used to turn the annual result into a loss, nor to reduce profits to less than tax losses carried forward from previous years. The reserve may not exceed a ceiling equal to a maximum of 12.5 to 20 times the average amount of premiums earned for the current accounting period and the 4 preceding periods net of cancellations and rebates and after deduction of reinsurance ceded, depending on the type of risk insured.

Reinsurance companies in Luxembourg are fully taxed, (the normal corporate tax rate, including municipal business tax, is 37.45%) albeit with major concessions outlined above. Thus, they may benefit from the double tax treaties entered into by Luxembourg. Investment of premium income in securities subject to withholding tax in treaty countries may, therefore be beneficially achieved by these companies who may gain treaty exemption from withholding taxes.

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B008 Åland Islands – Captive Insurance **Finland**

Conditions attached

Benefits are available to captive insurance companies, whether resident in the Province of Åland or not. To qualify for the benefits, the captive company must meet the following conditions:

- All shares in the captive company are owned by one single shareholder,
- Under the statutes of the captive company, only its shareholder or the shareholder's subsidiary can be insurants in the company
- The operation of the captive company is, subject to notification or licence, managed by an operating company carrying on its activities in the Province.

Tax Benefits

The aggregate rate of tax in respect of the income of the captive company is reduced to 18% (the normal rate being 28%). That reduced rate of tax is arrived at by lowering the rate of the local corporate income tax from 11.2% to 1.2%.

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B009 Foreign Insurance Companies **Sweden**

Conditions attached

Non-resident non-life insurance companies' activities carried out in Sweden (permanent establishments of non-resident insurance companies selling non-life assurance policies in Sweden).

Tax Benefits

The taxable income of the non-resident non-life insurance companies is calculated under a simplified method, which is different from the ones applicable in respect of resident non-life insurance companies.

Resident non-life insurance companies' taxable income is calculated under the standard assessment rules regarding the calculation of taxable corporate income. Resident companies are also entitled to certain technical provisions applicable to insurance companies and the income is taxed at a rate of 28%.

The taxable income of the non-resident non-life insurance companies is determined as being 2% of the total gross insurance premium income from insurance policies sold in Sweden. No deductions, for example on the basis of reinsurance premiums, are allowed for the purposes of calculating such income from insurance policies sold in Sweden.

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B011 Offices of Foreign Companies under the Law 89/67 Greece

Conditions attached

Foreign companies that fall under the provisions of the above-mentioned Law, may set up offices or branches in Greece that shall be engaged in conducting or monitoring their business exclusively outside Greece, provided that,

a) they obtain a special permit granted by decision of the Minister of National Economy,

b) their operating expenses in Greece must be covered by the importation and conversion to the local currency a minimum of US$ 50,000 annually which is increased according to the number of personnel employed.

Tax Benefits

No income tax or any other direct taxes are imposed.

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BAM006 Certain exemptions from corporation tax **Austria**

Conditions attached

a) Credit institutions qualify for a tax exemption if the following conditions are met:

– the corporate object consists exclusively in taking over guarantees and securities for credits and loans and implementing other aid measures of Austrian federal government and the Länder;

– according to the memorandum and articles or other legal rules, and actual management practice, the objective of profit must be excluded;

– persons must not benefit through administrative expenditure that is not in accordance with the corporation's object and members of the management and supervisory boards must not benefit from inappropriately high fees;

– on dissolution, repayment of capital shares that are needed to cover the losses or obligations of the credit institution must be excluded; any surplus assets must be disposed of exclusively in accordance with the authorised corporate objects.

b) Associations providing financing for SMEs qualify for a tax exemption if the following conditions are met:

– the corporation in question must constitute a limited company with a share capital of ATS 100 million that is set up by credit institutions on terms such that, within five years, the credit institutions must reduce their holding to a maximum of 30%.

– the business objects are restricted to lending and investment of share capital and must operate 75% within Austria.

– not less than 70% of the share capital must be invested in the form of holdings in commercial SMEs but the holding must not carry a dominant position.

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– the other assets must be exclusively in the form of money deposits or other loans with credit institutions and in fixed-interest securities.

– compliance with the conditions must be certified annually by an auditor.

Tax benefits

a) Non profit seeking credit institutions are not subject to Corporate Income Tax

b) Associations providing financing for SMEs are exempt from corporation tax for the first 5 years.

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BAM017 Provisions for fluctuation in insurance and re-insurance **Germany**

Conditions attached

Damage and accident insurance companies have to account for accrued liabilities for fluctuations in their commercial balance sheet in order to compensate for fluctuations of the development of damage/accidents in future years.

Conditions for creating accrued liabilities for fluctuations are:

– that according to the experience in the insurance industry concerned significant fluctuations of the yearly expenses for insurance cases are to be expected,

– that the fluctuations cannot be compensated by respective contributions,

– that the fluctuations are not covered by re-insurance.

The accrued liabilities for fluctuations have to be calculated following actuarial principles.

Tax benefits

Future expenses are taken into account in the profit determination. The accrued liabilities for fluctuations are created from the current insurance contracts for the part of future obligations of insurance companies that is presumably not covered by future premiums. The observed period is usually the 15 years preceding the accounting year. For hail and credit insurers it amounts to 30 years.

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BAM023 Banks and finance entities **Spain**

Conditions attached

Amounts set aside for the provision of risk coverage for possible debtor insolvency are deductible, up to the minimum amounts established in the regulations of Bank of Spain.

Provisions for the credits listed below are not deductible, except when they are the object of a judicial or arbitration proceeding to determine their existence or quantity:

a) those owed or guaranteed by bodies governed by Public Law,

b) those guaranteed by means of rights *in rem*, reservation of title agreements and *liens*, when the object of these rights is rural and urban land and buildings used for dwellings, offices and multipurpose use,

However, when more than three years have past from the due date of the first unpaid payments or instalments, and in cases of loss or failure of the guarantee, provisions made will be deductible.

c) those guaranteed with cash deposits or credit or security insurance contracts,

d) those which are subject to an internal renovation pact or a agreement.

Provisions based on overall estimations of the risk of the insolvency of debtors are not deductible.

Provisions for coverage of loss of value of assets acquired in payment of credits, previously classified as doubtful or very doubtful credits, shall be deductible, in accordance with the regulations established by the Bank of Spain.

In case of determination of financial leasing contracts due to non-payment of instalments, provisions for covering the depreciation of assets which are the object of same shall be deductible, in accordance with the regulations established by the Bank of Spain.

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Tax benefits

Special rules apply to financial institutions allowing a more flexible approach to the treatment of bad and doubtful debts.

BAM031 Business share capital companies (Law 2367/1995, Article 5) Greece

Conditions attached

These companies operate as public limited companies and have at least GRD 1 000 000 000 in paid-up capital; the shares are registered shares tradable on the Athens Stock Exchange.

The main characteristic of such companies is that they invest their capital in small and medium-sized undertakings not quoted on the Stock Exchange.

There are two basic forms of investment:

(a) shareholding in a company;

(b) acquisition of bonds convertible into shares in the company after a certain period of time has elapsed.

Tax benefits

Of the profits realised by the companies in each management year, the portion distributed is subject to 15% income tax. The undistributed portion of profits, intended for reinvestment, is not taxable.

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BAM034 Long term loans in foreign currency **Greece**

Conditions attached

This measure applies to interest on long-term loans or credits provided by Greek or foreign banks or the branches of foreign banks in Greece or investment banks to industrial and mining companies for productive investment, provided the capital lent is brought in from abroad solely for that purpose.

Tax benefits

The interest is exempt from income tax in Greece.

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BAM044 Finance centres **France**

Conditions

The financial flows concerned are those which take place in the framework of centralised financial management operations at the level of a group of companies, to which only companies which are directly or indirectly controlled by the same company may belong.

The structure responsible for the centralisation of funds must be one of the companies in this group or a branch of one of them. Its role will consist principally of actually receiving flows of funds from the companies linked by a contractual agreement and responding to their funding requirements. The companies involved in such flows must be established in at least three Member States.

The financial flows resulting from the agreement must be recorded in specific accounts so that they can be followed separately in each company which is a party to the agreement.

The agreement must be declared to the tax authorities by each of the companies involved established in France.

Tax advantages

The advantages concern the deductibility of interest paid and the deduction at source of interest paid outside France.

Firstly, the limitation on the deduction of interest paid within the framework of centralised financial management operations is withdrawn as from 1 January 1999.

In fact, Article 39-1-3 of the general tax code limits the deductibility of interest paid to associates on the basis of the sums which they make available to a company over and above their share of the capital. The deduction is limited to the annual average of the rate of the bank loans to companies, of a duration above two years and at a variable rate. This restriction is peculiar to French taxation.

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Secondly, interest paid outside France within the framework of financial operations managed on the current account are exempt from deduction at source on the basis of Article 131c of the general tax code. This measure applies to interest paid as from 1 January 1999.

These rules were laid down in a decision of 3 November 1998 and were the subject of an instruction of 12 April 1999.

BAM061 Provisions for risks relating to medium and long term credit operations carried out by banks and credit institutions **France**

Conditions

Banks and credit institutions carrying out medium and long term loans are authorised to establish a provision intended to cover particular risks relating to these loans and operations.

The calculation arrangements and the limits for this provision are laid down in Article 3a of Annex IV to the general tax code. The provision is subject to two limits:

– the annual amount may not exceed 5% of the paper profit for the financial year;

– the total amount of the provision may not exceed 0,5% of the amount of the medium and long term credit effectively used.

Tax advantages

The provision is deductible from the taxable result. It may not be cumulated with the provision for doubtful debts.

Where the loss for which the provision was established actually occurs, the amount of that loss must be charged to the provision.

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BAM062 Technical provisions for insurance and reinsurance undertakings France

Conditions

Resident and non-resident insurance and reinsurance undertakings may establish a provision to deal with the following risks:

– risks due to natural elements (hail, storms, hurricanes ...), atomic risks, third party risks due to pollution, space risks (Article 39dG of the general tax code);

– risks relating to credit insurance operations other than those carried out on export for the account of the State or with its guarantee (Article 39dGA);

– risks of death, incapacity and invalidity relating to group insurance operations (Article 39dGB).

The amounts allocated to the provisions are subject to two limits:

– 75% of the technical profit, excluding financial products, relating to the category of risk involved.

  The technical profit is obtained by the difference between, firstly, the amount of the premiums received during the financial year, less the amounts allocated to legally established provisions and, secondly, the amount of losses, less the amount claimed, plus expenses directly chargeable to the branch involved, as well as a share of other charges;

– the total amount of the provisions may not exceed a percentage of the annual premiums less the amounts reinsured which vary according to the nature of the risk insured [43].

[43] Hail (200%), natural disasters, natural elements and space risks (300%), atomic risks and third party risks linked to pollution (500%), credit insurance (134%), risks of death, incapacity and invalidity of group insurance contracts (23% to 100% depending on the size of the group insured).

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The provision thus established must be allocated in the order of seniority of the annual allocations for compensation of the negative technical results which might appear during the following financial years in the corresponding risk categories. Annual allocations which have not been used within ten years are reintegrated into the taxable profit for the 11th year following the year in which they are established.

Tax advantages

These provisions are deductible from the taxable result.

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BAM082 Incentives for the restructuring of the banking sector Italy

Conditions attached

Some incentives to the restructuring of the banking sector are provided by articles 22 and 23 of the legislative decree number 153 of 17 May 1999. Under §1a and 1b, banks, following a concentration of operations (by way of mergers, spin offs, contributions) are entitled to apply a reduced corporation tax rate, on the following conditions:

- the profits are allocated to a special reserve;
- the reduced tax rate applies for five years, from the date of closing of the merger;
- the eligible profits are limited to a maximum amount given by the following base : 1,2% of the difference between a) the amount of credits and debts of the banks making concentration and b) the amount of credits and debts of the largest bank taking part to the concentration ;
- if the reserve is distributed to shareholders before the third year from the allocation of profits to the special reserve, the profits are taxed under the ordinary regime and the reduced tax paid is credited to the ordinary tax due.

The same incentive applies also to concentrations which are carried out by way of exchange of controlling stock, or when the controlling stocks are conferred to a holding.

Tax benefits

The corporation tax rate on profits allocated to the reserve is 12.5% instead of the 37% statutory rate, which applies to the rest of the profits.

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BAM093 Tax deduction for interest on additional capital contributions from foreign head offices to Italian PE **Italy**

Conditions attached

Under Italian tax law - for anti avoidance purposes - transfer of goods and supply of services, carried out between resident and non resident enterprises belonging to the same group or between the company and its PE, are evaluated at the 'normal value': *i.e.*, at the price of goods or services of the same kind, in conditions of free competition (in other words, "at arm's length"; art. 76, §5 and art. 9 §3 of the Italian tax code).

The referred guideline (no. 32/9/2267 of 22nd September 1980, issued for the purpose of art. 53 and 56 of the tax code then in force, substantially confirmed by art. 76 of the new tax code) has been set in order to give instructions to the Administration for the appliance of the "arm's length" principle and the subsequent issues relating to transfer prices. Chapter IV, §4e of the guideline deals with "loans" granted by the head office to its Italian permanent establishment.

Sums paid by foreign head offices to the Italian PE, instead of being considered an increase of the initial endowment capital of the permanent establishment, may be recognised as loaned capital- if effectively connected to the PE- and, as such, being interest-bearing; this applies provided that transfer pricing conditions are met.

Sums paid to the Italian PE (in addition to the initial capital contribution) may be recognised as loan capital and evaluated according to market terms. The relevant factors in determining whether the loan is at market value include, among other things,

- the rate of interest,
- the amount of the loan,
- the duration of the loan, and
- the currency of the loan.

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These considerations must be supported by documentary evidence.

Tax benefits

If the capital contribution is held to constitute a loan, the interest paid by the PE is deductible according to the general tax rules. If there is a fund transfer, which is held to constitute a loan from the Italian PE to the foreign head office, the deemed interest paid by the foreign head office will be included in the taxable base of the Italian PE.

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BAM096 Exemption of income on Government securities **Ireland**

Conditions attached

The exemption applies in the case of securities issued by the Minister for Finance and held by either:

– a company resident and trading in Ireland provided that at least 90% of the share capital of the company is held by a company which is non-Irish resident and is controlled by residents of a country with which Ireland has a tax treaty, or

– a company which is non-Irish resident and is controlled by residents of a country with which Ireland has a tax treaty and which carries on a trade in Ireland through a branch or agency.

The exemption does not apply where the trade carried on consists of banking, life insurance, retail sales or dealing in securities

Tax benefits

Income from the securities is exempt from tax so long as the securities are held continuously from the date of issues.

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BAM098 Non-resident companies **Ireland**

Under Irish tax law prior to the 1999 Finance Act, a company was treated as not resident in Ireland for tax purposes if the central management and control of the company was located outside of Ireland. This rule applied whether the company was incorporated in Ireland or elsewhere. These rules were misused to establish companies which were Irish incorporated but not Irish resident and which were then used for various purposes.

Changes in the rules on company residence have been introduced as part of a package of measures under taxation law and company law adopted by the Irish Government to combat the misuse of non-resident companies.

Conditions attached

The tax changes introduced in the 1999 Finance Act provide that, subject to tax treaty arrangements, a company incorporated in Ireland will be treated as resident in Ireland for tax purposes except where both of the following conditions are met :

– the company or a related company carries on a trade in Ireland, and

– either the company is ultimately controlled by persons resident in EU Member States or in countries with which Ireland has a tax treaty, or the company or a related company is a publicly quoted company.

Where a company meets the above conditions, its tax residence will be determined on the basis of where the central management and control of the company is located.

The changes apply to new companies incorporated in Ireland on or after 11 February 1999 and to other companies from 1 October 1999.

After 1 October 1999 <u>all</u> companies incorporated in Ireland will be resident in Ireland for tax purposes, and therefore subject to Irish tax on world income, unless;

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- they come within the exception described above, and
- the place of central management and control is located outside Ireland

Tax benefits

Subject to tax treaty provisions, companies which are not resident in Ireland are taxable on Irish source income, while companies resident in Ireland are taxable on their world income.

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BAM118 Reinsurance Companies **Portugal**

Conditions attached

Reinsurance companies are subject to the same tax regime as other insurance companies and are subject to the same corporate tax rates.

The rule of sub-paragraph d) of paragraph 1 of article 33 of the Corporate Income Tax Code establishes the deductibility of provisions that might be set up according to the order determined by the Instituto de Seguros de Portugal to the companies subjected to its control, including the technical provisions that the insurance companies are legally obliged to set up.

Provisions allowed to be deducted by insurance and reinsurance entities under sub-paragraph d) of paragraph 1 of Article 33 of the IRC Code are as follows;

1) Provisions for non-acquired premiums

2) Provisions for current risks

3) Mathematical provisions for 'life' sector

4) Provision for old age

5) Provision for accident

6) Provision for participation in profits

7) Provision for contingency gaps

8) Provision for receivables

9) Provision for bad debts

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Provisions referred to under sub-paragraphs 1 to 7 are deemed to be technical provisions (as laid down in Article 70 of Decree Law 94-B/98, of 17 April) and those under sub-paragraphs 8 and 9 are non-technical provisions (according to Rule no. 30/95-R of 28 December 1995, from the Instituto de Seguros de Portugal)

Tax benefits

The provisions are tax deductible.

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BAM123 Independent investment managers **United Kingdom**

Conditions attached

The provision applies to non-residents who, through an agent, carry on trade in the UK of dealing in investments (i.e. shares, securities and similar financial assets).

The independent agent must be carrying on the business of providing investment management services. The transactions performed on behalf of the non-resident must be carried out in the ordinary course of that business; the agent must be acting in an independent capacity; and the non-resident must have paid for the agent's services at arm's length

Tax benefits

The profits of such a trade are outside the UK charge to tax if the agent is independent of the non-resident. The provision reflects the distinction in article 5 of the OECD Model Tax Treaty, which gives source states taxing rights where a trade is carried on through a dependent agent but not where it is carried on through an independent agent.

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C001 Scheme for Early Depreciation of Vessels **Denmark**

Conditions Attached

The scheme is applicable if the taxpayer has entered into a contract on the acquisition of a ship or has made plans to build a ship in his own business and the acquisition cost (or the calculated building cost) of the ship is at least DKK 1,047,200 (for 1999). It is a condition that the delivery takes place within four years. It is equally applicable in cases where a ship owned by a taxpayer is further constructed (enlarged or modified).

Tax Benefits

Advanced depreciation may be taken on that part of the acquisition cost (or the calculated building cost) which exceed DKK 1,047,200. Once the acquisition agreement has been formally concluded a total of 30% of the acquisition cost may be depreciated for tax purposes before the delivery of the vessel. However, no more than 15% of the acquisition cost may be depreciated in any one year before the delivery has taken place.

Advanced depreciation reduces any future depreciation after the delivery of the ship.

If the acquisition (construction) contract is terminated before delivery, any advance depreciation taken prior to the termination must be brought back to the taxable business income.

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C002 Shipping Regime – Tonnage Tax — Germany

Conditions attached

Shipping companies managed in Germany with their own or chartered commercial vessels which are for the most part entered in a German shipping register in the business year and used primarily in international transport may elect to be taxed under the rules providing for a tonnage tax system for the purpose of calculating taxable income. Sea-going vessels used mainly outside the territorial waters of Germany for towing, salvaging or locating mineral resources or for surveying energy deposits below the ocean floor are also eligible for the tonnage tax system.

Once a shipping company has elected to be taxed under these rules, it is bound by the system for a period of ten years. The measure is applicable for the first time to the business year ending after 31 December 1999.

Tax benefits

Under the tonnage tax system, the profits of a shipping company (to the extent that they are attributable to the operation of the qualifying vessels) are determined on the basis of the net tonnage (net registered tonnage) of the qualifying vessels.

The profit made in the business year is calculated on a daily basis, on each qualifying vessel's volume (per 100 net registered tons) as follows:

Daily tax	Total volume (net registered tonnage)		
DM 1,80	0	–	1 000
DM 1,35	> 1 000	–	10 000
DM 0,90	>10 000	–	25 000
DM 0,45	>25 000		

In addition, for the transitional financial period (during which the shipping company's income is calculated for the first time under the tonnage tax system), shipping companies may claim a tax deductible roll-over reserve on the basis of the balance sheets. The reserve may be used for the acquisition of a replacement vessel within two years from the date of disposal of a vessel.

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C003 Ship Management Offices (Law 89/67 and 378/68) Greece

Conditions attached

Foreign management companies may set up offices or branches in Greece for the management of ships engaged in deep-sea activities, provided that:

- they obtain a special permit granted by a decision of the Ministers for the National Economy and the Mercantile Marine;
- their operating expenses in Greece must be covered by the importation and conversion to the local currency of a minimum of USD 50 000 annually;
- the company's overseas head office places a bond equivalent to USD 10 000 with the Greek Treasury.

Tax benefits

No income tax or any other taxes benefiting the State are imposed.

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C004 Shipping Regime (Law 27/75) Greece

Conditions attached

This regime applies to shipping companies, whether resident or non-resident, with regard to profits from the use of vessels flying the Greek flag.

Tax benefits

Specific taxation system. Payment of taxes on an annual basis calculated by reference to the age and tonnage of the vessel:

Shipping companies, whether resident or non-resident, are exempt from corporation tax with regard to profits from the use of vessels flying the Greek flag. On the other hand, all vessels flying the Greek flag are subject to an annual income tax which varies according to the category, age and gross registered tonnage in koros, as follows:

Category A vessels

Includes the following types of vessels:

– Freighters, tankers and refrigerated ships of gross registered tonnage of 3 000 koros or more;

– All passenger vessels, independently of their gross registered tonnage, carrying out voyages from Greece to foreign ports, or between foreign ports.

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Tax due = rate x total koros x coefficient	
Rates of tax	
Age of the vessel (years)	*Rates in US $ per koros* *(increased 4% annually since 1/1/1976)*
0-4	0,53
5-9	0,95
10-19	0,93
20-29	0,88
30 and over	0,68
The above amounts of tax are multiplied by the following coefficients according to the gross registered tonnage of the ship	
Koros	**Coefficient**
100-10 000	1,2
10 001-20 000	1,1
20 001-40 000	1,0
40 001-80 000	0,9
80 001 and over	0,8

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Category B vessels

Category B includes power-driven and sailing vessels and other small craft. The taxation of category B ships is computed annually on the basis of the total capacity of the ship and is paid in drachmas according to the following table;

Tonnage bracket	Tax rates/koros	Scale tax per bracket	Total gross tonnage	Total annual tax
20	200	4 000	20	4 000
30	230	6 900	50	10 900
50	260	13 000	100	23 900
Excess	300			

The tax shown above is reduced by:

– 50% for ships on regular lines between Greek and foreign ports or solely between foreign ports;

– 60% for passenger ships, motor ships, and sailing vessels;

– 75% for fishing vessels.

For ships or vessels combining more than one of the abovementioned characteristics, only the highest of the above reductions applies.

The sale of vessels flying the Greek flag is subject only to the tax on transfers of immovable property and gives rise accordingly to the collection of a tax limited to US $1 per net registered tonne or the equivalent in GRD for sales made in Greece. Vessels of more than 1 500 gross registered tonnage are exempt from this.

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C005 Shipping Regime France

Conditions attached

Article 238*bis* HN of the General Tax Code, which was introduced by Law No 96-607 of 5 July 1996 on tax incentives for taking shares in jointly-owned merchant vessels, makes it possible, under certain conditions, to deduct the amount spent on acquiring such shares from the total income of natural persons or from the profits of firms subject to corporation tax.

However, these provisions no longer apply to investments for which an application for approval was not made before 15 September 1997 (Article 9 of the Finance Law 1998).

Subject to this reservation, the regime applies to shares in jointly-owned merchant vessels taken out before 31 December 2000 by natural persons domiciled in France and companies or bodies subject to corporation tax. The joint-ownership shares must be in merchant vessels flying the French flag (vessels for the carriage of goods or passengers, the supply of services, or research).

Not covered by the measure are shares in vessels equipped for fishing, mariculture or yachting (except for large pleasure craft operated exclusively for commercial purposes), vessels subject to the rules on the use of inland waterways, vessels of the civil and military authorities, companies or bodies whose principal activity is the fitting out, operation or chartering of vessels and companies or bodies belonging to the same group as them.

The deduction is subject to the following conditions:

– the vessel must be used for at least eight years;

– there must be an undertaking to keep the joint-ownership shares until at least 31 December of the fourth year following that in which the vessel is delivered to the joint proprietors;

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– the vessel must be operated by the joint owners from delivery until at least 31 December of the fourth year following that in which delivery was made;

– the vessel must fly the French flag until 31 December of the fourth year following that of delivery;

– the firm which manages the co-ownership must be a company liable to corporation tax whose business consists in the chartering of merchant vessels);

– the provision does not apply to purchase of shares in vessels from a company directly or indirectly associated with the shipowner;

– the regime is subject to the granting of prior approval.

Approval is granted under the following conditions, as specified in Directive 4 H-3-96 of 22 October 1996 (Section 24):

– the investment is made at the market price and at a normal financial cost, particularly with regard to carry costs. This condition enables, in particular, checks to be made, with a view to protecting investors, to ensure that the vessel is purchased at a fair price, having regard to its construction cost if it is a new vessel, or to its condition or to the application in the case of a second-hand vessel;

– the investment allows for an increase in the fleet of the firm operating the vessel, either as manager of the co-ownership or as charterer. This condition allows for an assessment of the intrinsic economic interest to the operator of the operation, the increase being assessed from both a quantitative and qualitative point of view;

– the investment is of economic interest, particularly in the light of the needs of the relevant sector of the merchant fleet, justifying the tax advantage applied for. This interest is assessed, in particular, with regard to the cost of the operation to public finance.

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Tax benefits

The sums which can be deducted from taxable profits are those which are paid, except for marketing costs. The deduction is made in the same tax year as the payment.

C006 Shipping Regime (Tax regime for shipping companies) Italy

Conditions attached

A register of vessels assigned exclusively to international shipping was introduced on 1 January 1998 ; vessels from the civil and military authorities, sports crafts, fishing boats and vessels used for inland coastal shipping are excluded from the register. Operation of vessels on the register confers a right to several tax concessions. Both resident and non-resident shipping companies may enter into the register.

Entry in the maritime register makes it possible to reduce tax on the profits generated by the company.

Tax benefits

Only 20% of the profits deriving from international shipping is subject to the income tax (e.g. in the case of a company total profits =100; statutory rate = 37%; profits liable to tax = 20; tax due =7.4).

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C007 Shipping Regime Netherlands

Conditions attached

Maritime shipping enterprises may opt for taxation on the basis of the net tonnage of the vessels which are owned or held as a bareboat charter.

The shipping regime is applicable on profits from:

- the operation of ships for the carriage of passengers or cargo in international traffic across the sea or for the carriage of passengers or cargo for the purpose of the exploration and exploitation of natural resources at sea;
- the towing or assistance of ships at sea;
- activities directly related to the operations of ships.

A shipping enterprise is considered to operate a ship if:

- the management and control of a ship that is owned or held as a bareboat charter is to a considerable extent carried out in the Netherlands (ships which are chartered out on a bareboat basis are excluded);
- the commercial management is mainly carried out in the Netherlands for ships owned by another company;
- the ship is chartered on a time or voyage basis.

From the shipping regime are excluded the extraction of sand, grit and mud, dredging, offshore fishing and the actual exploitation and exploration of natural resources at sea. A shipping enterprise must file a request in the first year in which the enterprise derives profits from maritime shipping in the Netherlands. If granted, the shipping regime will irrevocably apply for a 10-year period. After expiration of that period, a shipping enterprise may voluntarily revoke the shipping regime.

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Tax benefits

The profit made by each ship is calculated for each year on the basis of fixed amounts per 100 net tons per day according to a scale which decreases from NLG 2 per 100 net tons per day for ships up to 1000 net tons to NLG 0.50 per 100 net tons per day for ships over 25 000 net tons.

If a request for the shipping regime is granted, a tax claim on the fiscal and hidden reserves of the shipping enterprise is established by the tax authorities. If the shipping enterprise ceases its shipping activities in whole or in part, the claim will be included in the profit of the enterprise. The alienation or leasing out of a vessel on a bareboat basis may be considered a (partial) cessation of the shipping enterprise. The claim will be preserved during the 10-year period.

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C008 Shipping Regime Portugal

1. International shipping registry of Madeira

Conditions attached

The measure concerns the international shipping register kept by the International Shipping Registry of Madeira, part of the institutional set-up of the Madeira free zone. It covers shipping industry activity, except income derived from the transport of passengers or cargo between domestic ports.

Tax benefits

Shipping enterprises based in the Autonomous Region of Madeira qualify for the tax arrangements laid down in the legislation on the free zone (namely Article 41(1)(b), (2) and (8) of the Estatuto dos beneficios fiscais), which consist of the following:

- exemption from corporation tax (IRC), up to 31 December 2011, for profits arising from an authorised activity, and
- exemption from IRC or tax on personal income (IRS) for profits or dividends distributed to members of, or holders of shares in, the entities concerned, whether resident or non-resident;
- exemption from IRS for crew members of vessels registered in the International Shipping Registry in respect of the remuneration they receive in that capacity and for as long as their vessel's registration remains valid.

2. Relief on profits

Conditions attached

The scheme applies to resident companies engaged in shipping activities.

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Tax benefits

Profits generated by resident companies from shipping activities are exempted from corporation tax to the tune of 70% (Article 30 D of Estatuto dos beneficios fiscais). As the rate of tax is 37.4%, the effective rate applied is therefore 11.22%.

In addition, the interest paid to foreign financial institutions on loans granted by them to finance the purchase of vessels, containers and equipment is exempt from stamp duty at 4% (which applies to transactions not falling within the scope of VAT).

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C009 Ice-class Investment Allowance Finland

Conditions attached

An investment allowance is granted for the acquisition of a vessel of at least 19 net register tons. The ship must fulfil certain criteria concerning the classification of the vessel's navigational durability in ice conditions. The vessel must belong to ice class AI or higher, as legally defined.

The allowance is granted with regard to ships ordered during the period 1981-98. It is planned that the allowance could also be granted to ships ordered during 1999 and 2000.

Tax benefits

An allowance of 3 per cent of the acquisition cost of a ship is granted for the first two years after commissioning. The total allowance is therefore 6 per cent of the acquisition cost of the vessel.

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C010 Rollover Relief on Disposal of Ships United Kingdom

Conditions attached

Capital allowances allow the cost of capital assets to be written off against the taxable profits of a business. They take the place of depreciation charged in the commercial accounts, which is not allowable for tax.

Capital allowances are not specific to assets in the form of vessels. They apply more generally to the purchase of other assets such as buildings, plant and machinery, aircraft and spacecraft.

Tax benefits

Ships are considered to be items of plant or machinery for capital allowances purposes and receive allowances at 25% per annum. This means that although the useful life of a ship can be 20 years or more, about 90% of its cost is written off for tax purposes after only eight years. So when ships are sold the proceeds often exceed the tax written-down value. If there is insufficient unrelieved expenditure on other plant or machinery (including other ships) in the year of disposal, a balancing charge will result.

Rollover relief defers any such balancing charge. Instead the excess allowances given on the old ship are used to reduce the qualifying expenditure on new shipping purchased during the following six years. The scheme applies across groups of companies so that a balancing charge deferred by one group member can be set against the expenditure on new shipping incurred by another group member.

If no shipping is acquired during that time, or is insufficient to absorb the excess allowances given on the old ship, a balancing charge is reinstated with interest backdated to the time when the disposal took place.

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Only certain ship purchases qualify as new shipping:

- they must be flagged to the UK, an EC or EEA State, a Crown Territory or a Dependent Territory;
- they must be over 100 gross registered tons (unless the old vessel was accidentally lost or irreparably damaged);
- they must be used for the purposes of the shipowner's trade;
- they cannot be bought from a connected person;
- rollover cannot be used to create or enhance a loss.

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C012 Supplementary staff assigned to scientific research and export management **Belgium**

Conditions attached

A supplementary deduction in respect of taxable profits is granted in respect of supplementary staff assigned full-time in Belgium to:

– scientific research;

– the development of the firm's technological potential;

– a job as head of the export department;

– a job as head of the "total quality management" section.

Tax benefits

Flat-rate reduction of taxable profits.

The amount of the supplementary deduction is BF 440 000 per supplementary unit of staff. The amount of BF 440 000 is raised to BF 880 000 if the recently recruited person is a highly qualified researcher assigned to scientific research.

Whether staff are supplementary is determined on the basis of the average number of workers assigned by the firm to the same tasks during the previous tax period. The concession granted is withdrawn if there is a reduction in staff.

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C013 Tax credit for research **France**

Conditions attached

The measure applies to industrial, commercial and agricultural firms taxed automatically, or if they so choose, under an actual profits scheme. Such firms may opt for the scheme at the latest when they submit the profits return for the first tax year in the period in which they wish to receive the tax credit. To opt for the scheme, the firm must submit the special return annexed to the profits return.

To be eligible, expenditure must have been incurred in scientific and technical research, i.e. fundamental or applied research and experimental development. It may comprise:

- allocations for the depreciation of fixed assets used for research;
- staff expenditure allocated exclusively to research operations;
- other operating expenditure, assessed presumptively as a percentage of staff expenditure (varies from 65% to 100% depending on the place of employment of the persons concerned);
- the costs of taking out and renewing patents and allocations for the depreciation of patents acquired with a view to conducting scientific research activities;
- certain standardisation expenditure relating to the firm's products;
- certain expenditure associated with the preparation of new collections shown by firms in the textile, clothing and leather sector;
- external expenditure incurred by the firm in respect of scientific and technical research work placed with outside bodies.

The regime was extended for five years (1999-2003) by the Finance Law for 1999 (No 98-1266 of 30 December 1998).

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Tax benefits

The research tax credit is a deferrable and refundable tax credit granted if opted for in advance. It is calculated on the basis of the increase in certain expenditure specified in the statute.

From the sum of this internal and external expenditure are deducted any public subsidies and sums received by the approved bodies and experts.

The tax credit is equal to 50% of the amount by which the research expenditure incurred in a calendar year exceeds the average expenditure of the same type, weighted by the rise in consumer prices, incurred in the previous two years. There is a ceiling of FF 40 million a year per firm.

The tax credit is used to pay the corporation tax or income tax due for the year in which the firm increased its research expenditure. The tax-credit surplus constitutes for the firm a claim of equal amount against the State. The claim is used to pay the income tax due in respect of the three years following that in which it is established, then, if appropriate, the fraction unused on the expiry of that period is refunded (in the case of new firms, it is immediately refundable).

Where the variation in research expenditure is negative, 50% of its amount is imputed against the tax credit for the following years.

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C014 Research and Technical Development Ireland

Conditions attached

The regime applies to royalty income from a patented invention where the research and development work giving rise to the patented invention is carried out in Ireland. The regime applies to resident persons and was designed and introduced in 1973 to encourage individuals and companies to invest in research and development. The income to which the regime applies includes a sum paid for the grant of a licence to exercise rights under the patent. The benefits of the regime are limited to amounts which represent arms length prices.

Tax benefits

Royalty income covered by the scheme is exempt from tax. There is no restriction on the deductibility of patent royalties against the taxable income of the payer by virtue of the fact that such royalties are exempt from tax in the hands of the recipient.

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C015 Credits for Investments in Energy Saving Equipment Netherlands

Conditions attached

Persons conducting a business who are liable for income tax and companies which are liable for corporation tax are entitled to an energy investment allowance if they invest in energy saving business assets a particular year. The allowance only applies if the persons or companies are actively running a business and invest in assets that have not been used before.

Certain fixed assets are excluded from the energy investment allowance, for instance houses, cars, which are not meant for road transport and haulage, stocks, licences.

By ministerial decree those investments which are eligible for the energy allowance are designated. The ministerial decree includes a list with groups of energetic functions of application. These groups are for example heating, refrigeration/freezing, ventilation, insulation/shielding, lighting, drive, drying/moisturing and reuse of energy. The starting-point for the list is that non-specified investments with which a certain minimum energy saving standard per year (e.g. for investments in processes 0,5 Nm3 natural gas equivalent (nge) per NLG 1.00 invested) is reached, qualify. For example, a high efficiency boiler and a solar collector system also qualify. The list is brought up to date annually to keep up with the progress of technological developments.

The investments made in the interest of efficient use of energy only qualify for the allowance if there is a declaration by the Minister for Economic Affairs.

If fixed assets, for which an energy investment allowance was obtained in the past, are sold within 5 years of purchased, the energy investment allowance is withdrawn wholly or in part.

Procedure: the investor is obliged to report the investment, an auditor's statement must also be submitted at the reporting time. The reporting is at the same time a request for the needed declaration by the Minister of Economic Affairs.

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Tax benefits

The allowance can be deducted when calculating the taxable profits. The allowance amounts to a certain percentage of the total sum invested in energy saving business assets which appear on the list in a particular year. The percentage of the allowance decreases as the investment amount increases. For investments over NLG 3800 up to NLG 64000 the allowance is 52%. The maximum allowance is 40% of NLG 205 000 000.

The total budget for the energy investment allowance for the year 1999 amounts to NLG 230 000 000. If there is an indication that the total use of the allowance will exceed the total budget the percentage that is used will be decreased or it will no longer be possible to use the measure.

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C016 Research and Development Expenses Portugal

Conditions attached

The measure applies to an IRC taxable person who is resident on Portuguese territory and carries on as his main business a commercial, industrial or agricultural activity, and a non-resident having a permanent establishment therein.

Tax benefits

The beneficiaries may deduct from their taxable income in the financial periods from 1997 to 2000 an amount equal to expenditure on research and development, provided this is incurred on Portuguese territory, in respect of that part which has not been the subject of a non-repayable grant by the State, in accordance with a dual rate:

- the basic rate: 8% of the expenditure incurred in that period, and
- the higher rate: 30% of the expenditure accrual in that period with regard to the simple arithmetic average of the previous two accounting periods, up to a limit of PTE 50 million.

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C017 Calculation of Net Revenue **Greece**

Conditions Attached

Enterprises subject to tax in Greece may deduct from their taxable income expenses relating to certain determined activities.

This measure is addressed to companies which, on the basis of the nature of their activities, incur expenses that do not generally meet the requirements (form or substance) set out for the deductibility in the Greek legislation.

The regime was introduced as a temporary measure in 1958 but it has subsequently been regularly renewed. In its current form the measure is applicable for a period from 01/01/97 to 31/12/99 (Article 31 par. 2 of the Law No. 2238/94 as amended in 1996).

Tax Benefits

With respect to the expenses in question, the deductibility cannot be allowed on the basis of the actual amount of expenses incurred by the taxpayers. Therefore, the deduction is calculated according to a simplified method, on the basis of the gross income accrued from the activities to which it relates. Thus, the deduction amounts to a pre-determined percentage of such gross income as follows:

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Activity	Calculation Basis — Income attributable to	Percentage
Export of goods Hotel Industry	Exports Sales to Foreign Clients	2% of the gross income under GDR 750 million, 1% of the gross income from GDR 750 to 3 billion, 0.5% on the excess
Provision of Services Abroad Written Press Audio-visual Media	Services Provided Abroad Sales Advertising	1% of the gross income under GDR 3 billion, 0.5% on the excess

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C018 Audiovisual Investment Certificates **Luxembourg**

Conditions attached

The device of audiovisual investment certificates is based on the Law of 13 December 1988, amended by the Law of 21 December 1998.

It is designed to promote the provision of risk capital for the production of audiovisual works in Luxembourg.

The works conferring the right to grant audiovisual investment certificates must be fictional or documentary works containing original creative elements. They must be made primarily in production or post-production studios in Luxembourg, by or with the help of a production or post-production company resident in Luxembourg.

The amount of the audiovisual investment certificates to be issued is fixed in accordance with the production costs finally incurred and spent in the Grand Duchy of Luxembourg.

The procedures for issuing audiovisual investment certificates are determined by a Grand Duchy Regulation.

The audiovisual investment certificates are registered in the holder's name and may be endorsed only once. They may not be split.

Beneficiaries of audiovisual investment certificates may only be legal persons established as limited companies and fully taxable in Luxembourg.

Tax benefits

Taxpayers holding an audiovisual investment certificates at the end of the tax year obtain on request taxable income relief known as audiovisual investment relief. The relief is limited to 30% of the taxable income of the tax-paying beneficiary.

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C019 Film Industry United Kingdom

Conditions attached

All expenditure (capital or revenue) on the production or acquisition of a film is deemed to be of a revenue nature and it is possible to supplement revenue expenditure allocated to a period so that taxable profits only arise after all costs have been relieved (section 68 Capital Allowances Act 1990).

Alternatively, for British qualifying films ("qualifying films") completed on or after 10 March 1992, a film-maker can claim to immediately write-off pre-production expenditure subject to an overriding limit (section 41 Finance n°2 Act 1992) and then write off the rest of the production expenditure in equal instalments over three years (section 42 Finance n°2 Act 1992). For a qualifying film completed on or after 2 July 1997, and which cost £15 million or less to make, a film-maker may deduct the total expenditure incurred after 2 July 1997 and before 2 July 2000 (to be extended to 2 July 2002) in computing profits for the period of account in which the film is completed (section 48 Finance n°2 Act 1997).

The purpose of these measures is to stimulate the production of British films and promote growth, employment, investment and opportunities in the film industry.

Tax benefits

Section 68 Capital Allowances Act 1990 contains provisions which apply to expenditure on the production or acquisition of the original, master version of a film.

The first effect of section 68 is to treat expenditure on the production or acquisition of a master of a film, which would otherwise be capital expenditure on the provision of plant (in the form of the master version), as expenditure of a revenue nature. Conversely, capital receipts from the exploitation of master versions are treated as revenue incomings.

The section then sets out computational rules as to how expenditure is to be allowed for tax purposes. Two writing-off methods, which broadly follow accountancy practice, are available. These are the income-matching and cost-recovery methods.

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Under the income-matching method, expenditure is written off over the period during which the value of the film is expected to be realised. An amount of expenditure is allocated to a particular period of account on a just and reasonable basis having regard to the amount of unallowed expenditure and the proportion that the value of the film realised in the period bears to that value and the estimated remaining value.

Under the cost-recovery method, a film-maker can claim that the expenditure allocated to a period under the income-matching method should be increased so that the total expenditure allocated exactly matches the value realised from the film in that period. The effect of this method is that no profit need be brought into account for tax purposes until all the costs of production have been recouped out of the income related to that production.

Alternative relief is available under sections 41 and 42 Finance (n°2) Act 1992 for qualifying films completed after 10 March 1992. Under section 41, a claim can be made that development or pre-production expenditure is deducted in computing tax profits for the period in which it is payable or for a later period. This relief is limited to 20% of total budgeted production expenditure. Under section 42, a film-maker can claim to deduct one third of the total expenditure on producing a qualifying film (excluding any expenditure relieved under section 41) in computing profits for the period in which the film was completed, with further one-third deductions in the following two years. Relief under section 42 can also be claimed on the acquisition of a qualifying film.

Under section 48 Finance (n°2) Act 1997, a film-maker may deduct the total production costs of a qualifying film (excluding costs already allowed under section 41) in computing profits for the period of account in which the film was completed, provided that the expenditure does not exceed £15 million and was incurred on or after 2 July 1997 and before 2 July 2000 (this time limit is shortly to be extended to 2 July 2002). Relief under section 48 can also be claimed on the acquisition of a qualifying film.

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A qualifying film is one certified as such by the Department for Culture, Media and Sport (DCMS). For tax purposes the criteria are:

- the film is made by a company that is both registered and centrally managed in the UK or other EU State;
- any studio used must be in the UK, but a maximum of 7.5% of playing time may be shot in studios in Eire or Commonwealth countries;
- if more than 20% of playing time is shot on location outside the UK, the film must be prepared, equipped and processed in or from the UK;
- 75% of labour costs must be represented by payments to Commonwealth or EU citizens or ordinary residents of those countries.

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C020 Investment Deductions **Belgium**

Conditions attached

The measure is available to companies, and to natural persons declaring profits or gains.

The investment deduction may be applied to certain investments in tangible or intangible fixed assets, acquired or constituted new during the tax period and which are assigned in Belgium to the pursuit of a business activity. However, under no circumstances does it apply to investments sold to third parties.

Provision is made for various cases of exclusion, particularly with regard to non-depreciable assets, assets which may be written off in less than three years, and vehicles including those designed for the transport of both passengers and goods.

Since 1992 the investment deduction has been reserved for:

– investments by natural persons and by small and medium-sized enterprises, the latter being defined as companies where the majority of voting rights is held by natural persons and which are not part of a group with a coordination centre;

– investments qualifying for increased rates (R&D and patents, environment, energy-saving, innovative companies), whether the investor is a natural person or any company subject to corporation tax.

Tax benefits

The investment deduction makes it possible to deduct from the tax base a portion of the amount of the investments made during the tax period.

In principle, the deduction is granted once, but a staggered deduction is possible, depending on the size of the enterprise and the nature of the investment. The unused portion of the deduction can be carried forward to subsequent financial years, subject to certain ceilings.

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The basis of calculation is determined by the depreciable amount. The rate applicable is determined by taking a basic rate, which varies from 3% to 10%, and increasing it by a coefficient depending on the purpose of the eligible investment. Thus:

– investment in R&D and patents (+ 10 points);

– "green" investment, defined as that which seeks to promote R&D in new products and advanced technologies not having an effect on the environment or aimed at minimising adverse effects on the environment (+ 10 points);

– energy-saving investment (+ 10 points);

– investment in innovative companies.

Where the deduction is staggered, the basic rate is increased:

– by 17 points in the case of "green" investment;

– by 7 points in the case of other investment.

The rates applicable for the 1998 tax year, therefore, are:

Type of investor and nature of investment	Rate of deduction
Natural persons (single deduction)	
Basic rate	3.5%
Patents, R&D, "green" and energy-saving investment	13.5%
Companies (single deduction)	
SMEs	3.0%
Other companies	0.0%
Patents, R&D, "green" and energy-saving investment	13.5%
Staggered deduction	
"Green" investment	20.5%
Other investment	10.5%
Innovative companies	
Basic rate for innovative SMEs	8.0%
Basic rate for other innovative companies	5.0%
Patents, R&D, "green" and energy-saving investment	18.5%
Staggered deduction, green investment	25.5%
Staggered deduction, other investment	15.5%

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C021 Special Depreciation and Allowances – Agriculture and Forestry Germany

1. Accelerated depreciation of agricultural and forestry assets [44]

Agricultural and forestry holdings (industrial enterprises and companies resident in Germany) covered by a property-based tax scheme, whose net assets do not exceed DM 240 000, may apply a supplementary accelerated depreciation during the first year or one of the four subsequent years, equal to 20% of the value of the capital goods acquired new. This accelerated depreciation is combined with degressive depreciation (at the maximum rate of 30%). The goods may therefore be depreciated during one of the first five years at the maximum rate of 50% (30% + 20%).

2. Investment provisions

Agricultural and forestry holdings (industrial enterprises and companies resident in Germany) covered by a property-based tax scheme, whose net assets do not exceed DM 240 000, may constitute tax-deductible provisions with a view to acquiring capital goods in the two business years following the constitution of the provision.

The tax-deductible provision is equal at most to 50% of the amount of the acquisition, up to a ceiling of DM 300 000. The provision must be reincorporated in the taxable profits from the start of the depreciation of the goods concerned or on the expiry of the second year following the date when it was set up.

3. Relief applicable to profits from agricultural or forestry holdings

Farmers or foresters with income of up to DM 50 000 from an agricultural or forestry holding qualify for relief of DM 2 000. The above amounts are doubled where spouses are assessed together.

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[44] These depreciation and provision schemes also apply to industrial and commercial firms whose net assets do not exceed DM 400 000.

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4. Relief granted on capital gains from the sale of agricultural or forestry holdings

4.1. Total disposal of the holding

Capital gains from the disposal of entire holdings, made between 1 July 1970 and 31 December 2000, qualify for relief of up to DM 150 000, provided that the "economic value" of the holding is less than DM 40 000 and that the income of the farmer/forester has not exceeded DM 35 000 (DM 70 000 in the case of married persons) annually in the two years prior to disposal.

4.2. Partial disposal of the holding

The capital gain from the partial disposal of an agricultural holding made between 1 January 1986 and 31 December 2000 entitles the seller to relief of up to DM 90 000, provided that the farmer's income has not exceeded DM 35 000 (DM 70 000 in the case of married persons) in the year prior to disposal and the disposal is used to repay the holding's old debts. Above this ceiling, the relief is progressively reduced.

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C022 Incentives for Mining Enterprise Spain

Conditions attached

These measures relate to entities undertaking exploration, research and exploitation or profitable activities from mineral deposits and other geographical resources.

They reflect the increased and specific risks connected to this activity; the uncertainty of production levels, personnel costs and increased disease and accident risks, high investment costs and the wide time period between the first expenses and the first production outputs.

Tax benefits

There are free depreciation rules for assets directly invested in mining activities (including surface rental). The benefit applies from the first year in which the mining activity produces results.

Amounts used to obtain certain mining products may be deducted from the tax base. This reduction is limited to 30% of the tax base generated by these products.

Only amounts spent on expenses, jobs and assets directly linked with certain specified mining activities qualify and only for a ten year period. If this requirement is not satisfied the amounts will be taxable and interest for late payment charged.

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C023 Mining Taxation Ireland

Conditions attached

The measure applies to persons, whether resident or non-resident, engaged in mining scheduled minerals in Ireland.

Tax benefits

The normal corporation tax rate applies to income from mining operations.

The following tax benefits apply:

- capital expenditure (including abortive expenditure) on exploration for scheduled minerals and on mine development may be written off for tax purposes when it is incurred. Exploration expenditure incurred before trading commences may also be written off for tax after trading commences;
- exploration expenditure also qualifies for an investment allowance of 20%;
- accelerated capital allowances, and an investment allowance of 20%, are allowed in respect of the cost of plant and machinery used for the purposes of a mining trade;
- allowances are granted for expenditure incurred on, or set-aside for, rehabilitating the site of a mine;
- where a person carrying on a trade of working a qualifying mine acquires deposits of scheduled minerals, the cost of the deposit may be written off for tax purposes over the life of the mine (or 20 years).

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C024 10% Manufacturing Rate Ireland

Conditions attached

The measure applies to companies' income from manufacturing activities undertaken in Ireland. It applies to both resident and non-resident companies and covers transactions with both residents and non-residents.

Total employment in activities subject to the 10% manufacturing rate was roughly 265 000 in 1997, of which about 129 000 jobs were provided by foreign-owned companies and about 136 000 by indigenous companies.

Tax benefits

Income is subject to corporation tax at 10% instead of the standard rate.

Phasing out the measure

It is proposed to phase out of the 10% manufacturing rate by end-2002 while recognising that certain companies have legitimate expectations in relation to the 10% rate up to 2010.

Existing companies which have legitimate expectations of the continuation of the 10% rate until 2010 will be entitled to retain that rate until then. This includes projects approved by the Industrial Development Agency on or before 31 May 1998, together with a small number of pipeline cases approved on or before 31 July 1998.

New projects will have the 10% rate only to end-2002. During this period, the annual average of new Industrial Development Agency project approvals will not exceed the annual average for the last five years. After end-2002, these projects will be subject to the standard rate then applying.

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C025 Petroleum Taxation **Ireland**

Conditions attached

The measure applies to persons, whether resident or non-resident, engaged in petroleum exploration and extraction activities. It provides *inter alia* for a corporation tax rate of 25% on income of companies from such petroleum activities carried out under leases granted by the Minister for Marine and Natural Resources.

Tax benefits

- a 25% rate of corporation tax applies to companies' income from the production of petroleum under relevant petroleum leases;
- exploration expenditure incurred before commencement of trading is deductible in calculating taxable income after trading commences;
- however, abortive exploration expenditure may only be deducted if it was incurred in a period of 25 years before the commencement of trading;
- expenditure incurred on the abandonment of a field and on the dismantling/removal of structures is tax deductible against profits for the year in which that work is carried out and for the three previous years;
- where a person realises a capital gain on a disposal of assets in a licensed area and the Minister is satisfied that the sole purpose of the disposal is to ensure the proper exploration, delineation or development of the licensed area and the consideration is wholly applied for the purposes of petroleum exploration activities or searching for or winning access to petroleum, the capital gain can be rolled over;
- the cost of plant and machinery, buildings or structures and other assets which are of such a nature that they will have no or negligible value after the field ceases to be worked can be fully depreciated in the year in which they start to be used.

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CAM007 R&D allowance **Austria**

Conditions attached

Expenditure on the development or improvement of economically valuable inventions may benefit from a research deduction.

The measure may not be applied to administrative activities, or to expenditure incurred on fixed assets. This means that for expenditure on machinery, which is used for the invention, no research allowance can be applied, whereas a deduction is available in respect of raw materials, auxiliary and operating materials as well as for wages.

The economic value of the invention is to be proved by a certificate from the Ministry of Economic Affairs unless the invention is already protected by a patent.

The research deduction generally applies to research undertaken for third parties.

The increased research deduction applies to inventions retained in the balance sheet and used by the entity itself. The inventions must not be offered to other persons for substantial use. A "substantial use" means if the income from the use of the inventions by another person amounts to more than 25% of the research expenditures of this financial year.

The draft paper on the tax reform law 2000 provides for an increase of the research deduction up to 25%. A distinction between contracted research and research for internal use will no longer be made.

Tax benefits

The percentage of the research deduction amounts to

*12% generally,

*18% (increased research deduction) for inventions which are used by the entity itself.

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CAM015 Investor model/film funds **Germany**

Conditions attached

Under current legislation, expenditure on the production of intangible fixed assets may be deducted in full as operating costs in the year in which it originates. This is provided for by Article 5(2) of the Income Tax Law, which prohibits intangible fixed assets generated in house being treated as assets. The reason for this is uncertainty as to the value of these intangible assets, which cannot be calculated on the basis of the expenditure on their production until such time as the market has placed a value on such assets by a process of acquisition (precautionary principle).

Tax benefits

This general principle under tax balance sheet law enables investment companies having very high production costs - e.g. in the production of picture or sound recordings - to allocate large losses to shareholders in the production phase. This is attractive for investors. There are no special arrangements for film funds and no tax incentives for the film industry.

Under Tax Relief Law No 1999/2000/2002, measures have already been taken to curb excessive use of opportunities to set off or deduct losses with the introduction of minimum taxation in Article 2(3) of the Income Tax Law and the restriction on the setting off of losses in the case of participation in transparent loss-making companies (*Verlustzuweisungsgesellschaften*) provided for by Article 2b of the same law.

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CAM016 Rules for self-generated intangibles **Germany**

Conditions attached

Intangible assets are incorporeal assets, in particular rights and other benefits with economic value such as unprotected inventions, know-how, goodwill, trademark rights and computer programmes.

Under current legislation, expenditure on the production of intangible fixed assets may be deducted in full as operating costs in the year in which it originates. This is provided for by Article 5(2) of the Income Tax Law, which prohibits intangible fixed assets generated in house being treated as assets. The reason for this is uncertainty as to the value of these intangible assets, which cannot be calculated on the basis of the expenditure on their production until such time as the market has placed a value on such assets by a process of acquisition (precautionary principle).

Tax benefits

In the event of very high production costs, this general principle under tax balance sheet law enables large losses in the production phase to be treated as tax deductible. There are no special arrangements.

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CAM024 Relief for investments in films and audio-visual productions Spain

Conditions attached

Taxpayers who are liable to corporation tax are entitled to a relief for any investment made in Spanish films and fiction, animation or documentary audio-visual series, which allows the development of a master version prior to its mass production.

A “financial co-film-maker” who can also benefit from this measure, is understood to be any company participating in the expenditure incurred in respect of the above mentioned films exclusively through its financial contribution in an amount not less than 10% and not exceeding 25% of the total cost of the production. The consideration for such contribution must be the right to participate in any income derived from their exploitation. The co-production agreement, whose clauses must expressly mention these requirements, must be filed within the Ministry of Education and Culture.

Tax benefits

The film-maker is entitled to a relief of 20% in his tax liability. The base of the relief will be calculated by reference to the cost of production less any amount paid by a financial co-film-maker.

A financial co-film-maker will be entitled to a relief of 5% of the investment made, with a limit of 5% of income derived from such investment in each fiscal year.

Relief will be applied from fiscal year in which the production of the work finishes. Any amount not deduced in such period can be carried forward during the following 5 successive fiscal years. In such case, the limit of 5% will be calculated on the income derived from the co-production during the period to which the relief applies.

The total of this relief and that provided for in measure E16 (investment tax credits) cannot exceed 35% of the Corporation Tax Liability.

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CAM025 Investigation and exploitation of hydrocarbons Spain

Conditions attached

This measure is available for activities consisting of searching, exploitation, transport, storage, refining and trading of natural liquid or gas hydrocarbons, when such activities are performed by the researchers or exploiters themselves.

It is applied to Spanish or non-resident companies with a permanent establishment in Spain, who are the owners of the relevant licences for exploration, leases for exploitation and authorisations for carriage, storing and refining.

The activity must be performed in the Spanish territory.

Any amount deducted from the taxable base as a percentage depletion must be invested within the period of the following ten years, in activities related to the exploration of fields and on the dismantling of marine platforms. Exploration activities performed during the prior four years are eligible to this same regime.

Investments financed applying the percentage depletion cannot claim any other relief.

Tax benefits

Companies engaged in the above mentioned business activity are eligible to a relief in their tax liability, this relief will be calculated as a percentage deduction and it may consist, as the company prefers, of:

- 25% of the amount of the consideration paid for the selling of hydrocarbons and for rendering of services of storage. The limit of this percentage is the taxable base.
- 40% of the taxable base prior to this relief.

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The tax regime of these companies also contains the following peculiarities:

- Intangible assets and expenses incurred on exploration can only be depreciated, from the fiscal point of view, up to a maximum annual percentage of 50% (the general rule is freedom to depreciate).

- the compensation for negative taxable bases (losses) can only be made up to a maximum of 50% of each future positive taxable bases (profits) (the general rule allows up to 100%).

- The tax rate is 40% (the general tax rate is 35%).

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CAM027 Shipping **Spain**

Conditions attached

Tax measures (Law 19/1994) are applicable to shipping companies registered in the special register for boats and shipping companies located in the Canary Islands, and to shipping companies rendering regular services between the Canary Islands or between these and the rest of the Spanish territory.

Tax benefits

Relief of 90% of the Corporation Tax liability derived from the exploitation by shipping companies of their vessels registered as above mentioned, or from the exploitation of vessels rendering regular services between the Canary Islands or between these and the rest of the Spanish territory.

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CAM040 Accelerated depreciation for purchases of software France

Conditions attached

Companies liable for corporation or income tax (on industrial or business profits, agricultural or non-business profits) are eligible.

Tax benefits

Article 4 of Law No 84-578 of 9 July 1984 on economic initiative introduced a voluntary special depreciation scheme allowing companies to write down the cost of purchasing software over twelve months.

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CAM041 Accelerated depreciation for energy-saving equipment France

Conditions attached

This covers energy-saving equipment purchased or manufactured before 1 January 2003 listed in Article 02 bis of Annex IV to the General Tax Code.

Tax benefits

The equipment in question may be written down over 12 months from the date on which it enters service.

CAM042 Accelerated depreciation for environmental protection France

Conditions attached

This scheme applies to the following items of equipment purchased up to 1 January 2003:

- new non-polluting two or four-wheel vehicles (Article 39 AC of the General Tax Code);
- specific equipment required to operate non-polluting vehicles (Article 39 AD of the General Tax Code);
- energy storage and distribution equipment required for non-polluting vehicles (Article 39 AE of the General Tax Code);
- leased equipment referred to in Articles 39 AC, AD and AE (Article 39 AF of the General Tax Code);
- purchased or manufactured equipment designed to reduce the noise level of production units in service at 31 December 1990 which is listed in Article 06 of Annex IV to the General Tax Code (Article 39 quinquies DA of the General Tax Code);
- buildings specially designed to protect the environment in accordance with the provisions of Law No 76-663 of 19 July 1976 which are incorporated into agricultural production units and are completed before 1 January 2003 (Article 39 quinquies FC of the General Tax Code).

Tax benefits

The equipment in question can be written down over twelve months.

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CAM046 Deduction of cooperative dividends France

Conditions attached

These arrangements apply to dividends distributed by consumer, producer and agricultural cooperatives.

The cooperative dividend is distinctive in type, origin and method of distribution: it must be a surplus from operations undertaken with members and must be distributed among them *pro rata* to the operations they have undertaken with the cooperative.

Tax benefits

Such companies are authorised to deduct the dividends paid to their members from their taxable income.

Dividends are no longer tax deductible or only deductible in part where the monies in question are transferred back to the cooperative within the following two years as a result of certain events (companies form group or abandonment of cooperative status).

Article 70 of Law No 92-643 of 13 July 1992 on the modernisation of cooperatives provides that cooperatives may no longer deduct dividends where over 50% of their capital is held by non-cooperative members.

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CAM048- Tax exemption of capital gains on the sale of securities of companies established by special agreement to promote industry, business and agriculture **France**

Conditions attached

Decree No 59-248 of 4 February 1959 granted a number of tax benefits to small and medium-sized companies to help them adapt to new market conditions. These apply to industrialists, traders and farmers carrying out joint activities to develop exports and restructure their businesses. Such activities (specialised research, business organisation and market research) must be undertaken by a subsidiary or an economic interest group (groupement d'intérêt économique) set up for that specific purpose.

The group must undertake its activities solely on behalf of its members. It may not carry out manufacturing or processing operations on their behalf or, at a general level, carry out their normal or any related activity.

An agreement is conducted with the Ministry for Economic and Financial Affairs under which the subsidiary undertakes to carry out the programme drawn up by its members. This specific three-year investment programme which is financed by capital subscription must have no other objective than that defined by the group.

The agreement sets out the company's commitments regarding the scope of its activities and conditions under which its programme is undertaken, and the terms under which the agreement will be revoked if the company fails to meet its commitments. The company is required to submit regular accounts.

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Tax benefits

Article 40 quinquies of the General Tax Code provides that capital gains from the sale of the shares in companies which have concluded an agreement with the State under the conditions set out in the Order of 4 February 1959 are not taken into account in calculating the taxable income for the financial year in which they were realised.

Tax exemption is granted on condition that the proceeds of the sale be used to subscribe or purchase similar securities within one year of the date of the sale.

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CAM049 Exemption from corporation tax for the oil storage agency France

Conditions attached

Article 1655 quater of the General Tax Code defines the tax arrangements for the company responsible for establishing and maintaining strategic oil stocks.

It may only sell its stocks at a price higher than or equal to the average weighted purchase price on the instruction of the Ministry for Oil and Gas or at the request of the committee set up pursuant to Article 3 of Law No 92-1443 reforming the oil regime.

Tax benefits

The company is taxed on its profits when they are distributed and not at the time they are realised.

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CAM050 Corporation tax exemption for agricultural cooperatives France

Conditions attached

The eligible agricultural cooperatives (Article 207-1-2 of the General Tax Code) are agricultural supply and purchasing cooperatives, cooperatives producing, processing, storing and selling agricultural products and agricultural service cooperatives.

To be eligible for these arrangements:

- the cooperative's articles of association must comply with the relevant laws and provisions;

- the cooperative must operate in accordance with the relevant provisions subject to the following constraints:

• the cooperative's activities must be confined to the agricultural sector: the whole purpose of an agricultural cooperative is to enable farmers to pool their resources to facilitate or develop their economic activity and improve or increase their profits. They may also undertake agricultural work on behalf of the members of the cooperative;

• the majority of the capital must be held by the members of the cooperative;

• the cooperative's activities must be undertaken solely with its members (legal or natural persons operating as farmers or foresters within the cooperative's area of jurisdiction);

• annual profits must be distributed among members of the cooperative *pro rata* to the operations they have undertaken with the cooperative in the financial year in question.

Tax benefits

Agricultural cooperatives are exempted from corporation tax although some operations (operations undertaken with non-members, sales in a retail shop which does not form part of the main undertaking, certain processing operations, etc.) are not exempt.

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CAM058 Provisions for renewal of mineral reserves **France**

Conditions attached

Eligible companies are those involved in the extraction of minerals of value to the French economy listed in Article 4 C bis of Annex IV to the General Tax Code.

They may make provision for the renewal of reserves under the following conditions.

At the end of each financial year the allocation to the provision for the renewal of mineral reserves may not exceed:

- 15% of the proceeds from the sale of products extracted by the company or purchased from foreign subsidiaries in which it directly or indirectly holds at least 50% of the voting rights. This percentage may be reduced to 20% subject to approval;

- 50% of the taxable profit in the financial year in question realised on the sale of those products before or after processing.

The allocation at the end of a financial year must be used, within five years, in the form of capital assets, to finance research to exploit mineral reserves or to purchase participating interests in companies or organisations involved in the exploitation of such reserves.

Tax benefits

Provided it is used within the time limit and conditions set out above the provisions for renewal of reserves are exempted from tax.

If these conditions are not met, the allocation to the provision account will be added to the taxable profit in the financial year during which the five-year period ends.

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CAM059 Provisions for renewal of oil and gas reserves France

Conditions attached

Article 39 ter of the General Tax Code authorises oil companies exploiting oil and gas reserves in France and a number of other countries,[45] to make a provision which must be used within two years to finance prospecting of new reserves or to improve production of reserves already being worked in these countries.

This provision for the renewal of reserves is equal to 23.50% of the value of sales generated by the company's exploitation of the reserves up to a limit of 50% of the net profit on such sales.

Investment acquired using the provision must be included in the taxable income either as a lump sum in the case of tax-deductible expenditure or in line with depreciation in the case of fixed assets. However where the investment is made in France only 20% of its value has to be included in the taxable income.

Tax benefits

The provision is deductible from the taxable income.

[45] These are countries forming part of the community set up by the 1958 Constitution and include Algeria, Morocco, Tunisia, Togo and Cameroon.

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CAM063 Press **France**

Conditions attached

Under Article 39 bis A of the General Tax Code companies operating a newspaper or monthly or fortnightly publication dealing largely with political matters are authorised to draw up a provision to cover particular expenditure listed in this Article, i.e. purchase of the equipment, furniture, land and buildings strictly necessary to run the newspaper or publication.

The monies in question are limited to 30% of the profit in the financial year in question for all publications and to 80% or 60% for daily newspapers depending on whether their turnover is above or below FRF 50 million. They may be used only to finance a fraction of the cost of the eligible investment. This is set at 40% for all publications and 90% for daily newspapers. The monies used will be allocated to depreciation of fixed assets or transferred to the taxable income over a period of five years if they are used to finance non-depreciable fixed assets.

Tax benefits

The provisions made according to the above conditions and expenditure committed for the same purpose may be deducted from income subject to income or corporation tax.

Provisions which are not used for their intended purpose before the end of the fifth year following that in which they were made will be transferred back to the taxable income profit in that year and increased by a sum representative of the cost borne by the Treasury as a result of tax being deferred because these provisions are charged.

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CAM065 Special depreciation rules for the audiovisual sector France

Conditions attached

These arrangements apply to companies making cash subscriptions to the capital of SOFICAs (*sociétés de financement d'œuvres cinématographiques ou audiovisuelles*, i.e. capital financing for film or audiovisual productions companies). SOFICAs are solely concerned with providing capital financing for films or audiovisual productions primarily in French.

Tax benefits

Companies may carry out exceptional depreciation equal to 50% of cash subscriptions to the capital of SOFICAs.

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CAM070 Business and industrial real estate companies France

Conditions attached

These arrangements have not applied since 1996.

Companies eligible for such arrangements are called “business and industrial real estate companies” (SICOMI) and must meet the following conditions:

- they must be incorporated as limited liability companies;

- their sole activity is the leasing of business premises;

- 85% of the profit generated by the above operations must be distributed before the end of the financial year following that in which it was realised.

Tax benefits

Under Article 208 3° quater of the General Tax Code the proportion of profits generated by SICOMIs in existence at 1 January 1991 on leasing operations undertaken in France and concluded before 1 January 1991 and the capital gains realised on the sale of real estate under such operations are exempt from corporation tax.

If they decided to take up this option before 1 July 1991, the proportion of their net profit from leasing operations undertaken in France concluded before 1 January 1996 involving industrial or business property or new office premises vacant at 1 October 1992 and the capital gains generated by the sale of such property under such operations are exempt from corporation tax.

Corporation tax on the net profit generated by these companies from renting their property under contracts completed before 1 January 1991 to legal or natural persons carrying out an industrial or business activity in them is calculated on the basis of 20% for the financial year ending in 1991, 40% for the financial year ending in 1992, 60% for the financial year ending in 1993, 80% for the financial year ending in 1994 and 100% for the financial year ending in 1995 and subsequent years.

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CAM071 Companies authorised to provide energy-saving and heat recovery financing (SOFERGIE) **France**

Conditions attached

These arrangements apply to companies which are approved by the Ministry for Economic and Financial Affairs and whose sole purpose is to provide financing in the form of leasing of real estate or equipment or rental of energy-saving equipment or plants.

Tax benefits

Under Article 208-3° sexies of the General Tax Code the net profit earned by such companies on their leasing and rental operations and the capital gains realised under leasing operations are exempt from corporation tax.

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CAM073 Exceptional depreciation for participating interests in companies financing non-industrial fishing (SOFIPECHE) **France**

Conditions attached

Article 217 decies of the General Tax Code covers cash subscriptions made by any companies between 1 January 1998 and 31 December 2003 to the capital of companies subject to ordinary corporation tax which are involved in financing fishing (SOFIPECHE).

The sole purpose of such companies is to finance the purchase of fishing vessels on a joint ownership basis which are operated directly and permanently by small-scale fishermen. Over 50% of the jointly owned interests must be held for five years by a non-industrial fisherman or fishing company. Companies must retain their jointly owned interests in the vessel for at least five years from the date the vessel enters into service.

Such companies are subject to ordinary tax arrangements.

Tax benefits

Companies which make cash subscriptions to the capital of such companies may undertake exceptional depreciation equal to 50% of monies actually paid on up to 25% of the taxable profit in the financial year with effect from the year in which investment is made.

If all or part of the securities are sold within five years of their acquisition, the exceptional depreciation is reversed in full and carried as taxable profit for the financial year.

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CAM077 Securities in innovation financing companies (SFI) France

Conditions attached

Innovation financing companies (SFIs) defined by the Law of 11 July 1972 are designed to facilitate the industrial application of technological research and promote and exploit product, process or technique inventions already or about to be patented which have not yet been exploited and could generate completely new applications.

Companies subscribing to the capital of SFIs are liable to income tax on industrial and business profit or corporation tax.

Capital subscriptions to SFIs must be in cash if they are to be eligible for tax benefits. Only subscriptions to the initial capital or capital increases of such companies are eligible.

Tax benefits

Under Article 39 quinquies A-2-b of the General Tax Code companies subject to corporation or income tax on industrial or business profits may book depreciation on 50% of the amounts effectively subscribed in cash to SFIs.

Where securities are sold more than three years after their acquisition, the second paragraph of Article 40 sexies of the General Tax Code states that a portion of the capital gains realised equal to the depreciation booked can be excluded from the taxable profit.

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CAM080 Incentives for scientific research **Italy**

Conditions attached

This measure applies to small and medium-sized enterprises, craftsmen companies, and consortia and associations of small and medium-size companies.

The Ministry of University and Scientific Research grants the tax credit after a detailed audit of the requests for the above credit, within the overall amount established for that year. This authority transmits the tax credit beneficiaries list to the Finance Ministry. The financial burden, relating to the above tax benefits, is borne by the Ministry of University and Scientific Research, by way of a special fund.

The tax credit cannot exceed the overall amount of 60 million lire for each employer. To be eligible for the tax credit in respect of new employees, the number of full-time employees must be increased by comparison with the previous year.

Tax benefits

A tax credit is granted up to:

- 15 million lire (about 7.748 Euro) for each new full-time employee (up to a maximum of 60 million lire-about 30.992 Euro), even if with a fixed-term contract, chosen according to certain professional qualification requirements;

- 60% (up to a maximum of 250 million lire - about 129.132 Euro) of the amount to be paid for each new contract for research activities to be conducted by universities, consortia, inter-university centres, public bodies and institutions of research, private research foundations, highly-qualified public and private research laboratories.

Such tax credit can be used for the purpose of paying personal income tax, corporate income tax and VAT, or it can be offset against tax due.

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CAM094 Film **Ireland**

Conditions attached

The measure applies to investments by individuals and companies in shares of an Irish resident company to enable that company to produce a film which is certified by the minister for Arts, Heritage, Gaeltacht and the Islands as a qualifying film. In recent years the measure has been used almost exclusively by individuals.

The maximum percentage of production costs of a film which may be financed by investments qualifying under the measure are as follows:

- where total production costs do not exceed IR£4m - 60%
- Where total production costs are between IR£4m and IR£5m - a sliding scale between 50% & 60%
- where total production costs exceed IR£5m - 50%

Where less than 50% of the work on the film is carried out in Ireland these limits are reduced to the percentage of the work which is so carried out.

An overall cap of IR£7.5m qualifying investments applies to any film although this can be doubled where not less than half of the qualifying investments are made by companies.

The limits may be increased by 10% where either principal photography on a film commences off-season or where post production work on a film is to be carried out wholly or mainly in Ireland.

The annual limit on the total qualifying investments made by a person are:

- investments made by a company or a group of companies - IR£8m (max of £3m per film)
- investments made by individuals - IR£25 000

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Tax benefits

80% of a qualifying investment is allowed as a deduction from an investor's income for tax purposes.

In addition to the above investment relief, income of a company from the production of a film, not less than 75% of the work on which is carried out in Ireland, will generally be taxed at 10%.

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CAM097 Investments in renewable energy projects **Ireland**

Conditions attached

The measure applies to investments by companies in shares of an Irish resident company to enable that company to undertake a renewable energy project involving solar power, windpower, hydro power or biomass and which has been certified by the Minister for Public Enterprise as a qualifying energy project.

The maximum percentage of the project costs which can be financed by investments qualifying under the measure is 50% of all capital expenditure, excluding land and net of grants, but this is subject to a cap of IR£7.5m per project.

The annual qualifying investments made by a company, or a group of companies in more than one energy project, cannot exceed IR£10m.

Tax benefits

The investing company's profits are reduced for tax purposes by the amount of the qualifying investment

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CAM101 Tax exemption for profit/gain from the occupation of woodlands Ireland

Conditions attached

This measure applies to profits or gains of both individuals and companies arising from the occupation of woodlands (forestry) in Ireland which are managed on a commercial basis and with a view to the realisation of profit.

Tax benefits

Profits or gains to which the measure applies are not taken into account for tax purposes.

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CAM106 Depreciation of equipment and tools used solely for scientific or technical research operations **Luxembourg**

Conditions attached

Income tax law allows normal depreciation for wear and tear on a decreasing balance basis for equipment and tools used solely for scientific or technical research operations.

Tax benefits

This may not exceed four times the rate applying in the case of straightline depreciation and may not be more than 40%. Under income tax law the straightline method must be used again once a depreciation rate applied under the decreasing balance method falls below the straightline rate.

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CAM107 Shipping regime **Luxembourg**

Conditions attached

The Luxembourg Shipping Register was set up by the Law of 9 November 1990 and amended, inter alia, following a judgement by the Court of Justice, by the Law of 17 June 1994.

Vessels which are more than 50% owned by EU nationals or companies registered in a Member State of the Community, vessels chartered on a bareboat basis and vessels operated by such persons may be registered in the Luxembourg Shipping Register provided all or at least a significant portion of the vessels' management takes place in Luxembourg. The registration procedure is laid down by law.

The shipping company operating a vessel under the Luxembourg flag is deemed to be a company incorporated under common law for tax purposes. It is subject to corporation tax and wealth tax.

It must also pay an annual basic tax of EUR 2 000 on each vessel and a tax calculated on the net tonnage which may range from EUR 0.40 to 0.65 per net tonne of vessel.

Tax benefits

Depending on the nature of particular activities the operating profit of Luxembourg shipping companies is exempt from communal business tax if such profit is generated by operating or chartering vessels in international shipping.

The straightline or decreasing balance depreciation method may be used for fixed assets. Depending on the assets' normal service life the decreasing balanced rates may vary from 18.75% to 25% (large passenger liners) but may not be more than three times the straightline depreciation rate or 30%.

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CAM110 Film industry **Netherlands**

Conditions attached

Accelerated depreciation is permitted for the production expenditure of films which are meant for presentation in cinemas. Business films and instruction(information) films are excluded.

Accelerated depreciation is only available to persons conducting a business who are liable for income tax and companies liable for the corporation tax if there is a declaration by the Minister for Economic Affairs that the film is primarily destined for presentation in the cinemas and that is not a business or instruction film The accelerated depreciation is not applicable for the acquisition costs of films which have already been produced and are going into distribution.

Tax benefits

Accelerated depreciation of 100% is permitted for the investment in the production costs of films. It is not possible to depreciate more than the production costs (less the residue value).

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D001 Employment (T) Zones **Belgium**

Conditions attached

Six employment zones were created in Belgium in the mid-1980s to create new employment in high technology industries.

The measure is available to companies which are established in these employment zones and created in the five years after publication of the Royal Decree establishing the zone. The Royal Decrees in question were issued between 1983 and 1985. The establishment of companies in employment zones therefore had to take place at the latest between 1988 and 1990. All operations, except for sales operations and service facilities abroad, must be located in these zones.

At least ten jobs must be created within two years of the start of the activity and the companies concerned may not employ more than 200 employees.

Tax benefits

For a period of ten years as from establishment in employment zones, retained and distributed profits are exempt from corporate taxation and losses can be carried forward. This scheme therefore expires in 2000.

Withholding taxes on dividends, interest and royalties are exempted. Registration duties on capital contributions are also exempted.

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D002 Incentives for Investment in Certain Regions **Belgium**

Conditions attached

The Law of 30 December 1970 applies to large companies situated in development zones. It is designed to promote economic expansion by stimulating industrial activities that contribute directly to the creation, extension, conversion and modernisation of industrial enterprises.

The Ministry of Economic Affairs operates the law. The Decree of 25 June 1992 (Walloon Region) extends the applicability of the measure to cover companies whose main activities consist of agricultural, horticultural and fish-farming activities.

Tax benefits

Accelerated depreciation during three consecutive years at a double rate on industrial buildings, machinery and equipment situated in the special development areas.

Exemption from the immovable property withholding tax [46] (for a maximum period of five years after the immovable property has been taken into use) for investments in immovable property by companies benefiting from the legislation concerned.

The tax incentives provided for under the Decree of 25 June 1992 (Walloon Region) are basically the same as those provided under the Law of 30 December 1970.

[46] The immovable property withholding tax is essentially a local tax.

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D003 Re-conversion Zones **Belgium**

Conditions attached

Under the Law of 31 July 1984, tax incentives are provided for companies which enter into a re-conversion contract with a public investment company, and for private companies located in a re-conversion zone.

The location of the zones coincides with the development zones in Flanders and Wallonia.

In order to take advantage of the incentives the company must have been incorporated by 3 December 1990 and a re-conversion contract presented to a public investment company before 6 December 1990.

Re-conversion companies can continue to be created but without the tax incentives. Other companies had to be established by 23 July 1990.

The contract establishes how the company will implement the investments which contribute to the modernisation of the industrial activity in the re-conversion zone.

The re-conversion company must invest at least 80% of the total contributions in tangible assets which promote the research, development, manufacture or sale of new products, new technologies, industrial processes to save energy etc.

Tax benefits

Companies may deduct from their taxable profits the price paid for the shares repurchased from a public investment company.

Companies which have not entered into a "re-conversion contract" but which were established in a re-conversion zone before 1990 (or before 23 July 1990) are exempt from corporate income tax on their distributed profits up to 8% a year of their paid-up share capital. This exemption is available for a period of 15 consecutive financial years. For companies established in a re-conversion zone by 23 July 1990 the exemption is available for 10 consecutive financial years.

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D004 Enterprise Zones Denmark

Conditions Attached

Rules on Enterprise Zones were introduced in 1992. The rules cover business enterprises that have activities in certain areas of Denmark.

Ten municipalities are designated enterprise zones because they have a special high degree of unemployment. (Denmark has 275 municipalities).

The enterprise must have been established before 1 January 1995 and the depreciable asset acquired after designation of the zone.

Agriculture, fishing and related industries do not qualify. Shipbuilding and plastics industries, motor manufacturing industry projects, of which the value exceeds DKK90 million, as well as coal and steel, industries are also excluded.

The rules on accelerated depreciation are applicable until 1999 and will cease to have effect from 2000.

Tax Benefits

The rules have the effect that enterprises are allowed an accelerated (doubled) depreciation on buildings and installations and on equipment located in these enterprise zones. Thus the maximum annual depreciation rate for buildings is 12% for the first five years and 4% thereafter, for installations 16% for the first five years and 8% thereafter, and for machinery and equipment 60% of the collective remaining balance (declining balance method).

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D005 Special Depreciation – Business Investment in Former GDR and West Berlin **Germany**

Conditions attached

In the case of business investments (purchase or manufacture of movable long-term economic assets, subject to wear and tear, and of working premises; subsequent manufacturing work on such assets), made in the new Länder and West Berlin between 1991 and 1998, special depreciation may be claimed in addition to the normal deduction for wear and tear.

Movable economic assets must remain for at least three years in a business or business premises of the tax-payer located in the new Länder.

Tax benefits

The amount of the special depreciation depends on the time and type of investment. For investments made in 1997 and 1998, special depreciation of up to 20%, 25% or 40% of the purchase price or manufacturing costs of qualifying assets is available. It may be claimed by all firms making appropriate investments (movable and immovable economic assets), irrespective of their size and the type of economic sector to which they belong.

Special depreciation claimed in 1997 totalled DM 6 100 million, and the figure for 1998 was DM 5 800 million.

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D006 Investment Grants - Business Investment in Former GDR and West Berlin **Germany**

Conditions attached

Manufacturing firms, craft industries and urban wholesale and retail businesses may be entitled to an investment grant, paid by the tax offices, in respect of new, movable fixed assets, subject to wear and tear, purchased or manufactured in the new Länder and West Berlin. Since 1 January 1999, companies providing services in close contact with production and newly built business premises have also been eligible for investment grants. Grants are tax-free. Qualifying economic goods must remain in the new Länder or West Berlin for at least three years after their purchase or manufacture.

Tax benefits

The amount of the investment grant depends on the time of investment, the size of the business, the economic sector to which the business belongs and the type of investment. For investments made in 1997 and 1998 the investment grant amounts to 5% or 10%, and in 1999 to 2004 to 10% or 20%, of the purchase price or manufacturing costs. For investments begun prior to 30 June 1994 and completed prior to 1 January 1997, the grant amounts to 8%.

The tax cost was DM 1 767 million in 1997 and DM 1 262 million in 1998.

D007 Tax Advantages – Commercial Investment in FRG/GDR

Border Area **Germany**

Conditions attached

For commercial investment in the former FRG/GDR border area (along the former line of demarcation with the GDR and the border with the – present-day – Czech Republic), special depreciation could be claimed until the end of 1994 and tax-free reserves established until the end of 1996. Depreciations amounted to up to 50% of the manufacturing cost or purchase price and could be claimed within five years. The maximum amount of special depreciation in the business year was DM 20 million. In the two years (four in the case of buildings) prior to manufacture/purchase, reserves up to the amount of the special depreciation – or a maximum of DM 20 million – could be established in the new Länder and West Berlin.

Tax benefits

The tax benefits have now expired.

The remaining lower tax receipts amounted in 1997 to DM 1 000 million and in 1998 to DM 550 million.

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D008 Canary Islands REF Spain

Conditions Attached

The Canary Islands are designated an outermost region of the European Community. The Economic and Tax Regime of the Canary Islands (REF) include tax measures to promote the economic and social development of the Canary Islands.

The measure applies to entities subject to Spanish Corporate Income Tax and which obtain income in the island through a permanent establishment.

Allowances for tangible assets must relate to agricultural, stock rearing, industrial or fishing activities (where the deep sea fishing catch is unloaded, handled and processed in the Canaries).

The measure is not available to shipbuilding, synthetic fibres, automobile, steel and coal industries.

Tax Benefits

Companies and natural persons resident in the Canary Islands and permanent establishments located there enjoy an allowance of 50% of corporate and income tax liability in respect of income from the sale of tangible assets produced in the Canary Islands. Thus the tax rate is reduced from 35% to 17.5%. The 50% allowance applies from 1 January 1998 until 31 December 2001 but will be reduced to 40% for the year 2002 and to 30% for 2003.

Reduction of the tax base may also be achieved in the case of establishments situated in the Canary Islands, through the allocation of such profits to a reserve for certain investments in the Canary Islands. The maximum allocation is 90% of the undistributed profits for the year concerned. The reserve must be applied to investment in the Canary Islands within three years.

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Persons liable to personal income tax under the direct evaluation scheme are also entitled to deduct from their tax liability net operating profits allocated to a reserve for investments in the Canary Islands. The maximum allocation is 80% of the proportion of the total tax liability.

There is an exemption from taxes on capital transfers, increases in capital, legal documents and on the purchase of capital goods situauted in the Canaries. The 100% exemption will be reduced to 75% in 2002, and 50% in 2003.

D009 Basque Country - Start Up Relief Spain

Conditions Attached

The provisions relate to the provinces of Alava, Guipuzcoa and Vizcaya and cover all sectors of the economy. The measure is no longer available.

Companies must have a minimum paid up start-up capital of ESP 20 million, they must not be subject to the tax transparency (imputation) system, and not have been created as a result of a conversion, merger, division or transfer of assets. The new activity must not have been carried on before under another name and must be carried on in new premises or an establishment where no other activity is carried on by any natural or legal person. The companies must invest, between incorporation and 31.12.95 at least ESP 80 million.

At least 10 jobs must be created within six months of incorporation and maintain an average workforce of at least this number throughout the exemption period.

Companies must not pay tax under consolidated taxation arrangements and must provide a business plan for a period of at least five years.

Tax Benefits

A general exemption from corporation tax is granted for ten years (not renewable) for firms incorporated between the entry into force rules and 31.12.94. The exemption does not apply to income from capital or capital gains.

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D010 Navarra - Start Up Relief Spain

Conditions Attached

The provisions relate to the province of Navarra and cover all sectors of the economy. The measure is no longer available.

Companies must have a minimum paid up start-up capital of ESP 20 million, they must not be subject to the tax transparency (imputation) system, and not have been created as a result of a conversion, merger, division or transfer of assets. The new activity must not have been carried on before under another name and must be carried on in new premises or an establishment where no other activity is carried on by any natural or legal person. The companies must invest, between incorporation and 31.12.95 at least ESP 50 million.

At least 10 jobs must be created within six months of incorporation and maintain an average workforce of at least this number throughout the exemption period.

Companies must not pay tax under consolidated taxation arrangements and must provide a business plan for a period of at least five years.

Tax Benefits

An allowance of 95% of corporation tax is granted for ten years (not renewable) for firms incorporated between the entry into force rules and 31.12.94. The allowance does not apply to income from capital or capital gains.

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D011 Regional Development Companies Spain

Conditions Attached

This measure applies to industrial regional development companies which are public commercial corporations. The objective of such companies is to promote the industrial economy of the region through the temporary minority ownership of shares, mid and long term lending of funds and the provision of services to industrial companies. The companies concerned are regulated by a special Law (18/82).

Tax Benefits

The capital gains from selling shares (or other similar capital rights) attract limited exemption.

If the period between buying and selling shares is less than two years, there is no exemption.

If the period between buying and selling shares is between three and ten years, there is a 99% exemption.

If the period between buying and selling is more than ten years there is no exemption.

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D012 Corsica Incentive Regimes I, II, III **France**

Conditions attached

I – Corsica Free Zone

The Corsica Free Zone was introduced for existing activities or those created in Corsica between 1 January 1997 and 31 December 2001 in commercial, industrial or artisan sectors whose management and property are located in Corsica. Certain activities, including financial, banking, and insurance are excluded. Eligibility is subject to various conditions (for example, a maximum of 30 or, under certain conditions, 50) employees.

II – Exemption for companies creating new activities in Corsica

Tax concessions are provided for new activities created between 1 January 1991 and 1 January 1999 in industrial, artisan, building and agricultural sectors and not benefiting from other preferential arrangements such as the Corsica Free Zone. The objectives of the business and its work programme require prior approval from the Ministry for Economic Affairs, Finance and Industry.

Financial activities are excluded from these concessions.

This scheme expired on 31 December 1998 and has not been extended.

III – Exemption for profits earned by companies created in Corsica

Benefits are available to companies created between 1 January 1988 and 1 January 1999 and which are liable to corporate income tax, or whose seat and effective management have been located in Corsica since their creation. The measure covers industrial, crafts, hotel, building and public works sectors. No more than 50% of the voting rights can be held, either directly or indirectly, by other companies.

Financial activities are excluded from these concessions.

This scheme expired on 31 December 1998 and has not been extended.

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Tax benefits

I – Exemption from corporate income tax and professional capital gains tax for up to five years. There is a limit of FF 400 000 per company per annum. Dividends, profits realised outside the free zone, royalties, etc. remain taxable.

II – Eight-year full exemption from corporate income tax

III – Eight-year full exemption from corporate income tax

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D013 Tax Free Zones – ZFU **France**

Conditions attached

The measures are designed to revitalise certain areas and relate to activities in one of the 44 depressed urban or suburban zones (including 6 in the Overseas Départements (OD). Activities in the industrial, commercial, some specifically designated non-commercial, or artisan sectors, rental of buildings for commercial or industrial use, are eligible if the activities are created or exercised prior to 31 December 2001 (effective from March 1997). Certain activities (e.g. non-commercial activities which are not of a professional nature) are specifically excluded.

Tax benefits

Full exemption for five years.

Article 44g provides for exemption for only those profits arising from the activity established in the urban tax-free zones.

The taxpayer must therefore have in the zone concerned physical plant (business, practice, workshop) and means of operation enabling him to engage in an economic activity and to realise professional income, whatever this economic unit's relationships or links of dependency on a decision-making centre outside the free zone. In this respect, the existence of an office in the zone or attachment to a company with an official address also located there although virtually the entire activity takes place outside the zone, does not make the undertaking eligible for the scheme set out in Article 44g of the CGI (French tax code).

The establishment of means of operation in the urban tax-free zone is a necessary condition of eligibility for the scheme but is not sufficient per se. The taxpayer must engage in an actual activity in the zone, given concrete shape through significant presence on the premises and through the performance of actions associated with this activity: reception of clients, performance of services, receipt and despatch of goods, trade, etc.

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Taxpayers whose activity is established entirely or in part in the urban tax-free zone are exempt from income tax or corporation tax within a limit of FF 400 000 of profits per 12-month period.

Companies exempt from corporation tax are also exempt to the same extent from the contribution of 10% of the corporation tax provided for in Article 235b ZA of the CGI and from the temporary contribution.

D014 Enterprise Zones **France**

Conditions attached

Enterprises engaged in industrial or commercial activities and whose seats and activities are located in the economically depressed areas of Dunkirk, Aubagne-La-Ciotat and Toulon-La-Seyne can benefit from a temporary tax exemption. Financial, banking and insurance business is excluded as are non-commercial, agricultural and certain industrial activities (e.g. iron and steel industries and shipbuilding).

The enterprise must have been created between 1 February 1987 and 1 February 1992 and employ at least 10 people.

98 companies were involved in this scheme as at 31 December 1996, and all benefits will expire in February 2001.

Tax benefits

Ten-year exemption from corporation tax and annual flat-rate tax (except for income from shares, ownership of industrial property etc).

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D015 Overseas Départements (OD) France

Conditions attached

French Overseas Départements (OD) benefit from specific tax measures which are designed to assist their economic development. This is achieved through

1. a tax holiday from corporation tax on companies established or creating a new activity (implementation of a branch of activity newly undertaken by a pre-existing company) prior to 31 December 2001 in one of the socio-professional sectors regarded as having priority for the economy of the départements concerned.

   The sectors in question are industry, fishing, hotel industry, tourism, new energy sources, agriculture, building and public works, transport and small craft industries.

   Banking and financial activities are therefore excluded from this scheme.

   Application of the scheme is subject to approval by the Minister for the Budget, granted on the basis of the economic interest of the programme.

2. long-term preferential treatment, granted with the Minister's approval to companies engaged in research and exploitation of mineral deposits, companies undertaking agricultural, forestry or industrial activity in Guyana, and companies exclusively engaged in the départements of Guadeloupe, Martinique and Reunion in an industrial activity involving implementation of an investment programme totalling at least FF 20 000 000.

3. an allowance for the corporation tax base, on income earned in the OD, for companies operating in certain sectors (agriculture, hotel industry, tourism, fishing, etc.).

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4. an incentive scheme for investments by companies operating in certain sectors (industry, fishing, agriculture, tourism, audiovisual production etc.) in the OD. Similar benefits are available to companies which subscribe to the capital of regional development companies or companies which invest in the same sectors.

Tax benefits

The benefits for each of the above measures are, respectively;

1. 10-year exemption from corporation tax.

   The exemption does not apply to the gains arising from the alienation of all or part of the portfolio or fixed assets.

2. 25-year exemption from corporation tax for profits reinvested in the enterprise.

   A company cannot claim this benefit at the same time as that set out above.

3. allowance of one-third, for the corporation tax base, applicable to positive and negative results.

   In the event of distribution, the part of the result which has been exempted gives rise to payment of the deduction at source.

4. deduction from their taxable income of a sum equal to the amount of productive investments minus the fraction of their cost price financed by public subsidy.

   The deduction is generally made automatically in the case of investments of an amount not exceeding FF 5 million. Beyond that figure, the deduction of investments is normally subject to prior approval from the Minister of the Budget.

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However, this threshold is reduced to FF 2 million if the investment is made directly or indirectly by moral persons acting in a non-professional capacity or through the agency of companies or groupings subject to the taxation system provided for in Article 8 of the CGI.

The same applies in principle to the deduction of productive investments made in the sectors of transport, yachting, sea fishing, audiovisual and cinematographic production and distribution, and investments relating to the construction of hotels, apartments for tourists or hotel-like establishments and investments required for the operation of a local public service concession of an industrial or commercial nature, whatever their amount (Finance Law for 1999).

Approval is granted if the investment provides an economic benefit to the départment in which it is made, it is conducive to maintaining or creating jobs in the départment, it is incorporated into land use planning and environmental policy, and it guarantees protection for investors and third parties.

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D016 Nord-Pas de Calais – Privileged Investment Zone **France**

Conditions attached

Companies must undertake industrial or commercial activities and must locate their seat and activities in two zones in the Nord and Pas de Calais. Banking, finance and insurance, non-commercial or agricultural activities are excluded, as are companies restructuring existing activities or benefiting from other aids.

At least 10 people must be employed.

The measure came to an end in May 1998 and only two companies have benefited.

Tax benefits

A tax credit equal to 22% of the tax-free cost price of industrial buildings and capital goods, redeemable on a degressive basis, purchased or leased during the 3-year period following the creation of the company, is granted for ten years following its creation.

The tax credit is reduced by the subsidies granted on the basis of these goods.

This tax credit, which is not refundable, is charged against the corporation tax payable in respect of the financial years for which the accounts have been closed, within ten years of the establishment of the company.

The charge can be made from the corporation tax payable in respect of the financial years for which the accounts have been closed, within ten years of the establishment of the company.

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D017 Shannon Airport Zone Ireland

Conditions Attached

The measure applies to income for certified trading operations of companies in Shannon Airport. The companies must be engaged in the repair or maintenance of aircraft or in trading operations, which can include financial services activities, which contribute to the use or development of the airport. It does not apply to the operation of a scheduled air transport service or services to embarking or disembarking passengers.

It is available for both residents and non-residents.

Certificates impose a minimum job creation requirement. Total employment in certified trading operations in Shannon currently amounts to around 2,400.

Tax Benefits

Income from certified trading operations is taxed at the rate of 10% instead of the standard corporate tax rate (32%).

100% write-off in first year of new building costs for owner-occupiers.

54% write-off in the first year of new building costs for lessors and write-off of the balance at 4% per annum thereafter.

100% write-off in the first year of expenditure on new equipment.

Phasing out of the preferential tax regime

The regime will be phased out by the end of 2002, subject to the following transitional arrangement. Projects that were approved on or before 31 May 1998, which have a legitimate expectation of the continuation of the 10% rate until end 2005, will be entitled to the 10% rate until the end of 2005. New projects will only be eligible for the 10% rate until the end of 2002 and the deadline for approving new projects is the end of 1999.

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D018 New Investments — Buildings in Run-down Urban Areas Ireland

Conditions Attached

Certain inner city areas have been designated as zones for urban renewal relief. Businesses in these areas enjoy a number of advantages, which are not available elsewhere.

Tax Benefits

Lessors of rented, residential accommodation can charge the full construction cost (spread over 10 years) of such property and 100% (also spread over 10 years) of the cost of refurbishing such property against their rental income.

Lessors of commercial property can claim allowances of 50% (25% in year 1 and 2% per annum thereafter) of the cost of construction or refurbishment of such property while 100% (25% in year 1 and 4% per annum thereafter) may be claimed by them in the case of industrial property.

Owner occupiers of commercial property can claim the available maximum of 50% [47]of the cost of construction or refurbishment of such property in year 1, while in the case of industrial property, they may claim 50% in year 1 with the balance (up to 100%) available at 4% per annum.

Lessees of commercial and industrial property may be granted a double rent allowance for 10 years.

Rates remission for 10 years can also apply, usually on a sliding scale basis, for commercial and industrial buildings.

[47] In a few areas, these allowances of 50% for commercial property are increased to 100%.

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D019 Accelerated Depreciation of new buildings in certain regions Netherlands

Conditions Attached

Since 1996 this measure has been available to stimulate investment in new buildings located in economically less developed areas of the Netherlands.

The regime may apply if an investment is made in a building which has not been used before, is located in one of the municipalities designated by the State Secretary in the provinces of Groningen, Friesland, Drenthe, Overijssel, Limburg, or Flevoland, cost at least NLG 5 million, and is bought by a company which is liable to corporation tax.

This measure is applicable until the end of 1998. However, it is the Government's intention to continue the measure for some other years.

Tax Benefits

Accelerated depreciation of up to 50% of the investment costs is permitted. The balance over 50% attracts a regular (straight line) depreciation scheme.

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D020 Accelerated Depreciation - Investments in Developing Regions Finland

Conditions Attached

The aid scheme applies to investment in fixed assets (buildings, machinery and equipment) for new and expanding production capacity in the manufacturing and tourist sectors. The aid is applicable to investments in developing areas (support areas I and II). The aid is restricted to small and medium sized enterprises defined in the law.

The law applies to investments made in the years 1994-2000. Sensitive sectors of agriculture, steel, the automobile industry, synthetic fibres and shipbuilding have been excluded from the scope of the law from 1998 onwards.

The scheme is open to both residents and non-residents.

Benefits are available to all enterprises which have a production plant or tourist enterprise in the supported area and which fulfil the other conditions mentioned above.

The authorities have no discretionary power in granting aid.

Tax Benefits

The aid under the scheme is granted by means of accelerated depreciation. The depreciation on the acquisition cost of the building, machinery or equipment can be increased by 50% in relation to the normal rate of depreciation. That is to say that the maximum depreciation of a production building is 10.5% instead of the regular rate of 7% and the maximum rate of depreciation on machinery and equipment is 45% instead of the normal rate of 30% (37.5% / 25% from 1999 onwards). The law entitles the enterprise to make accelerated depreciation during three years: in the year when the building, machinery or equipment has been brought into use and during the two following years.

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D021 Enterprise Zones United Kingdom

Conditions Attached

With a view to stimulating regeneration in areas suffering from physical or economic decay, the UK Government introduced Enterprise Zones (EZ). These are geographical areas designated by Government. EZ status confers a range of benefits, detailed below.

The following benefits run for a 10-year period from the date on which each zone is designated:

Tax Benefits

i) 100% capital allowances for corporation and income tax purposes for capital expenditure on industrial and commercial buildings. Outside a zone that expenditure would either get allowances of 4% per annum for an industrial building, or nothing at all.

For 20 years after the zone is first designated, 100% allowances are also available for expenditure after the expiry of the zone, if it is incurred under a contract entered into during the zone's life.

ii) Exemption from local taxes on industrial and commercial property;

Other Benefits

iii) Employers are exempt from industrial training levies and from the requirement to supply information to Industrial Training Boards;

iv) A greatly simplified planning regime: developments that conform with the published scheme for each zone do not need individual planning permission;

v) Applications from firms in EZs for certain Customs facilities are processed as a matter of priority and certain criteria relaxed;

vi) Government requests for statistical information are reduced.

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D022 Small and Medium sized Enterprises in Northern Ireland United Kingdom

Conditions Attached

On 12 May 1998 the Chancellor of the Exchequer announced his intention to introduce 100% first year capital allowances for spending by small and medium sized businesses on machinery and plant for use in Northern Ireland.

This scheme has been legislated but not yet activated. It will be available for spending on such assets during the period from 12/05/98 to 11/05/2002. It is part of a targeted package of measures to help modernise Northern Ireland's economy by generating investment and fostering enterprise.

Small and Medium sized enterprises are those that meet two of the three following tests :

– have an annual turnover of not more than £11.2 million ;

– assets not more than £ 5.6 million ;

– not more than 250 employees. If the company is a member of a group, the group must be small or medium-sized.

The measure will also be available to businesses carried on by individuals and partnerships made up of individuals, provided the business would qualify if it were carried on by a company.

Expenditure on machinery and plant for leasing or hiring, cars, long-life assets, sea-going ships and railway assets is excluded.Aircraft will also be excluded.

Tax Benefits

The normal rate of capital allowance for expenditure on machinery and plant is 25% per year on the reducing balance basis.

Under the proposals announced on 12 May 1998, the rate of capital allowances in the first year will be increased to 100% for spending by small and medium-sized businesses on machinery and plant for use primarily in Northern Ireland. The whole of the cost of the investment can thus be written off against tax straight away.

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DAM022 50% profit exemption in Ceuta and Melilla **Spain**

Conditions attached

This measure applies to operations effectively and materially carried out in the North African cities of Ceuta and Melilla or their dependencies. This means that it applies to

a) Spanish entities resident for tax purposes in those territories,

b) Spanish entities resident for tax purposes outside those territories, but operating there through a permanent establishment or branch office, or

c) Foreign entities without residence in Spain, but operating there through a permanent establishment or branch office.

The term "operations effectively and materially carried out in Ceuta and Melilla or their dependencies" is understood as those activities which cover a full production cycle generating income in those territories. Therefore it does not include isolated extraction, manufacturing, purchasing, transport, general dealing operations, and, broadly speaking, when the operations do not generate income;

Exceptionally, for determining what part of income obtained by shipping or fishing entities is attributable to Ceuta and Melilla, the law provides for a method based on paramaters such as the volume of fisheries, freight etc.

Dividends derived from entities earning income in Ceuta and Melilla are not eligible to this relief.

Tax benefits

Entities that effectively and materially operate in Ceuta and Melilla or their dependencies are eligible to a 50% profit exemption in their tax liability, on that part of the income derived there.

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DAM043 Exceptional depreciation for buildings constructed under urban and rural planning arrangements **France**

Conditions attached

The provisions in question are restricted to small and medium-sized enterprises subject to income tax or corporate income tax which:

- have less than 250 people on their payroll;

- have a before-tax turnover of under 140 million francs or a balance-sheet total of under 70 million francs;

- are no more than 25% held by companies which do not fit the above description;

- are not involved in banking, finance, insurance, or buildings management or letting activities.

Companies that are involved in such activities may still be eligible for the arrangements if they have the prior approval of the minister in charge of the budget. Such approval will be granted if the company proves that it fulfils the conditions described above (if it is investing on its own behalf) or that the tenant fulfils those conditions (if the building is to be let).

Depreciation is confined to new buildings put up in rural revitalisation and urban revival areas and finished between 1 January 1995 and 31 December 1999.

Tax benefits

This arrangement provides exceptional depreciation equivalent to 25% of the cost price of a building put up in a rural revitalisation or urban revival area and finished between 1 January 1995 and 31 December 1999.

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DAM086 Regional Incentives: south of Italy (Mezzogiorno) Italy

Conditions attached

The relief in question applies to individuals who:

- are less than thirty-two years old and file a declaration of commencement of activity for the first time,
- receive unemployment benefit,
- have been registered in the unemployment lists for over two years, or
- are disabled.

Tax credits are granted for activities in the following fields:

- energy efficiency and the promotion of renewable sources of energy,
- selective waste sorting and waste recycling,
- territorial hydro-geological recovery or environmental restoration,
- planning and implementation of action for the maintenance or renovation of historical centres,
- the production of goods carrying the eco-label referred to in EC Regulation no.880/92 of the Council of 23rd March 1992.

The measure applies in respect of new local productive initiatives in the following territories

- Abruzzo, Basilicata, Calabria, Campania, Molise, Apulia, Sardinia and Sicily.
- Latina, Frosinone, Ascoli Piceno, Rome, Rieti, Triest, Genoa.

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- Busto Arsizio, Genoa, Legnano, Gallarate, Triest, etc.
- Areas *ex* Art. 92, 3, c) of the Rome Treaty: Reggio Emilia, Gorizia, Frosinone, etc, even if outside the objectives 1, 2 and 5b of EC regulation 2052/88.

Tax benefits

From 1st January 1997 a tax credit was granted for the year in which the activity commenced and for the two following years. The measure was repealed in 1998 and is no longer in force. As from 1 January 1999, it is no longer possible to benefit from the tax credit for new productive initiatives**.**

For each year, the tax credit amounted to 50 per cent of the IRPEF due on income proportionally attributable to business income, or on income deriving from arts and professions carried on in the year in question.

Such tax credit has been used for paying personal income tax and could not exceed the overall amount of 5 million lira (about 2,580 Euro) per year

For initiatives taken in the areas of Abruzzo, Basilicata, Calabria, Campania, Molise, Apulia, Sardinia and Sicily), such credit is applied for the year of commencement of activity and for the subsequent five years.

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DAM115 Industrial Free Zones **Portugal**

Conditions attached

This measure applies to entities licensed to carry out operations of an industrial nature, or other activities accessory or complementary thereto, in the designated geographical areas of Caniçal (Madeira) and Santa Maria (Azores) until 31 December 2011.

The incentives are granted irrespective of the final destination of the goods produced by the entities referred to above. Goods can be sold either locally, in the EU territory or in international markets.

The Industrial Free Trade Zone of Madeira is one of the four sectors of economic activity which make up the International Business Centre of Madeira. The other three sectors are the Financial services and the International services, which were listed as measure B6 and the International Shipping Register which was included in measure C8.

Tax Benefits

Entities, approved before 31 December 2000, are entitled to exemption of Income Tax (IRC) until 31 December 2011 in accordance with paragraph 1 a) of Article 41 of the Portuguese Statute of Fiscal Benefits (EBF).

Similarly, the shareholders or partners of the above-mentioned entities, whether residents or non-residents of Portugal, are entitled to exemption of Income Tax (IRC or IRS) on the dividends or profits declared by those entities, or on interest or other funds made available by them, until 31 December 2011 in accordance with paragraph 2 of the aforementioned Article.

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E001 US Foreign Sales Companies Ruling **Belgium**

General

US Corporations carrying on sales operations in certain countries other than US (e.g. Belgium) may attribute part of the income realised from the sales abroad to the relevant Foreign Sales Company (FSC). Under certain conditions and limitations, the profits thus attributed to the FSC (as taxable abroad) may be exempted in the US.

Conditions Attached

A US based enterprise establishing a FSC in Belgium may lodge an application with the Belgian central tax authorities for a ruling under which the taxable income is calculated on the basis of a percentage of certain expenses. The applicant must disclose detailed information on itself and the anticipated FSC (e.g. their legal form, activities, nature of the goods sold through the FSC and cost incurred by it).

The FSC may operate in the form of a Belgian company (subsidiary) or a branch office (permanent establishment) of the US base company.

The ruling, granted on individual basis, is valid for a period of three years and it is tacitly renewed unless either party gives a notice of termination 6 months before the end of the three-year period. The US based company must, however, in order to keep the ruling valid, annually produce evidence of the US authorities' recognition of the FSC.

Tax Benefits

Should the FSC operate in the form of a branch office (Belgian permanent establishment of the US based company), the taxable profit in Belgium is determined on a notional cost plus basis with a mark-up percentage of 8%. All "direct" costs incurred by the FSC in respect of advertising and sales promotion activities, transport of goods and assumption of credit risks, may however, be excluded from this notional cost plus tax base. Similarly, the income taxes paid by the FSC are not included in the notional tax base.

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In the case where the FSC operates in the form of a subsidiary (a Belgian company) the taxable profit of the FSC is, in principle, determined on the basis of the accounting profit with the necessary tax adjustments. Accordingly, the taxable profit consists of the retained profits, non-deductible expenses and the paid dividends. It is, however, accepted that the FSC's transactions with affiliated companies are at arm's length (the FSC has not granted any abnormal or benevolent advantages) when the thus determined profits are at least 8% of the relevant costs incurred by it (see above).

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E002 Informal Capital Ruling **Belgium**

General

The concept of informal capital is related to the centralisation (or concentration) of a wide range of corporate functions of a (international) group of companies. The scope of the centralised functions that a group company may assume and carry out on behalf of the group is wide and may include, for example, the following types of tasks:

- commercial strategy development, brand image development, advertising, product development, research activities, distribution strategy planning, co-ordination of vertical management, procurement of raw materials, etc.

Setting up an integrated structure of such separate functions may require "an informal capital injection", i.e. group companies place non-material resources (e.g. know-how) which exist at the group level at the disposal of the group company that assumes the responsibility for certain centralised functions.

Conditions Attached

All companies taxable in Belgium may apply for the ruling. However, the nature of the activities prevents co-ordination centres, distribution centres and service centres from benefiting from the measure.

Tax Benefits

Under Article 24 of the Belgian Income Tax Act (Code des impôts sur les revenus) only those profits which result from a company's own activities are taxable in Belgium.

Under the ruling, for the first ten years the part of the profits which relates to informal capital (directly contributing to the generation of income) is not considered as resulting from the company's own activities, but is supposed to correspond to a return on the informal capital.

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The informal capital is determined, on a case by case basis and according to the range of activities undertaken, by reference to the net profit margin of the company. This profit margin consists of two elements: the part which is deemed to refer to the company's own activities (always at least 10% of the turnover) and that referring to the informal capital. The informal capital amounts to the sum of the annual profit margin referring to the informal capital during a period of max. 10 years.

The informal capital is amortised for tax purposes over a period of at least 10 years. The injection of the informal capital is not taxable and there is no tax on the informal capital as such but capital gains arising from a subsequent transfer of the informal capital and liquidation proceeds are taxable in Belgium.

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E003 US Foreign Sales Companies Ruling **Netherlands**

General

US Corporations carrying on sales operations in certain countries other than US (e.g. the Netherlands) may attribute part of the income realised from the sales abroad to the relevant Foreign Sales Company (FSC). Under certain conditions and limitations, the profits thus attributed to the FSC (as taxable abroad) may be exempted in the US.

Conditions Attached

A Dutch FSC carrying on preparatory and auxiliary activities may apply for a cost plus ruling provided for in the Administrative Publication of 25 March 1985 (infobulletin 85/253). The cost plus ruling is granted for a period of 4 years (renewable) and it ascertains the minimum acceptable prices for intra-group transactions of the FSC.

Tax Benefits

According to the Administrative Publication, the cost plus mark-up percentage applicable to all operating expenses may vary, depending on the relevant circumstances, between 5% and 15%.

In order for a FSC to be considered dealing at arm's length it must show a profit of at least the confirmed fixed percentage of the operating expenses. Should the commercial profit, computed under the US rules, exceed the result from the cost plus calculation, the excess amount is deemed to constitute a contribution to the equity of the FSC and is therefore not included in its taxable profit.

The tax on the profit calculated on the cost plus basis is levied at the standard corporate income tax rate of 35%.

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E004 Informal Capital Ruling **Netherlands**

Conditions Attached

This ruling practice is based on Supreme Court decisions of 3 April 1957 (BNB 1957/165) and 31 May 1978 (BNB 1978/252) where the Dutch Tax Administration was ordered to accept the informal capital concept in respect of interest free loans between related parties. The ruling may be granted to entities liable to Dutch taxation and it is valid for a period of 4 years (renewable).

Under Netherlands tax law formal contributions to, or withdrawals from, equity capital do not constitute taxable profit. Similarly, informal contributions to, or withdrawals from, a Dutch company's equity capital are not contributing to or deductible from taxable corporate income. The informal capital ruling is concerned with interest free loans obtained from the parent company. Such a ruling ascertains the amount of informal capital contribution.

A combination of a cost-plus ruling and an informal capital ruling is not possible. Where there are separate, different activities involving one taxpayer, one activity might require a cost-plus approach, the other an informal capital approach.

Tax Benefits

The taxable profit of the holder of the informal capital ruling is adjusted by the amount of the informal capital contribution, i.e. the ruling allows a deduction for deemed payments, for the most part, of interest or rent. The informal capital concept might also apply to other items (for example to the transfer of intangible assets such as goodwill). This in respect of benefits provided by related companies at less than arm's length prices. The adjusted profit is taxed at the standard corporate income tax rate of 35%. The informal capital contribution is subject to a capital tax at a rate of 1%.

In accordance with the general principle outlined above, under Netherlands tax law the taxable profit of the related party that had made the informal capital contribution, is adjusted with a corresponding amount. In cross-border situations a corresponding adjustment of the taxable profit will depend on the system of the country involved.

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E005 Foreign Business Operations Relief **Denmark**

Conditions Attached

The foreign business operations relief is available with respect to foreign business operations through branches located abroad (permanent establishments) as well as conducted through a non-resident subsidiary taxed jointly with the Danish parent company under the Danish 'Joint Taxation' rules. Other activities, such as shipping and transport of goods by vehicles between two foreign destinations, salvage and engineering have also been regarded as qualifying foreign business operations.

Tax Benefits

The tax relief granted to the income from foreign business operations equals 50% of the income tax proportionally attributable to the net taxable income from the foreign business activity. Net foreign-source income is computed according to the Danish tax law. The relief is granted in respect of qualifying income, irrespective of the fact whether this income has been subject to tax abroad. The relief will be gradually abolished by 1/7 a year, as from 1994 when the tax relief was reduced to 6/7 of the full 50% of the tax attributable to the qualifying income. Accordingly, the relief will be completely abolished by year 2000.

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E006 Bénéfice Mondial and Bénéfice Consolidé **France**

The French legislation, unlike those of the other States, relies on the territoriality principle, according to which corporate tax is only levied on the profits of enterprises carrying out their activities in France. Consequently, the profits or losses of the establishments of a French enterprise located outside the French territory are not taken into account in computing the corporate tax.

The Bénéfice Mondial and the Bénéfice Consolidé regimes have been introduced to promote establishment of French groups abroad.

Conditions Attached

Bénéfice Mondial (world-wide income): French resident companies, which have obtained an approval from the Ministry of Economy and Finance may opt to be taxed on their world-wide income by consolidating profits and losses of all foreign direct operations (branch offices, offices, agencies, factories and other permanent installations without distinct legal personality) with their own profits and losses.

Bénéfice Consolidé (consolidated income): French resident companies, which have obtained an approval from the Ministry of Economy and Finance may elect to compute taxable profits by consolidating the profits and losses resulting from their operations outside France and from the (indirect) operations within and outside France of their French or foreign subsidiaries with their own French source profits and losses. The French parent company must hold at least 50% of the voting rights in the subsidiaries concerned.

The duration of the application of both measures is five years, and it may be prolonged by a period of three years.

The approved application of these measures cannot be revoked by the enterprise, whatever changes occur to corporate income tax rates in France or in the other relevant countries. The approval may be revised by the Ministry in the following cases of abuse:

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- where a company has undertaken its direct or indirect operations outside France under conditions in which the profits and losses have not been consolidated due to an interpolation of a controlling person (persons) or a controlling company (companies), or has cancelled an operation by way of a reorganisation, merger or any other legal transaction without however losing the control over the means of production;

- where a company has modified its share percentage in a participation in an indirect operation in order to increase the amount of losses of this operation to be taken into account in calculating the consolidated taxable result;

- where a company sets up an indirect operation destined to substitute an existing direct operation under conditions in which, and with to the objective that, the profits and losses of this indirect operation are not included in the consolidated profits and losses of the company, etc.

Approvals for the application of these measures are accorded only to the extent to which the advantages correspond to the economic unity of the relevant group companies, notably with respect to their exports, employment or foreign currency transactions.

Approvals regarding both these measures are only granted on very limited basis: currently 12 French groups have an approval for the Bénéfice Consolidé and no group has an approval for the Bénéfice Mondial.

Tax Benefits

Companies with foreign source income or French and foreign subsidiaries can benefit from consolidated taxation of foreign source income or the relevant part of group companies, respectively. The operating profits and losses are set off against each other in order to reach an aggregate group taxable income.

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For the tax consolidation purposes the taxable profits (or losses) of the foreign direct operations or the foreign subsidiaries are calculated under the rules of the French Tax Code (CGI). Accordingly, any depreciation, valuation rules, etc. allowed by foreign tax law but not by French tax law will be adjusted. Long-term and short-term capital gains are also calculated at the level of each branch, subsidiary, etc. and subsequently, with certain adjustments, aggregated at the group level.

Foreign taxes are credited in France. The foreign tax credit, however, is first subject to a per country limitation and then restricted to the French corporate income tax which would normally apply to the income from each country in each taxable year, as recomputed under French rules.

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E007 Foreign Income **Ireland**

Dividends received by and foreign branch profits of the Irish resident companies holding the respective certificates, following submission of an investment plan directed towards the creation or maintenance of employment in Ireland or involving additional employment in Ireland, are exempt from Irish corporate income tax.

1) Repatriated Dividends from a Foreign Subsidiary

Conditions Attached

The measure applies to certain dividend repatriations by a foreign subsidiary (51%) located in a treaty country to its Irish resident parent company. A certificate must be obtained from the Minister for Finance on the basis of an investment plan. The dividends must be applied for the purposes of the investment plan which must be directed towards the creation or maintenance of employment in trading operations carried on in Ireland.

Tax benefits

Double taxation relief for the repatriated dividends is provided by way of an exemption from Irish corporation tax rather than the normal way of giving double taxation relief through a credit for foreign tax.

2) Relief for Foreign Branch Trading Profits

Conditions Attached

The measure applies to foreign branch trading profits and related capital gains of an Irish resident company which undertakes an investment project leading to the creation of substantial new employment in Ireland. Companies must be certified by the Minister for Finance on the basis of an investment plan. The investment plan must be framed in accordance with published guidelines. These guidelines stipulate conditions in relation to employment and investment in permanent capital.

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Tax Benefits

Double taxation relief for the foreign branch trading profits is provided by way of an exemption from corporation tax rather than the normal way of giving double taxation relief through a credit for foreign tax. Related capital gains are also exempted from capital gains tax.

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E008 Newly Created Companies **France**

Conditions Attached

The measure is statutorily applied to new companies (incorporated between 1 January 1995 and 31 December 1999) with industrial, commercial and artisan business activities. The companies must be genuinely new enterprises and they may therefore not have been created as a result of a corporate reorganisation (new enterprises created through a consolidation of business activities, a restructuring operation, an extension or a recommencing of an existing activity are excluded from the application of the measure). No more than 50% of the shares (representing the share capital or voting rights) of these companies may be held, directly or indirectly by other companies.

In order to qualify for the benefits of the measure, companies must satisfy with activity and location tests. Certain activities are expressly excluded from the scope of application of the measure. These are banking, financial and insurance activities, management of real estate rental activities and agricultural activities. The premises and the management of the companies must be situated in the defined rural or urban development zones.

Tax benefits

A full corporate income tax exemption for the initial 24 months, which is reduced to 75 per cent, 50 per cent and 25 per cent for each of the three subsequent 12-month periods, respectively.

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E009 Tax Holidays for New Businesses **Luxembourg**

Conditions Attached

This measure is one of the instruments under the regime concerning regional aid. The measure is available to new enterprises or enterprises manufacturing new products, which stimulate growth and improve the structure of the economy, or which will lead to a better geographical distribution of economic activity, provided that they do not compete with existing business.

Tax Benefits

The amount of the tax relief depends on the extent of investment in land, buildings and equipment and is granted for a fixed period of 8 years starting from the commencement of the new facility. The maximum amount of the tax relief is 25% of the taxable profits. The tax benefit may not exceed the ceilings provided for in the regime concerning regional aid.

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E010 Special Depreciation for SMEs **Germany**

Conditions Attached

Companies, of which the total taxable net asset value is no more than DEM 400,000 (for agriculture and forestry this limit is 240,000), qualify as small and medium sized enterprises. For the purposes of the special depreciation, these requirements must be met at the beginning of the tax year in which the fixed assets are acquired.

Tax benefits

Small and medium sized enterprises may claim an additional depreciation allowance of 20% of the acquisition cost of movable fixed assets. The allowance may be claimed only in the year of acquisition and it is additional to normally allowed depreciation. It is available only if the assets are kept in business in Germany by the taxpayer for at least 1 year. The tax benefit will be abolished as from year 2000.

In addition, small and medium sized enterprises may make allocations to a depreciation reserve of up to 50% of the expected manufacturing or acquisition costs of future depreciable assets, with a ceiling of DEM 300,000. The reserve will be taxed as soon as the regular depreciation scheme starts to apply to the new assets. The reserve will also be taxed if no assets are acquired or manufactured within 2 tax years after the reserve was created. In these cases the reserve will be added to the taxable income.

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E011 Incentives for SMEs **Spain**

Conditions Attached

A company qualifies as small or medium sized company (SME) if its turnover in the preceding tax year was lower than ESP 250 million. If the company is newly created, this threshold is applied to its turnover of the current (first) tax year. The SMEs in Spain are granted a wide range of different tax benefits. Some of the conditions attached to them are dealt with in more detail below.

Tax Benefits

(A) New tangible fixed assets may be freely depreciated for tax purposes, provided that there is an increase in the annual average amount of salaried personnel within the 24 months starting from the tax year in which the asset was used for the first time. The increase in the amount of personnel must be maintained for another period of 24 months.

This depreciation can not exceed an amount resulting from multiplying ESP 15 million by the increase in the amount of personnel.

(B) New tangible fixed assets of any of which the value does not exceed ESP 100,000 may be freely depreciated for tax purposes, however, only up to a total amount of ESP 2 million for each tax year.

(C) New tangible fixed assets may be depreciated for tax purposes, using an increased rate determined by multiplying the depreciation rate allowed under the official table by a coefficient of 1.5 New tangible fixed assets that arise from a reinvestment can be depreciated using an increase rate determined by multiplying the depreciation rate allowed under the official table by 2.5.

(D) SMEs may establish a tax deductible provision for bad debts. The maximum deductible allocation is 1% of the balance of debtors.

(E) From 1 January 1997, the first ESP 15 million of profit made by a SME are subject to tax at a reduced rate of 30%.

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E012 Micro and Small Enterprises **Portugal**

Conditions Attached

In order to qualify as a micro or small enterprise a Portuguese resident company or a non-resident company with a Portuguese permanent establishment must meet the following requirements:

1) the turnover of such enterprise may not exceed PTE 600 million in the first year during which the incentive is applied and

2) no more than 50% of it may be, directly or indirectly owned by another enterprise of which the turnover exceeds this turnover limit in the fiscal periods of 1998, 1999 and 2000

3) it is not a result of a demerger effected after the publication of the legal provision, unless the set preconditions were already met (before the demerger).

Additionally, the company must carry on industrial, commercial or agricultural activity as its main activity. The measure will be available for the micro and small enterprises during the tax years 1998, 1999 and 2000.

Tax Benefits

Qualifying additional investments of micro and small enterprises entitle to a deduction of the taxable base equal to 10% of the relevant additional investment. The deduction, however, may not exceed an amount equal to 30% of the taxable base.

This 30% limit will be increased by 10% where the taxable profit, in the accounting period to which the investment relates, is at least 20% higher than the taxable profit in the preceding period and the enterprise withholds an amount of profit equal to such minimum increase in profits. The withheld profit may not be distributed, in any form, during the three subsequent fiscal years.

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The additional investment is determined as being the difference between the investment made during the relevant accounting period and the simple arithmetic average of the investment made in the previous two accounting periods in new fixed assets connected to the operations of the enterprise and used by the enterprise within the Portuguese territory.

New Measures in respect of Microbusinesses (Articles 45 and 46 of Act No 87-B/98 of 31 December 1998)

Conditions Attached

For the purposes of these measures, microbusinesses are defined as entities liable for IRC that are not limited companies and generated in 1997 and 1998 average annual turnover of not more than PTE 30 million or, where they are set up after 1 January 1999, generate in the year of their creation an annualised turnover for that year of not more than PTE 30 million.

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Tax Benefits

The rate of tax on corporate income (IRC) applicable to microbusinesses in 1999, 2000 and 2001 is 20%.

Microbusinesses which are set up after 1 January 1999 and at least 75% of whose registered capital is held by young people of between 18 and 35 years of age are exempt from IRC in 1999, 2000 and 2001 if the fact of setting up the business results in net job creations.

Microbusinesses which effectively carry on their activities in "internal" areas of the national territory, to be defined by the Government by legislative order, are furthermore entitled to the following benefits:

(a) Reduction of the rate of IRC to 15%;

(b) A tax credit equal to 15% of the cost of additional relevant investments made during the tax period, within the limit of 35% of the amount of their IRC liability. These limits will be raised by 5 percentage points where at least 75% of the registered capital of the microbusiness is held for the three tax years concerned by young people of between 18 and 35 years of age;

(c) Exemption from all fees and other legal charges on increases in their registered capital.

Microbusinesses are exempted from real-estate transfer tax (SISA) and from stamp duty on the following transactions:

(a) Acquisitions, by young people of between 18 and 35 years of age, of urban buildings or independent parts of urban buildings located in "internal" areas of the national territory, to be defined in the abovementioned legislative order, for use exclusively as their own main permanent residence and provided that they do not exceed a given value determined by reference to the maximum values of controlled-cost housing;

(b) Acquisitions of urban buildings or independent parts of urban buildings located in the above-mentioned "internal" areas and assigned on a long-term basis to the activities of the businesses concerned.

Failure to comply with the conditions results in loss of the benefit.

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E013 Special Scheme for Accelerated Depreciation **United Kingdom**

Conditions Attached

This temporary one-year measure (applicable only in respect of the accounting year ending between 1 July 1998 and 30 June 1999) was introduced in 1998. It is available to small and medium sized enterprises which invest in plant and machinery other than those in connection with leasing of cars, ships, railway assets or long-life assets.

Tax Benefits

Investment in qualifying plant and machinery entitles the SME to an increased first year allowance at a rate of 40% instead of the normal allowable depreciation at a rate of 25% (declining balance method).

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E014 Scheme for Early Depreciation of Certain Assets **Denmark**

Conditions Attached

The scheme is applicable if the taxpayer has formally entered into a contract on the acquisition of machinery or other capital assets and the acquisition cost (excluding financing costs) of such assets is, in any year, at least DKK1,047,200 (in 1999). In determining whether this requirement is met, the acquisition costs of all qualifying assets are pooled each year.

Subject to the same annual acquisition cost limit the scheme is equally applicable in cases where the taxpayer manufactures the asset to be used within his own business.

In order for the taxpayer to apply the scheme, he must have placed a definite order for the purchase of an asset or definite plans must have been made to process an asset within the business. The delivery or completion of such an asset must take place within 4 years.

Tax Benefits

The depreciable basis is the contracted or calculated price of the asset. Once the acquisition agreement has been concluded a total of 30% of the acquisition cost exceeding DKK 1,047,200 (in 1999) may be depreciated for tax purposes before the delivery or completion of the asset. However, no more than 15% of the acquisition cost may be depreciated in any year before the delivery or completion has taken place.

If the acquisition contract is terminated, the delivery does not take place within four years or the plans are abandoned before the completion of the manufacturing process, any advance depreciation taken under the scheme must be brought back to the taxable business income.

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E015 Incentives for Investment (Law 2601/98 ex1892/90) Greece

Conditions Attached

This measure benefits businesses making investments within the meaning of Act 2601/1998 that are designed to encourage private investment in Greece, boost regional development, promote business competitiveness and create new jobs. Broadly speaking, these investments concern building, expanding and modernising manufacturing and other installations, buying and installing modern machinery and other equipment as well as introducing, developing and applying modern technology and know-how.

For the purposes of the development act referred to above and, in particular, in the interests of successful regional development in Greece, the country is divided into four regions (A, B, C and D), so that larger tax benefits are given to businesses making the relevant investments in remote areas where there are serious problems of unemployment and/or a dwindling active population. The tax benefits also vary according to the businesses' activities, so that more support is given for activities that contribute most to promoting economic development.

Tax Benefits

Businesses making the relevant investments are entitled to form a tax-exempt reserve from their undistributed profits, the size of the reserve being fixed as a percentage of the value of the investments made.

The tax-exempt reserve is formed from the profits from the tax year in which the relevant investments were made and continues to be built up successively from the profits of the next ten tax years until it reaches the permitted size.

The maximum amount, which may be deducted from taxable profits, is determined as a percentage of the net annual profits (from 60% to 100%) in the year of investment and the cost of the investment (from 40% to 100%), again depending on the region.

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E016 Investment Tax Credits **Spain**

General

Investments in new tangible fixed assets (A), export related investments (B), research and development activities (C), staff training (D), publication of books, films or audio-visual productions (E) and environmental investments (F) qualify for different tax credits dealt with in more detail below.

Conditions Attached and Tax Benefits

The investment tax credits, which may be set off against corporate income tax liability, vary from 5% to 25% of the invested amount:

(A) An amount equal to 5% of investments in new tangible fixed assets (except for land) in Spain may be credited against corporate income tax. The assets must be kept in use for a period of at least 5 years (or for the asset's useful life if this is shorter than 5 years). This tax credit finished in 1996.

(B) Investments made to set up foreign permanent establishments, or to acquire at least 25% of the capital in existing foreign companies or newly created foreign subsidiaries. The activities of such branches and subsidiaries must be directly related to the export activities of the Spanish investor (finance and insurance activities do not qualify) or contracting of its tourism services in Spain. In the tax period in which the qualifying (25%) stock ownership is acquired, the total investment made in that year and in the two preceding years qualify for the 25% tax credit.

Similarly, expenses incurred in respect of promotion, publicity and marketing carried out abroad related with the launching of new products or the opening of new markets, over periods exceeding 1 year entitle the Spanish taxpayers for the 25% export related investment credit.

The base of the export related investment credit must be reduced by 65% of any subsidies received.

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(C) Research and development expenses incurred in any tax year entitle to a tax credit amounting to 20% of these expenses. Should the expenses exceed the average amount of expenses in the preceding 2 tax years, the rate of 20% will apply to an amount equal to the average amount and a rate of 40% to the excess. The base of these credits must be reduced by 65% of any subsidies received.

(D) Staff training related expenses incurred by employers entitle them to a tax credit of 5% of such expenses. Should the expenses exceed the average amount of expenses in the preceding 2 tax years, a rate of 10% will apply to the excess. The base of these credits must be reduced by 65% of any subsidies received.

(E) An investment credit of 5% and 20% (reduced by any subsidies received) is granted for the publication of new books and the production of films (and audio-visual productions), respectively.

(F) A tax credit of 10% is granted for investments in fixed assets made to preserve or improve the environment. The base of the credit must be reduced by the amounts of any subsidies received.

The sum of the above investment credits is limited to 35% of the corporate income tax liability regarding all other investments. Any unused credit may be carried forward for 5 years subject to the 35% limitation in each period.

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E017 Special Depreciation Arrangements for Assets Intended for Environmental Protection and Energy Saving, and for Assets Adjusting Work Places for Disabled Workers **Luxembourg**

Conditions Attached

Article 32 bis of the Income Tax Act (loi concernant l'impôt sur le revenu) provides for special depreciation rules with respect to non-productive fixed assets destined exclusively to environmental protection (e.g. reduction of residual emissions to water, air and ground) to energy saving, and to fixed assets adjusting the work places for disabled workers.

An approval for the application of the measure may be granted on the basis of a request made in conjunction with the tax return together with a certificate from the Ministries which are competent in the sectors of environment, energy and labour, respectively.

The measure applies to all business activities without distinction on the basis of, for example the taxpayer's branch of activity or sectors of activities. The approval is based exclusively on the fact that the depreciation corresponds to the ecological objectives described and defined together with the procedure set out in the Income Tax Act.

Tax benefits

In this context a special depreciation may be accounted for tax purposes. The special depreciation may not exceed 60% of the acquisition cost or the price of the fixed assets in question and corresponding to the conditions set out in law. The remaining 40% of the cost of the investment is depreciated in accordance with the relevant fixed asset's useful life.

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E018 Investment Allowance **Netherlands**

Conditions Attached

Income tax liable persons conducting a business and companies liable to corporation tax are entitled to an investment allowance on the basis of their investments in fixed assets.

In principle, all investments in fixed assets qualify for the investment allowance. Certain fixed assets, for example, houses, stocks, licences, and cars not meant for road transport and haulage, however, do not qualify.

The investment allowance is wholly or partially withdrawn if the fixed assets, for which the investment allowance was obtained, are sold within a period of 5 years from their purchase.

Tax Benefits

The allowance amounts to a certain percentage of the total sum invested in qualifying fixed assets in any particular year. The allowance can be deducted when calculating the taxable profits. The percentage decreases with the increase of the invested amount. It varies between 0% and 27%, depending on the total sum of investments made as follows (in 1999):

Invested amount per annum (NLG)		Percentage
Over -	Not over	
3,800 -	64,000	27
64,000 -	125,000	21
125,000 -	187,000	19
187,000 -	248,000	16
248,000 -	309,000	13

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309,000	-	371,000	11
371,000	-	433,000	8
433,000	-	495,000	5
495,000	-	556,000	3
556,000			0

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E019 Tax Incentives for Contractual Investment **Portugal**

Conditions Attached

The legal basis: Article 49-A of the Rules on Tax Benefits (as amended by the Government Finance Act of 1999). The measure is available by means of contracts to be concluded between the State and the sponsoring entity for a period of up to ten years, in respect of projects for investment in production units which are implemented before 31 December 2010 and cost not less than PTE 1 billion. The projects must be of special interest to the national economy, reduce regional imbalances, result in job creations or contribute to technological innovation or the advancement of national scientific research.

Certain tax benefits may also be granted contractually in respect of direct investment projects carried out by Portuguese firms outside Portugal, where the relevant investments cost not less than PTE 50 million and the projects make a positive contribution to the company's results. In this respect the projects must be of strategic importance for the internationalisation of the Portuguese economy. In such cases the contract may run for a maximum of five years. The procedural rules in respect of this measure are due to be published shortly in two Decree Laws but are not currently available.

Tax Benefits

The benefits are determined on a case-by-case basis according to the specific features of each project. The benefits may be cumulated with each other but not with other benefits provided for by other legal provisions, and are confined to relief from tax on corporate income (IRC) and relief from municipal tax, real-estate transfer tax (SISA) and stamp duty. As far as it concerns investment projects realised within the domestic territory the benefit in respect of the IRC is a tax credit of between 5% and 20% of the cost of relevant investments actually made under the project, which can be deducted from the amount assessed under Article 71(1)(a) of the IRC Code.

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In respect of qualifying direct investment projects carried out by Portuguese firms outside Portugal, the benefits consist of a tax credit of between 10% and 20% of the cost of the relevant investments. This tax credit is deducted from the amount of corporate income tax liability assessed under Article 71(1)(a) of the IRC Code up to an annual limit of 25% of that amount and an annual deduction of PTE 200 million. Where the investment takes the form of the creation or acquisition of foreign companies, economic double taxation during the period covered by the contract is eliminated in accordance with Article 45 of the IRC Code.

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E020 Tax Credit for Investment **Portugal**

Conditions Attached

This regime (Decree Law No. 121/95 of 31 May 1995) is available for Portugal resident companies and non-resident companies with Portuguese permanent establishments, whose main activities must consist of activities of commercial, industrial or agricultural nature. Finance and real estate activities, rental activities, and provision of services to enterprises are expressly excluded from the scope of application of this measure. The measure will be applied for the last time in 1998.

In order to qualify for the tax credit the investments shall be made in elements of fixed assets, acquired as new (in mint condition), other than:

- land, except if intended for the purposes of exploration or exploitation of mining concessions, natural and source mineral water, quarries, clay pits and sand pits in extractive industry projects,
- construction, acquisition, repair and improvement of any building other than manufacturing premises,
- light vehicles,
- furniture and comfort or decoration goods,
- social equipment, or
- other capital goods not directly and necessarily connected with the productive activity carried out by the enterprise.

Under the risk of the benefit of the measure becoming void and the taxes thereby not imposed becoming due (increased by an interest payable) the assets must be kept by the taxpayer for a period of at least 3 years.

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Tax Benefits

Qualifying additional investments entitle the relevant taxpayer to a tax credit deductible from their taxable base. The credit amounts to 5% of the relevant additional investment. The credit, however, may not exceed an amount equal to 15% of the taxable base.

The additional investment is determined as being the difference between the investment made during the relevant accounting period and the simple arithmetic average of the investment made in the previous two accounting periods in fixed assets connected to the operations of the enterprise and used by the enterprise within the Portuguese territory.

E022 Rollover of Capital Gains **Germany**

Conditions Attached

Assets qualifying for the measure are: stocks or shares of corporate entities, real estate, buildings, ships, depreciable movable assets with useful lives of at least 25 years and certain agricultural and forestry enterprises' fixed assets. A 6-year holding period prior to sale is required (except for the agricultural and forestry enterprises' fixed assets).

As from 1 January 1999 the tax benefits of this measure are limited to real estate and buildings and to expenses related to real estate.

Tax Benefits

Generally 50% of the capital gains realised on the sale of fixed assets (100% in the case of buildings and land) may be deducted from the cost of qualifying replacement assets. If replacement is not effected immediately, the allowable deduction may be carried forward as a tax-free reserve for the following 4 business years (6 years for buildings and ships whose construction has begun within 2 years).

The deduction will also be available against replacement assets acquired in the period prior to that of the sale.

Future depreciation of the replacement assets is based on acquisition cost less the amount of untaxed capital gain. If replacement assets have not been acquired, the profit for the business year in which the tax-free reserve must be released must be increased by 6% of the released amount for each year the tax-free reserve has existed (sanction).

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E023 Reinvested Capital Gains **Portugal**

Conditions Attached

The measure (Article 44 of The Legal Persons Income Tax Act) is available in respect of capital gains arising from a conveyance in return for payment of tangible fixed assets.

Tax Benefits

The difference between the realised capital gains and capital losses on tangible fixed assets is exempted if the total consideration received is reinvested in the acquisition, production or construction of any elements of tangible fixed assets until the end of the third financial period following its realisation. If only part of the consideration is reinvested, only the corresponding part of the capital gain qualifies for the exemption.

However, even if the capital gain is not taxed at the time it is realised, it will always be taxable due to the subsequent operations, either because of the respective reintegration into the acquisition price (in the case where the acquisition price after the deduction of non-taxed capital gain is considered as a reintegrated price) or because of a reinvestment of the capital gain, of which the calculation takes into consideration the non-taxed capital gain.

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E024 Small Islands Income Tax Reduction **Greece**

Conditions Attached

The measure is available to legal persons, joint ventures and associations created under the civil code and which carry on their operations in small Greek Islands with less than 3100 inhabitants. This measure will cease to apply in 2006.

Tax Benefits

The normal income tax rates are reduced by 40%.

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E025 St Martin and St Barthelemy **France**

Conditions Attached

The Islands of Saint Martin (35,000 inhabitants) and St Barthélémy (6,000 inhabitants) are two communes of the department of Guadeloupe and, in this respect, benefit from the particular tax measures designed to promote the economic development of the overseas territories (see Category 4, measure D15). These measures consist of:

· A temporary exemption of corporate income tax; companies established or companies who create a new activity (setting up a new branch of activity by an existing company) prior to 31 December 2001 within a socio-professional sector which is considered as being of priority interest to the concerned departments.

  These sectors include industry, fishing, hotels, tourism, new energy sources, agriculture, construction and public works, transport, and craft industry. Banking and financing activities are excluded from the scope of this regime.

  Application of the regime is subject to an approval by the Ministry of Budget, granted in accordance with the economic interest of the programme.

· A long-term fiscal scheme (article 1655 b CGI) is applicable to limited companies (i.e. société anonyme, société commandite par actions, société à responsabilité limitée) which have as their objective the research and exploitation of mineral ores, to companies whose exclusive objective is the realisation of an industrial activity comprising an investment programme amounting to at least FFR 20,000,000;

· Reduced tax base scheme (article 217 b CGI) applied to corporate income tax liable enterprises, of which the activities fall within the following sectors: agriculture, tourism, fishing, new energy sources, building and public works, transport, etc.

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- Investment incentive scheme (articles 199, 163, 217 of the CGI) is available for corporate income tax liable enterprises, of which the activities fall within the following sectors: agriculture, tourism, fishing, new energy sources, building and public works, transport, production and distribution of audio-visual works, etc.

Tax Benefits

The respective tax benefits of each of these measures are as follows:

- temporary full exemption from corporate income tax for a period of 10 years from the creation of a qualifying company. The exemption does not apply to capital gains arising from a full or partial disposal of the portfolio or immovable assets.

- Exemption from corporate income tax liability for a period of 25 years for the profits that are reinvested in the company.

- Only 2/3 of the profits (or losses) are taken into account in calculating the corporate income tax due of the companies qualifying for the reduced tax base scheme. This reduction of the tax base is applicable until the end of 2001.

- Deduction from the taxable result of an amount equal to the investment (decreased by that part of the investment which has been financed by public subsidy).

  The deduction is, in principle, statutorily applied with regard to investments which do not exceed FFR 5 million. As far as any excess amount is concerned, the investment deduction is subject to a prior approval by the Ministry in charge of the budget.

  This ceiling is however decreased to FFR 2 million when the investment is realised directly or indirectly by individual persons acting in a non-professional capacity or by representatives of companies or groups subject to tax under the regime provided for in Article 8 of the CGI.

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The same applies in principle for the deduction of productive investments in the sectors of transport, boating, maritime fishing, audio-visual (and film) production and distribution, as well as for investments in construction of hotels and other tourist accommodation, and necessary investments for fulfilment of local public service contracts of a commercial and industrial nature, irrespective of the amount invested (Finance Law for 1999).

An approval is granted if the investment is of economic interest to the department in which it is realised, if it promotes the maintaining or creation of employment in this department, if it is integrated in the policies of national and regional development and environment, and if it guarantees the protection of investors and third parties.

NB! Irrespective of any particular regime, the difficulties in enforcing tax laws in St Martin and St Barthelemy have lead to a situation where, in practice, corporate income taxes are not always imposed or collected, notwithstanding the fact that in the jurisprudence of the Council of State it has been held that the legislation in force in metropolitan France regarding direct taxation is normally applicable in these islands as it is in the entire department of Guadeloupe.

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E026 Mutual Funds / Portfolio Investment Companies **Greece**

Conditions Attached

The measure is applied to mutual funds and portfolio investment companies whose exclusive purpose is to hold securities, such as shares, bonds, titles of participation in mutual funds, bank deposit certificates, Government treasury bills and other stock exchange titles).

The minimum share capital of a portfolio investment company must be at least GRD 500 million, their shares must be listed on the Athens Stock Exchange within 6 months following their formation and the securities owned by them must be deposited for custody with a bank legally operating in Greece.

The share capital consists of contributions

· in cash,

· in securities listed on the main market of the stock exchange of a EU Member State, the parallel market of the Athens Stock Exchange, any other EU Stock Exchange having listing requirements equivalent to the parallel market of the Athens Stock Exchange or any other recognised stock exchange market of an EU country as determined by a decision of the Minister of National Economy,

· in titles of participation in EU mutual funds which meet the requirements of the Directive (85/611/EEC) on "UCITS".

Contributions in kind (i.e. movable and immovable property) are also permitted provided that they do not exceed 1/10 of the share capital and on the condition that such property serves the operating needs of the company.

Tax Benefits

The income of the mutual funds and portfolio investment companies is subject to an income tax at a rate of 15% except for income related to Greek government bonds which are exempt. In addition, these entities are liable to tax on their average value of their investments and their disposable funds at a rate of 0.3%.

E027 Venture Capital Funds and Companies **Spain**

Conditions Attached

Companies whose purpose is the promotion, through temporary participation in the share capital, of non-financial (and non-listed neither participating in with more than 25% of the share capital of listed companies) companies, are deemed as venture capital companies (VCC).

The share capital of a VCC must be at least ESP 200 million of which at least 50% must be paid in at the time the VCC is formed and the remaining 50% within 3 years. A Venture Capital Fund (VCF) must have an initial capital of ESP 275 million.

A VCC may grant participating loans to its subsidiaries if the loans granted serve its business purpose.

Both VCCs and VCFs must keep at least 60% of their assets in shares or participations in the capital of the 'target companies'. Additionally, both VCCs and VCFs require prior administrative approval and, they must be registered as such with the Ministry of Economy and Finance as well as the Mercantile Registry.

Tax Benefits

· 100% relief from corporate income tax on dividends, regardless of the ownership period and the size of the stock ownership,

· Partial corporate income tax exemption for capital gains on disposal of shares (the exemption amounts to 99% of the capital gain, depending on the holding period, varying from 3 to 10 years, respectively,

· 100% relief from withholding tax on account of the corporate income tax on the distribution of dividends and other profit distributions, regardless of the ownership period and the size of the stock ownership.

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E028 Venture Capital Companies **France**

Conditions Attached

In order to qualify as a venture capital company and thereby for the beneficial tax treatment, a French company must meet the following requirements:

- The company must be incorporated as a stock corporation, i.e. either as a "société anonyme" or a "société commandite par actions". At least 50% of its net assets must constantly consist of parts, shares, convertible bonds or participating titles in companies who have their legal seat in a Member State of the European Communities, whose shares are not quoted on a French or on a foreign stock exchange, which carry on industrial and commercial activities (as provided for in Article 34 of the CGI) and who are subject to corporate tax at normal statutory rates or who would be subject to statutory corporate tax if the activities were carried on in France.

- In order for the venture capital companies not to constitute parts of groups of companies their participations in their subsidiaries must remain as minority participations not conferring them voting rights exceeding 40% of total voting rights and they may invest no more than 25% of their funds in any single company.

- No more than 30% of its capital may be held by any individual person.

Tax Benefits

Venture capital companies are exempt from corporate income tax on their dividend income (in whatever form) and capital gains.

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Moreover, the dividend distributions of the venture capital companies attract favourable tax treatment:

- The corporate shareholders of the venture capital companies benefit from the long-term capital gains tax treatment (i.e. subject to tax at a rate of 19%), when the distribution is effected from the capital gains that have been realised from a disposal of assets which took place no longer than 4 years ago and the assets have been held by the venture capital company for a period of at least 2 years.
- Individual shareholders are subject to income tax on dividends received (drawn from the capital gains of the portfolio held by the venture capital company) at a flat rate of 16% instead of the regular progressive rates.

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E029 Participation Fund Companies **Austria**

Conditions Attached

Only Austrian resident limited companies (AGs) can qualify as Participation Fund Companies (PFC). A PFC has to be financed by an issue of certificates providing their owners a pro-rata share of the annual profits of the participation fund. The certificates may be issued up to a maximum of 15 times the nominal share capital of the PFC (of which the nominal amount must be at least 150 million ATS). The participation fund must be invested in Austrian enterprises registered in the commercial register and all investments must be held for a period of at least 10 years.

Tax Benefits

PFCs are exempt from corporate income tax with respect to the part of income attributable to the participation fund. Dividends and other profit distributions from companies in which the PFC participates are exempt from withholding tax. Income received by the holders of the certificates (with the exception of the certificates owned by the PFC itself) is exempt from withholding tax (and is not subject to individual income tax). Special tax privileges apply to participations (and to income received from them) held by the PFC as a trustee.

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E030 Investment Companies **Sweden**

Conditions Attached

An Investment Company (IC) is a company or economic association, of which the exclusive or semi-exclusive activity is to manage securities or other similar movable property and whose principal objective is to offer its shareholders an investment form that spreads out the risk over a broad portfolio of securities. The basic idea is that it should not make any difference whether an investor invests through an IC or directly. Dividends and capital gains received by individuals are taxed at a rate of 30%. Capital gains tax on the sale of shares is imposed at this rate irrespective of the time period during which an individual has held the shares.

In order to qualify as an IC, a large number (several hundred) of individuals must be participants or hold the shares of the IC (in case law it has been held that 80 individual shareholders is not enough to qualify).

This individual shareholders requirement is usually met where an IC is a listed company (on the Swedish Stock Exchange).

All requirements are stated in law. No prior administrative approval is required to qualify as an IC.

Tax Benefits

Capital gains and losses realised on the sale of shares and other securities are disregarded for taxation purposes. Thus capital gains may be re-invested or accumulated at the IC-level. If the capital gains are not distributed they will increase the value of the IC and the taxable capital gains realised by the investor at a later stage. In order to neutralise the advantage from the deferral of taxation (compared with the tax treatment of directly held shares by individuals), an amount equal to 2% of the market value of the shares and other securities held by the IC at the beginning of each tax year is deemed to be taxable income of the IC (at the standard corporate income tax rate of 28%).

Dividend income received by an IC is fully taxable.

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Distributed dividends are deductible but the IC cannot incur taxable loss due to dividend distributions.

Management expenses are deductible.

Unit Trusts (värdepappersfonder)

The same rules apply also to unit trusts, except that an amount equal to 1.5% (instead of 2%) of the market value of the shares and other securities held is deemed taxable (at the standard corporate income tax rate of 28%). Unit trusts are not entitled to take loans to finance their operations and therefore the percentage is set at a lower level than that applied to the ICs.

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E031 Limits on Taxes on Commercial Income **Germany**

Conditions Attached

The measure applies to commercial enterprises that are liable both to income tax and to the tax on income from trade and industry (Gewerbesteuer).

Tax Benefits

By means of this measure the marginal tax burden - which according to the progressively designed income tax rate table depending on the level of the taxable income can be up to 53% -is limited at max. 47% for determined commercial income, if the part of the commercial income in the taxable income amounts to at least 100.278 DM / 200.556 DM (basic table/split table for married persons). Thus, the extra-burden on commercial income resulting from the fact that the tax on income from trade and industry shall be taken into account in the applicable statutory income tax rate and not only through the deduction of the "Gewerbesteuer" from the tax base (as business expenses).

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E033 Representative Office **Spain**

Conditions Attached

The measure is available for Spanish permanent establishments (PEs) / representative offices (ROs) of foreign investors, when the operations of these PEs/ROs do not cover a full production cycle generating income in Spain, the said cycle being concluded by the non-resident company or by one or more of its PEs. No consideration may arise, apart from covering the costs incurred by the PE/RO and no part of the products or services may be intended for third parties. (Article 50(4) of Law 43 of 27 December 1995).

Tax Benefits

The PEs/Ros, as defined in Article 50(4) of Law 43 of 27 December 1995, are liable to pay corporate income tax at the standard 35% rate, but all the transactions between the PE and the parent company or any other PE of the group are valued at the market prices. However, when this system can not be applied the taxable income is determined on the basis of a fixed cost plus mark-up of total expenses incurred by them in the performance of their activities. The mark-up rate for the purpose of calculating the taxable income is fixed, by an order of 23 December 1997, at 15%.

All income of an accessory nature, such as interest or rents, which does not stem from the object of the representative offices activities, is added to the amount calculated on the cost plus basis. Capital gains or losses accruing from the assets allocated to the representative office are equally taken into account for the purposes of calculating the taxable income in Spain.

No other deduction or tax incentive can be applied.

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E034 Tax Credits for Job Creating Investment **France**

Conditions Attached

The measure applies statutorily to all companies subject to normal corporate income tax, irrespective of their legal form (sociétés civiles, sociétés commerciales, etc.) or of their activities (commercial, artisan, industrial, agricultural, non-commercial, etc.).

The measure is only applicable in 1998, 1999 and 2000 (when it will expire).

A neutralising mechanism is applied to companies which have direct or indirect dependent relationships or which result from a merger, division, capital contributions or similar operations. The purpose of the mechanism is to neutralise, in calculating the tax credit, the effects of transfers of salaried personnel from a company to another, which however do not increase the overall number of the personnel.

Tax Benefits

The tax credit amounts to FFR 10,000 for each additional employee, calculated as an average number of salaried employees during the year in question and compared with the corresponding number from previous year. The comparison is always made between two subsequent calendar years, even if the financial year (accounting period) of the company would not tally with the calendar year.

The maximum annual tax credit is FFR 500,000 and it can only be set off against the 10% supplementary corporate tax contribution (as provided for in article 235 ter ZA of the CGI).

The credit may be carried forward (until 2000) but it can never lead to a tax refund. In the case where the average number of salaried employees decreases (compared with the corresponding figure of the previous year) the negative balance of the credit can be set off against future credits or against credit carried forward from previous years. If such a set off is not possible, the negative balance must be returned to the treasury. The amount of negative balance that has to be returned to the treasury is limited to the amount of the credits used against the 10% contribution.

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E035 Tax Credits for Staff training Costs **France**

Conditions Attached

The measure applies (with an option to revoke) to enterprises which have incurred training expenses that are greater than the respective expenses during the previous calendar year. Only expenses exceeding those incurred due to the legal training obligations are taken into account.

A neutralising mechanism is applied to companies which have direct or indirect dependent relationships or which result from a merger, division, capital contributions or similar operations. The purpose of the mechanism is to neutralise, in calculating the tax credit, the effects of transfers of salaried personnel from a company to another, which however do not increase the overall number of the personnel.

Tax Benefits

The tax credit amounts to 25% of the eligible training expenses exceeding the respective figure of the previous calendar year, but adjusted in accordance with the percentage change in the number of salaried personnel and an amount of FFR 3,000 per additional student trainee whose training lasts at least 8 weeks during the course of the year. The tax credit is set off against the company's corporate income tax or income tax liability. Should the credit exceed the corporate income tax liability, the excess is refundable. The credit is, however, limited to a maximum amount of FFR 1,000,000 per year.

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E036 Listed Companies – Reduced Rates **Italy**

Conditions Attached

The measure is available for companies whose shares are quoted on an Italian stock exchange.

Under the Italian differentiated income tax system the taxable profits of companies are subject to corporate income tax at the standard corporate income tax rate of 37%, except for that part of the profits which is deemed to correspond to a 'ordinary return on capital'. The part of the income which is deemed to correspond to the ordinary return on capital is taxed at a reduced rate of 19%. The overall tax rate resulting from this differentiated taxation of corporate income may not, however, be less than 27%.

Tax Benefits

In the case of quoted companies the reduced tax rate applicable to the part of income corresponding to the ordinary return on capital is further reduced to 7% and the minimum overall tax rate is 20% (instead of 27%). These reduced rates are applied to the corporate income during the first three years following the year when the shares of the company were quoted on a stock exchange for the first time.

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E037 SGII Companies **Portugal**

Conditions Attached

The tax benefits provided for in the measure (Article 26 of Statute of Fiscal Benefits) are available for qualifying real estate investment and management companies (SGIIs) that are authorised by the Minister of Finance. The authorisation (SGII recognition) is granted as a Ministerial Decision by the Ministry of Finance in accordance with the regime provided for in Decree Law No. 135/91 of 4 April 1991).

Tax Benefits

Corporate income tax (IRC) is levied at a reduced rate of 25% (instead of the standard IRC rate of 34%) on the taxable profits of SGIIs. Additionally, immovable property rental income derived by qualifying SGIIs is exempt from withholding of IRC.

The SGIIs are also exempt from the real estate transfer tax (SISA) on the acquisition of immovable property and from municipal tax on buildings or parts of urban buildings intended to be let for residential occupation.

The above mentioned reduced IRC rate and the exemptions apply to SGIIs during their year of incorporation and the following 7 years.

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E038 SCR, SDR and SFE Companies **Portugal**

Conditions Attached

The measure (provided for in Articles 23, 24 and 25 of the Rules on tax concessions) was available for

a) venture capital companies (SCRs) incorporated in 1989-1990,

b) regional development companies (SDRs) incorporated in 1989-1992, and

c) business promotion companies (SFEs) incorporated in 1989-1990.

The applicability of the relevant rules has not been extended and therefore, the measure has expired in 1997.

Tax Benefits

Venture capital companies (SCRs) and regional development companies (SDRs) were exempt from corporate income tax during the first 5 years of their business operations and business promotion companies (SFEs) during the first 8 years of their business operations. Interest received on deposits of these companies did not qualify for the exemption but was subject to tax at a reduced rate of 20%.

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EAM004 Investment allowance Austria

Conditions attached

This measure applies to the acquisition or manufacture of depreciable fixed assets. The investment allowance makes it possible to deduct from the tax base a portion of the amount of the investment made during the tax period.

Investments in the following assets are excluded:

- private motor vehicles and motor vehicles used for both transportation of persons and goods, motorcycles and used lorries,
- aircraft used for transportation of persons (other than by passenger airlines),
- less valued economic goods (initial costs up to 5000 ATS), which are immediately depreciated in full,
- goods which are purchased within the framework of the acquisition of an enterprise,
- assets used for 'sale and lease back' and 'sale and sale back' operations,
- used and intangible goods within a group of companies,
- purchased intangible goods, which are intended to be leased or rented.

At the end of the fourth year after the year of the acquisition or manufacture (where there is an obligation to maintain the asset) the investment deduction has to be transferred into a reserve, recorded in accordance with tax regulations, or into a capital account without being taxed. If economic goods leave the entity before the end of this period (for instance through sales transactions or withdrawal) or are transferred within this period into an entity located abroad, the investment deduction has to be reversed in this year and the taxable profit increased accordingly. In the case that the economic good leaves the entity because of force majeure, no profit increasing reversal of the investment deduction is required.

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If the investment deduction results in a loss or an increase of the loss, a loss - compensation or the carrying forward of losses is not allowed. The loss can be set off at the next opportunity against a subsequent profit of the same entity.

Tax benefits

The investment deduction amounts to

- usually, 9% of the acquisition or manufacturing costs,

- 6% for motor vehicles (if not specifically excluded) and for intangible assets.

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EAM009 Tax exemptions **Austria**

Conditions attached

This measure is designed to avoid international double taxation of the same income of the same taxable person and applies only where there is no treaty for the avoidance of double taxation concluded between Austria and the other country concerned.

There must be a factual double taxation by Austria and the other state in question as evidenced by a receipt of the payment of tax made or by a formal declaration on behalf of the other state.

Tax Benefits

The Federal Minister of Finance can either arrange a tax exemption of individual taxation issues (e.g. foreign income) or provide for a foreign tax credit on the Austrian tax (i.e. either of the methods indicated in the OECD Model Tax Convention).

Generally this unilateral relief is granted by applying the exemption method (exemption method is also commonly used in the double tax treaties into which Austria has entered).

The credit method is only used in cases where the income earned abroad is repatriated to Austria (e.g. dividends, interest and royalty income received by Austrian taxpayers).

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EAM011 Investment funds Belgium

The legal reference given in the request for information (i.e. Articles 68 to 77 and 201 of the "*Code des impôts sur les revenus*") concerns investment deductions which have already been looked at and discussed (measure C20).

Assuming that the request for information concerns investment funds (investment undertakings):

Conditions attached

Belgian investment undertakings are governed by the Law of 4 December 1990 transposing the Directive of 20 December 1988 (85/611/EEC) on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS). Investment undertakings include:

1. Investment firms: open-end investment companies (SICAVs), closed-end investment companies (SICAFs) and debt-claim investment companies (SICs), all with legal personality;

2. Investment funds: (open-end and closed-end funds and debt-claim funds), without legal personality; they are management companies authorised by the market authorities which manage a joint portfolio of transferable securities on behalf of their investors.

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Tax benefits

1. Investment firms: Investment firms are not tax-transparent in law. However, they are subject to corporation tax on a reduced taxable base consisting solely of non-deductible business expenses and costs and non-standard benefits received. Profits distributed or set aside are accordingly not taxable. The standard rate of 39% plus an austerity levy of 3% (giving an aggregate rate of 40.17%) applies. Additionally, these companies are subject tax on their net assets at a rate of 0.06%. Income from capital received by such entities is exempt from withholding tax ('*précompte mobilier*') on certain conditions. The tax is nevertheless payable on dividends from Belgian sources but it is offset against the fund's tax liability. Only the actual beneficiary (the investor) can be taxed on the profits distributed by investment companies.

2. Investment funds: Investment funds are totally tax-transparent. They are not liable for corporation tax. The actual beneficiary can be taxed on the capital income.

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EAM033 Large scale product-line investments financed with foreign capital **Greece**

Conditions Attached

The measure is based on the Legislative Decree (2687/53), which is constitutionally safeguarded by virtue of the special provision of Article 107 of the Greek Constitution in force. The Legislative Decree (2687/53) stipulates the type of protection afforded to foreign capital imported in Greece (irrespective of the country of origin) and used in productive investments.

Productive investments shall be deemed any investment which aims at promoting national production or which contribute to the economic progress of the country. The imported foreign capital can be in the following forms:

- Foreign exchange
- Machinery and materials
- Patents
- Technical processes
- Trade marks and vessels of over 1,500 gross registered ton (registered under Greek flag)

The provisions for the protection of the imported capital have been rendered redundant as a result of the transposition of Community Law on free movement of capital. The tax provisions included in the Legislative Decree (2687/53) do not apply to undertakings engaged in shipping activities (to which law 27/75, as described in category 3, measure C4, is applied).

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Tax benefits

The Legislative Decree (2687/53) contains tax provisions of which the purpose is to create a stable tax environment for the realised foreign investments:

- Freezing of income tax rates for a period not exceeding ten years, with the provision for downward adjustment to the level of applicable rates (in the event that the tax rates are lowered). Since the adoption of law 2065/92 the income tax rates have however remained unchanged.

- Lowering of or exemption from any charge or levy imposed by local government authorities, port authorities or other organisation for a period not exceeding ten years.

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EAM035 National infrastructure Greece

Conditions Attached

The provisions of paragraph 6 of Article 13 of Law 2238/94 provide for a special method of taxing income acquired in Greece by foreign businesses and organisations from studies and projects or from technical, economic and scientific research whether these are carried out in Greece or abroad and also from the monitoring and co-ordination of the implementation of technical works carried out by third parties in Greece or from the provision of scientific advice for the main part of the technical works carried out in Greece.

This method of taxation of the aforementioned businesses or organisations was introduced owing to the difficulties encountered or impossibility of checking data relating to the expenses made abroad and charged to income made in Greece. It is designed to simplify the procedure for determining and collecting the tax and combating tax evasion.

The provisions of paragraph 7 of Article 13 of Law 2238/94 provide for a special method of taxation of foreign companies or organisations engaged in Greece in the contractual construction of public works or private technical works or in the execution of mechanical and electrical installations.

Tax benefits

Firms and organisations covered by paragraph 6 of Article 13 of Law 2238/94 are taxed by deducting income tax at source at a rate of 17.5% calculated on the total gross remuneration. With this tax deduction, the tax obligation of the foreign firm or organisation is discharged.

Firms or organisations covered by paragraph 6 of Article 13 of Law 2238/94 are charged income tax on the total gross value of the project at the following rates:

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(a) 4% of the total gross value of state, municipality or community works, public corporations or bodies, public utility organisations or firms and legal persons under public law generally, whether or not the works are carried out with materials belonging to the contractor,

(b) 4.8% of the total gross value of private works, in general

(c) 10% of the total gross value of the works excluding the value of the materials referred to in the above case (b) for which the contractor does not use his own materials. Deduction of the tax discharges the tax obligation of the foreign company or organisation. This method of taxation of the companies or organisations in question is deemed necessary as in many cases those firms leave Greece on completion of the project making it impossible for tax auditing and creating difficulties in making public the tax auditing and collection forms for the tax due. The tax charged on the aforementioned foreign firms or organisations is the same as the final charge on similar Greek companies.

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EAM045 Tax credit for membership of a 'groupement de prévention agréé' **France**

Conditions attached

4) '*Groupements de prévention agréés*' were set up by Law No 84-148 of 1 March 1984 on the prevention and amicable settlement of difficulties encountered by enterprises.

To qualify for the arrangements, companies must meet both of the following conditions which relate to the year in which the tax credit is applied:

- the company must be a legal person governed by private law subject to corporation tax under the normal rules or to income tax on the partners;

- it must belong to a '*groupement de prévention*'.

The aim of these groups is to provide a confidential service to their members consisting of analysing accounting and financial data which the latter undertake to send at regular intervals. When the group detects signs of problems, it informs the member company and can recommend a consultant who can help.

As part of their role, '*groupements de prévention agréés*' are also allowed to make agreements with departments of the French National Bank and credit or insurance companies.

Tax benefits

The companies concerned are eligible under corporation tax, or income tax in the case of individual businesses, for a tax credit equivalent to 25% of expenditure incurred in the first two years of membership subject to an annual limit of FRF 10 000.

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EAM051 Exemption from corporation tax on takeover of ailing companies — France

Conditions attached

Companies eligible for Article 44f of the Tax Code (CGI) must be subject to the normal rate of corporation tax, must have been formed with the aim of taking over an industrial undertaking in difficulty within the legal meaning of the term and conduct the business of that undertaking as their sole activity.

The new company's capital must not be owned, directly or indirectly, by persons who were partners or operators or who indirectly owned more than 50% of the capital of the ailing company in the year preceding the takeover.

The firm taken over must be solely engaged in industrial activities and be the subject of a court sale order.

Tax benefits

Article 44f CGI provides for a two-year exemption from corporation tax.

This temporary exemption is granted subject to the Budget Ministry's consent in the case of branches (to avoid any improper transfer of income or expenditure).

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EAM053 Legal persons liable for corporation tax whose objects are to transfer use and benefit of movable or immovable property to its members free of charge — France

Conditions attached

The object of the legal person liable for corporation tax must be to transfer use and benefit of movable or immovable property to its members free of charge (Article 239g CGI).

These provisions do not apply to legal persons carrying out income-generating transactions with third persons unless such transactions are incidental and do not account for more than 10% of total income or arise from an obligation imposed by the public authorities.

Tax benefits

By derogation from the general rule the net value of the benefit in kind is not taken into account when calculating the taxable income.

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EAM054 Distribution by certain companies of capital gains arising on liquidation **France**

Conditions attached

Article 239a(B) CGI provides for special arrangements to assist in winding up inactive companies.

These concern companies liable for corporation tax which have carried out an industrial or commercial activity for at least five years but are obliged to cease business for economic reasons.

These provisions may only be used by companies which, prior to winding-up, applied to the Ministry of Economic Affairs for consent to that effect, issued in accordance with the opinion of the Committee on Economic and Social Investments. Consent is granted subject to conditions laid down in the Ministry of Economic Affairs Decree of 17 May 1976.

Tax benefits

The arrangements provide two forms of relief:

- the net capital gains arising on liquidation operations are taxed in accordance with the rules specific to long-term net capital gains at a reduced base rate of 19% (the normal base rate is 33 1/3%), regardless of the date of acquisition of the assets;

- the net amount - after payment of corporation tax - of the capital gains arising on liquidation plus all or part of the reserves carried in the company balance sheet on the date of winding-up may be distributed between partners, in addition to the contributions which are refunded to them, subject to payment of a flat-rate tax of 15%.

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EAM055 Provisions to cover price increases France

Conditions attached

Firms (Article 39(1)(5) CGI) must record a price rise of more than 10% on a given product or material over a period which cannot be longer than two consecutive financial years.

In accordance with Article 38(3) CGI, stocks are valued at cost or their financial year-end value where this is lower. The cost price includes the price of the most recently acquired components used in the manufacture of the products (first in, first out rule).

Tax benefits

Firms may make a tax-free provision against price rises corresponding to the fraction by which the rise exceeds 10%.

The provision made at the end of a financial year is automatically carried forward to the taxable profits of the financial year obtaining at the end of the sixth year following the financial year end when the provision was first made.

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EAM056 Provision for setting up foreign branches France

Conditions attached

To qualify for the regime laid down in Articles 39g A-II, D and D-IV CGI, firms must be:

- subject to corporation tax automatically or by choice;

- engaged in manufacturing activities or the provision of services in establishments whose income is subject to corporation tax. This condition excludes from the arrangements firms whose sole activity is trading (purchase-resale of goods in their unaltered state).

Foreign investments may be made directly or via a subsidiary in which the French company holds at least one third of the capital.

The foreign holding must:

- if it is a subsidiary, be established as a limited company;

- be subject to comparable taxation of its profits by the foreign state as would result from the application of corporation tax in France;

- be engaged in marketing abroad goods which have mainly been produced by the French firm in one of its establishments whose income is subject to corporation tax.

Tax benefits

French firms which set up foreign branches in accordance with the above conditions may set aside a tax-free provision calculated on the basis of the subsidiary's or foreign establishment's losses up to the limit of the amount of the investment.

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The tax-deductible provisions are subsequently added to the French company's taxable income up to an amount equal to the profits made by the foreign subsidiary or establishment. At the latest they are added to the income of the financial year or tax period ending in the tenth year following that in which the investment conferring entitlement to the provision was made.

Provisions are included in the taxable income in the event of the participating interest in the subsidiary being reduced or if one of the conditions required for application of the arrangement is no longer met.

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EAM057 Provision for employee start-up loans France

Conditions attached

Firms eligible for the arrangements are those which, since the financial year beginning 1 January 1996, have granted soft loans to firms set up by members of their staff or which subscribe to the capital of companies set up by such persons (Article 39n H CGI).

Firms granted the loans must be engaged in an industrial, commercial or craft activity in France, be new or set up as an extension of an existing activity and, at the end of the year of creation or resumption of activities and the following two years must have a turnover of no more than FRF 30 million or FRF 10 million depending on the activity.

The founders of the new firm must not hold or have held, *de jure* or *de facto*, a management post in the firms which employed them. They must have been employed by the firm for at least one year.

Soft loans are those having a minimum duration of seven years or, in the event of early repayment, an average duration of at least five years. They must bear interest at a rate of no more than two-thirds of the annual average of the mean rates effectively applied by credit institutions in respect of floating-rate business loans with an initial duration of more than two years.

Tax benefits

The special tax-free provision is equivalent to half of the actual loan payments or 75% of the amount of subscribed capital. It may not exceed FRF 300 000 in respect of an individual employee.

The provision is incorporated into the taxable income in thirds at the end of the fifth, sixth and seventh financial years after that in which the new company was set up.

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EAM060 Provisions for risks relating to medium-term credit transactions by firms carrying out works or selling abroad **France**

Conditions attached

To be eligible for this provision (Article 39(1)(5)), firms carrying out industrial or commercial activities must:

- sell or carry out works abroad;

- grant medium-term loans to clients for the above transactions (the loans must be for a period of between two and five years)

Tax benefits

For the purpose of assessing the income tax or corporation tax base, the firms concerned are allowed to set aside provisions to cover specific risks relating to the medium-term loans which they grant in respect of sales or works carried out abroad.

Articles 4a and 4c of Annex IV CGI lay down the conditions and limits for setting aside such tax-free provisions.

The total provision that can be carried in the final balance sheet may not exceed 10% of the amount of the medium-term loans in that balance sheet relating to business carried out abroad, income from which is included in the income tax or corporation tax bases.

The outstanding balance carried under assets in the balance sheet of the medium-term loans relating to sales effected or works carried out abroad is used in order to calculate the relevant amount of the loans.

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EAM064 Regime for long-term capital gains on FCPR and SCR securities France

Conditions attached

Law No 97-1026 of 10 November 1997 excluded from the long-term capital gains or losses regime capital gains or losses realised by firms liable for corporation tax on the disposal of all fixed assets with the exception of:

- capital gains or losses from the sale of units in *fonds de placement à risque* (FCPR - unit trusts) which meet the conditions laid down in paragraph 1a, II, Article 163n B CGI (of which at least 50% of the assets consist of '*sociétés de capital risque*' (SCR - venture capital companies) securities held for at least five years);

- capital gains or losses from the sale of shares in SCR which meet the conditions of Article 1 of Law No 85-695 of 11 July 1985 (see Measure E 28: venture capital companies) held for at least five years.

SCRs and FCPRs whose securities may be eligible for the long-term capital gains or losses arrangements must comply with the above conditions for the entire period during which the units or shares are held or for at least five years prior to their sale.

Tax benefits

The disposal of SCR or FCPR securities held for at least five years is taxed at the reduced base rate of 19% (the normal base rate is 33 1/3%) plus additional contributions, i.e. a tax rate of 22.8%.

Net capital losses may only be set off against long-term capital gains made in the following ten financial years.

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EAM066 Carryover of losses on merger (consent) France

Conditions attached

By derogation from the normal rules (under which the losses made by the company acquired prior to the effective date of merger (ordinary losses and 'deferred' depreciation) may not be transferred to the acquiring company because of the corporate identity principle, and the acquiring company's right to carry over the 'deferred' depreciation indefinitely ceases to apply if the firm takes over all or part of the activities of another firm or transfers to it all or part of these activities), Article 209 II CGI stipulates that, subject to prior ministerial consent, transferring companies or companies receiving assets ('deferred' depreciation and ordinary losses) may, in the event of merger, be allowed to carry over previous losses which have not yet been deducted.

The application for consent must be made prior to the envisaged merger transaction. The decision is taken by the Ministry of Economic Affairs in accordance with the opinion of the executive committee of the economic and social development fund. Each participating company is notified.

The decision is taken following an examination of all the tax, legal and financial aspects of the envisaged transaction and of the economic objectives of the contracting companies. Consent is denied where the merger simply involves a restructuring of the acquiring company (judgement of the Lyon Administrative Court of Appeal of 17 January 1996 confirming the decision of the administration).

Tax benefits

In the event of a merger, transferring companies or companies receiving assets ('deferred' depreciation and ordinary losses) may be entitled to carry over previous losses which have not yet been deducted for a maximum period of five years.

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In the case of mergers carried out since 1 January 1991, the acquiring company may also carry over its own 'deferred' depreciation indefinitely once it has obtained the consent provided for in Article 209III CGI provided that, "with regard to the origin of the losses, the tax advantage is socially and economically justified taking account of the nature and scale of the activities respectively transferred and retained".

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EAM067 Deferred taxation in the event of merger and partial asset transfer — France

Conditions attached

Application of this regime is subject to the acquiring company's compliance with certain conditions (Article 210A to C CGI)

- provisions, the special long-term capital gains reserve carried as liabilities in the balance sheet of the company acquired, must be entered on the liabilities side of the acquiring company's balance sheet;

- the acquiring company must put itself in the place of the company acquired in respect of reincorporating the income which had been deferred for the purpose of calculating the acquired company's tax liability;

- the acquiring company must calculate capital gains subsequently realised on the transfer of non-depreciable assets on the basis of the value that such assets had for tax purposes in the accounts of the company acquired;

- the company acquired must integrate into its profits, which are taxable at the usual rate, any net capital gains realised when transferring depreciable assets.

Tax benefits

Net capital gains and profits realised on all assets brought in as a result of a merger or partial asset transfer benefit from a deferral of corporation tax. Neither are provisions of the company acquired which become redundant.

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EAM068 Authorised telecom financing companies France

Conditions attached

Authorised telecom financing companies were set up by Article 1c of the 1969 amending Finance Act.

Authorised telecom financing companies (SFT) are private bodies whose sole purpose is to help fund telecom facilities by means of plant and property leasing under agreements with the post and telecommunications administration. They can also act as SICOMIs [see Measure 70, category 3] (property rental as such or as part of leasing transactions).

Authorised jointly by the Economic Affairs and Finance and Post and Telecommunications Ministers, such companies are subject to various obligations: they must be set up in the form of a public limited company, have a minimum capital of FRF 10 million and, each year, distribute a dividend consisting of at least two components (85% of the portion of their net profits from rental transactions under the SICOMI arrangements and 85% of their net profits from transactions with the Post and Telecommunications administration).

No SFT licences have been issued since 1 January 1989.

Tax benefits

Under Article 208(3)n CGI, SFTs enjoy exemption from corporation tax on that portion of their profits derived from transactions with the Post and Telecommunications administration or capital gains realised on such transactions and on that portion of the profits and capital gains they realise in their capacity as SICOMIs.

As no licences have been issued since 1 January 1989, the exemption arrangements only currently apply to leasing agreements with Post and Telecommunications Administrations concluded before 1 January 1993.

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When these agreements expire, the SFT will be carrying out exactly the same activities as a SICOMI. If the SFT wishes to carry out activities other than those authorised by its articles of incorporation, it must transfer a whole branch of activity carried out under those articles to a SICOMI. The new activities are then taxed in accordance with the normal rules.

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EAM069 Investment companies France

Conditions attached

Investment companies are governed by Title II of the Order of 2 November 1945. Their purpose is to manage a portfolio of transferable securities.

They must be constituted as public limited companies and have a paid-up capital of at least 20 million francs. They can only purchase securities which have been publicly issued, officially listed or traded by securities dealers or securities of companies which have prepared at least three annual balance sheets approved by General Meeting.

Pursuant to Article 208 A CGI, eligibility for Articles 208(1)a and 208(2) of the Code is open only to investment companies which distribute all profits to their shareholders each financial year. In accordance with Article 9 of the amended Order of 2 November 1945, profits may be distributed regardless of the amount of the reserves.

Tax benefits

Under Articles 208(1)a and 208(2) investment firms are exempt from corporation tax on that portion of their profits derived from the net proceeds of their portfolio and from the capital gains they realise on the sale of securities or shares in that portfolio.

The tax provisions only serve a purpose if investment companies actually distribute their profits and do not use them to build tax-free reserves over and above the legal requirement.

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EAM074 Reduced rate of 19% on reinvested SME profits France

Conditions attached

Eligible companies must be subject to corporation tax under the normal rules, have a turnover of less than FRF 50 million and not be the parent company of a group (Article 219(I)(f) CGI, Instruction 4 H - 3-97).

At least 75% of their capital must be held directly or indirectly by natural persons.

Tax benefits

The corporation tax rate has been reduced from 33 1/3% to 19% on part of the taxable income of the above small and medium-sized enterprises. The reduced rate is applied on the fraction of the profit as stated in the accounts included in the capital or put into a special reserve. However, the income tax at the reduced rate may not be greater than one quarter of the profit as stated in the accounts after tax or a total of FRF 200 000.

Application of this rate is optional but it must relate to a period of three consecutive profit-making years.

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EAM078 Dual income tax **Italy**

Conditions attached

The measure applies to corporations, partnerships, individual entrepreneurs as well as to non-residents who carry out business activities in Italy through a permanent establishment located in Italy.

Tax benefits

Under the Dual Income Tax (DIT) provisions a reduced rate of 19% is applied to the part of income (determined according to ordinary rules) which corresponds to deemed ordinary return on the increased net equity of the company (e.g. cash contributions or retained earnings). The rest of the business income is subject to tax at the applicable statutory rate (in the case of a corporation the statutory rate amounts to 37%). The overall tax rate resulting from this system of differentiated tax rates may not, however, be lower than 27%.

For the purpose of determining the amount of the increased net equity a comparison is made between the net equity of the company in its balance sheet in the tax year closed on 30 September 1996 and the corresponding figure in its balance sheet in the tax year concerned.

The ordinary rate of return on the net equity is fixed by reference to the average yield of government securities and private bonds, which is increased by a maximum mark-up of 3%. The mark-up is deemed to compensate the higher risk born by the capital invested in the business (as opposed to investment in government securities or private bonds). During the last two tax years the ordinary rate of return has been fixed at 7%.

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EAM083 IRAP exemptions **Italy**

General

IRAP is a regional tax levied on productive activities, established since the fiscal year 1998. The IRAP taxable base is generally subject to a 4.25% tax rate. The taxable base is the difference between a) gross proceeds and payments pertaining to the entrepreneurial or professional activities; and b) purchase costs of commodities, capital goods and professional and business services. Financial and employment costs are not deductible.

The IRAP replaced a number of taxes, such as the local income tax (ILOR) and levies, such as the national health service contributions. However, certain reliefs (see below) which were applied in respect of the ILOR legislation and the national health service contributions continued to apply although they are currently being phased out.

Conditions attached

The basic condition for the eligibility for the IRAP related tax reliefs is set out in Article 17 of legislative decree 446/1997 (IRAP legislation).

1) Continued ILOR exemption regimes

The locally applied ten-year ILOR tax exemption regimes granted an exemption in respect of income from investments located in a certain territory for a ten-year period. The IRAP related tax reliefs are available for enterprises which, at the date of the entry into force of the IRAP legislation, were entitled to one of the ten-year ILOR exemption regimes.

All the deadlines for the investments (qualifying for the tax exemption) have expired between 1990 and 1995. In most cases the deadline was set (or anticipated) on 31.12.1993. Therefore, the benefits only continue to apply to a limited number of persons and years.

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The ILOR exemption regimes, which - being not yet expired – continue to benefit from the tax relieves provided for in article 17 (1) of the legislative decree 446/1997 (IRAP legislation) are as follows:

- Aid to southern Italy: in this case the time limit, *i.e.* the date within which the productive investment had to be made, expired on 31.12.1993. As for the Provinces of Rome and Ascoli Piceno, the deadline was later anticipated on 31.12.1990 and for the provinces of Latina and Frosinone on 31.12.1992. Therefore, the relevant tax reliefs will expire as from 2000 through 2003;

- Aid to Trieste and Gorizia: for these Provinces the time limit for productive investments expired on 30.06.1992 and therefore the tax relief will expire on 30.06.2002;

- Aid to Vajont: in this case the deadline was expected on 31.12.1993 and therefore the tax relief will expire on 31.12.2003;

- Aid to areas hit by earthquakes in Friuli-Venezia-Giulia, Basilicata, Campania, Apulia and by natural disasters in the Marche: the deadline for investments to be made in these Regions, excluding Marche, expired on 31.12.1993; therefore, also in this case, the tax relief regime will expire on 31.12.2000;

- Aid to flood areas of Valtellina: the tax reliefs for Valtellina are applied in the case of enterprises meeting the tax relief requirements by 31.12.1994; therefore, the relevant exemption regime will expire on 31.12.2004.

2) Continued health service contribution reliefs

The national health service contribution reliefs previously applied to enterprises set up in Sicily, Sardinia, Calabria, Basilicata, Campania, Apulia and Molise were continued under Article 17 (3) of the legislative decree 446/1997 (IRAP legislation). This regime is available for taxpayers performing productive activities through industrial plants that are set up in southern territories. The health service contribution relief is granted in respect of expenses for subordinate employment in tax years 1998 and 1999.

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Tax benefits

1) Continued ILOR exemption regimes

The IRAP tax base is reduced by an amount equal to the income which would have benefited from the previously existed ILOR-related tax relief. Since the ILOR rate was at 16.25% and the IRAP rate is 4.25% replacing the regime implies a reduction in the amount of the exemption (according to an unaltered taxable basis).

2) Continued health service contribution reliefs

Under IRAP, taxpayers performing productive activities through industrial plants that are set up in southern territories are entitled to a tax credit equivalent to 2% of the amount of expenses for subordinate employment in fiscal year 1998 and equivalent to 1% in fiscal year 1999. The amount of this relief is equal to that granted by the previously applicable health service contribution legislation.

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EAM085 Regime for small and medium-sized enterprises Italy

General

Under the Ministerial Decree of 18 September 1997, issued by the Minister of Industry, a company is considered to qualify as a "small and medium-size company" if:

- it has less than 250 employees;
- its annual turnover does not exceed EUR 40 million, or its annual balance sheet total does not exceed EUR 27 million; and
- it is regarded as an "independent" company.

Tax benefits to small and medium-sized are granted in accordance with two separate legal acts:

- Art. 4, law no. 449 of 27 December 1997 (measure 1); and
- Art. 4, law no. 448 of 23 December 1998 (measure 2).

<u>Measure 1</u>

Conditions Attached

Small- and medium-size companies are granted tax credits, connected with the recruitment of new personnel during a period from 1 October 1997 to 31 December 2000, starting from the first outstanding fiscal year at 1 January 1998.

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The new employed must be based in areas situated in territories referred to in objective 1 of EEC regulation no. 2052/88 and subsequent amendments[48], or in territories recognised by the European Commission - Decision no. 836 of 11 April 1997, confirmed by Decision no. SG (97) D/4949 of 30 June 1997[49]. Such areas are the following:

1. areas concerned by the territorial agreements referred to in Art.2, par.203, of law no. 662 of 23 December 1996[50];

2. disadvantaged urban areas[51] of the municipalities with over 120,000 inhabitants and low social and economic indicators with respect both to the national average and to the average of the city whose provinces they are, to an extent established by an administrative decision, having regard, in particular, of the youth unemployment rate, of the schooling rate and of other appropriate social, demographic and environmental indicators;

3. municipalities forming part of industrial development areas and of industrial centres established in accordance with Consolidated Act no. 218 of 6 March 1978, and of law no. 219 of 14 May 1981, as well as mountain areas communities;

4. islands, excluding Sicily and Sardinia, notwithstanding paragraphs 1, 2 and 3 of this list;

The specific conditions for receiving the tax credit are that:

- the enterprise, even if newly-established, increases the number of its full-time employees with open-term employment contracts,

- for enterprises already established on 30 September 1997, the reference number of employees is the amount of existing staff at that date;

48 Basilicata, Calabria, Campania, Molise, Apulia, Sardinia and Sicily.
49 The Abruzzi region and areas ex Art.92, 3, c) of the Treaty.
50 Objective 1 areas.
51 A detailed list of the disadvantaged urban areas is included in the annex to circular letter 219/E of 18th September 1998 (12 cities of the South and Islands).

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- the newly-established enterprise carries on activities which do not even partially take up the activities of legally pre-existing enterprises, except for activities with a limitation in number or surface;
- the employment level reached is not lowered during the period of the relief;
- recruits are registered in the employment or mobility lists or collect dole and welfare benefits in the territories referred to in objective 1 of EEC regulation no. 2052/88 and subsequent amendments;
- new employees are recruited in compliance with collective bargaining agreements;
- regulations for security and safety of the workers are respected; and
- environmental performance indicators are complied with.

The measure does not apply to those sectors excluded by the EEC Commission Communication 96/C 68/06, concerning the *de minimis*[52] aids. The tax credit may be combined with any other benefit granted in accordance with the EC Communication, provided the relevant credit ceiling is not exceeded. The maximum total amount of the public aid granted as *de minimis* aid is EUR 100,000 in a three-year period as from the first *de minimis* aid.

Tax Benefits

The tax credit, which is granted on the basis of increased number of employees, amounts to:

- ITL 10 million (approx. EUR 5,165) for the first new employee;
- ITL 8 million (approx. EUR 4,130) for each extra new employee.

[52] The sectors excluded are those ruled by the ECSC treaty (coal and steel industry), shipbuilding, transportation and aids granted for expenses relating to agricultural or fishing activities, as well as the aids for exports as defined in the Communication itself.

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Such tax credit cannot exceed the overall amount of ITL 60 million (approx. EUR 31,000) per year in each of the three fiscal years following the first recruitment (ITL 180 million per three years, approx. EUR 93,000). The tax credit does not form part of the taxable income and can be carried forward to the subsequent fiscal years. It can be offset against tax due under legislative decree no. 241 of 9 July 1997, and used for the purpose of paying the following taxes: IRPEF, IRPEG and VAT. The tax credits are not refunded.

Measure 2

Conditions Attached

Small- and medium-sized companies are granted tax credits, connected with the recruitment of new personnel in the period from 1 January 1999 to 31 December 2001.

The new employed must be based in:

1. areas with unemployment rates above the national average and adjoining the territories referred to in objective 1 of EEC Regulation no. 2052/88 and subsequent amendments;

2. territories recognised by the European Commission - Decision no. 836 of 11 April 1997, confirmed by Decision no. SG (97) D/4949 of 30 June 1997;

3. depressed areas referred to in Art.1, par.1, of Law decree no. 148 of 20 May 1993, as amended and converted into law no. 236 of 19 July 1993 (areas referred to in objectives 1 and 2 of EEC regulation no.2052/88 or of EEC regulation no. 328/88; areas with an outstanding local imbalance between labour supply and demand).

The measure does not apply to sectors excluded by EEC Commission Communication 96/C 68/06, concerning *de minimis* aids. The tax credit can be combined with any other benefit granted in accordance with the EC Communication provided that the ceiling of ITL 180 million (approx. EUR 93,000) in the triennium is not exceeded.

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Tax Benefits

A tax credit of ITL 1 million per year is granted for each new employee. Such tax credit cannot exceed the overall amount of ITL 60 million (approx. EUR 31,000) per year in each of the three fiscal years following the first recruitment (ITL 180 million (approx. EUR 93,000) per three years). The tax credit does not form part of the taxable income and can be carried forward to the subsequent fiscal years. It can be offset against tax due under Legislative decree no. 241 of 9 July 1997, and used for the purpose of paying the following taxes: IRPEF, IRPEG and VAT. The tax credits are not refunded.

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EAM088 Special depreciation regime Italy

Conditions Attached

The Italian tax administration has set the yearly standard depreciation rates for each type of fixed assets, depending on the activity carried out by the enterprise (the straight-line method is used for tax depreciation purposes).

In general terms, it is possible to derogate from these given rates (*i.e.* apply a higher or a lower rate), if the enterprise can demonstrate a different effective use of the fixed asset, compared with the use estimated in determining the standard rates.

Additionally, independently from the events affecting the life of the asset concerned, taxpayers may claim for increased tax depreciation in the first year of use and in the following two.

The provisions are set by law and they are automatically applicable to all taxpayers; there is no administrative discretion given to the tax authorities.

Tax Benefits

Depreciation rates can be increased on the basis of proven different effective use (wear and tear) of the assets.

Alternatively, irrespective of the effective use of the assets, taxpayers may claim for increased depreciation (up to twice the amount of the ordinary rate) in the first year of use and in the following two.

The total amount of the depreciation allowances cannot exceed the value of the asset concerned.

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EAM089 Special regime for investment funds Italy

Conditions Attached

Collective investment undertakings in Italy are organised either as mutual investment funds (which do not have legal personality and are managed by fund management companies) or as investment companies which are legal entities. Investment funds are regulated by a number of domestic laws including provisions as to the minimum qualifications of the management of the investment funds and restrictions on the investment powers of the funds. The restrictions on the investment powers of the mutual investment funds and investment companies comply with the EC UCITS Directive (85/611/EEC).

Tax Benefits

Following the provisions of the legislative decrees of 21 November 1997 and 16 June 1998 investment funds are, as from 1 July 1998, subject to a 12.5% substitutive tax on their annual yield.

The taxable base is determined as the difference between the net value of the fund (increased by "substitutive" taxation, distributed profits and repayments of debts) at the end of the year and the net value of it (increased by exempt and non-exempt profits) at the beginning of the year. The net values are assessed on a mark-to-market basis. The tax base includes both returns on capital (dividends and interest) and capital gains or losses. Any outstanding losses can be carried forward for an unlimited time or transferred to other funds managed by the same company.

As the tax is levied at the level of the investment funds, individual investors are not taxed on the profit distributions by the funds.

Although investment funds are not treated as transparent entities for tax purposes, their tax regime is equal to that which is applied to the return on direct investments (interest on obligations and other similar titles of quoted companies, dividend income and capital gains) of resident individual investors; hence there is a strict economic neutrality in the taxation between direct investment of individual investors and investment through collective investment undertakings.

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EAM090 Substitute tax regime for corporate reorganisations Italy

In 1997 Italy introduced a substitute tax regime, under which the capital gains arising from certain corporate reorganisation transactions may be excluded from the ordinary taxation regime. Under the ordinary taxation regime such capital gains are included in the taxable income during the fiscal year in which they are realised and the following four fiscal years. The application of the substitute tax regime – at the rate of 27%, which is the rate applicable to capital gains arising from the disposal of controlling stocks by an individual stockholder - is optional for the taxpayers and can be used in conjunction with the following types of transactions:

A) Transfer of a business or lines of business and of participation in controlled or affiliated companies

Conditions Attached

According to Article 1 of Legislative Decree No. 358 of October 8, 1997 the substitute tax regime may be applied, if opted for by the taxpayer, to capital gains realised on the transfer of a business or lines of business owned for a period of at least three years. The same applies to the transfer of participation in controlled or affiliated companies, on condition that the shareholding has been carried as a financial asset on the last three balance sheets.

Tax Benefits

Should the taxpayer opt for the application of this regime the substitute tax is payable at a rate of 27% and the capital gain is not subject to tax under the ordinary taxation regime. The substitute tax may be paid in up to five equal yearly instalments and is not deductible for income tax purposes.

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B) Contribution of a business or lines of business and of participation in controlled or affiliated companies

Conditions Attached

The substitute tax regime may be applied, at the discretion of the taxpayer, to capital gains arising from contributions of a business (or lines of business) and of participation in controlled or affiliated companies between resident companies. If the transfer relates to a business located in Italy, the substitute tax regime may be opted also if the transferor or the transferee is a non-resident. The business must have been owned for at least three years or the shareholding must have been carried as a financial asset on the last three balance sheets. The capital gain is determined – in the substitute tax regime, as well as in the ordinary regime – as a difference between the book value of the participation entered by the transferor (or, the value of the transferred assets entered by the transferee in its book-keeping, if this is higher) and the fiscal cost of the transferred assets (business or participation).

Tax Benefits

Such capital gains may be subject to a 27% substitute tax, which may be paid in up to five equal yearly instalments (Article 3 of Legislative Decree No. 358/1997) instead of being subject to the ordinary taxation regime. The substitute tax is not deductible for income tax purposes.

C) Mergers and divisions

Conditions Attached

The substitute tax regime allows, as an option for the taxpayer, a possibility for a step up of a merger (or division) deficit to be recognised for tax purposes by paying the substitute tax of 27% on the amount of the step-up. The substitute tax may be paid in up to five yearly equal instalments and is not deductible for income tax purposes. The option for the step-up must be exercised in the first tax return following the merger (or the division).

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The step-up is tax free up to up to the amount of the capital gains on the transfer of the shares, if the capital gain has been subject to Italian tax in the hands of the transferor. In order to benefit from the tax-free step-up the entire history of the participation must be available and disclosed.

Tax Benefits

Under the ordinary Italian tax regime, mergers and divisions are treated as tax neutral transactions. As an alternative to the tax neutral treatment under the ordinary regime, Article 6 of Legislative Decree No. 358/1997 allows – provided that the substitute tax of 27% has been paid - the use of a merger (or division) deficit for a step-up of the value of the assets received by the absorbing company, the company resulting from a merger or the beneficiary company (in case of a division). Such step-ups result, in particular, in a higher depreciable base for tax purposes.

If the step-up is derived from the cancellation of the shares of the absorbed (or divided) company, held by the absorbing (or beneficiary) company, it is tax-free up to the amount of the capital gains on the transfer of the shares subject to Italian tax in the hands of the transferor.

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EAM091 Tax advantages for certain trade and commercial activities **Italy**

Conditions Attached

Under Art.11 of law no. 449 of 27 December 1997 the application of the measure is limited to small and medium-sized enterprises, as defined in the Ministerial Decree of 18 September 1997, issued by the Minister of Industry. A company is considered to qualify as a "small and medium-sized company" if:

- it has less than 250 employees;
- its annual turnover does not exceed EUR 40 million, or its annual balance sheet total does not exceed EUR 27 million; and
- it is regarded as an "independent" company.

In order to qualify for the tax benefit (a tax credit), the enterprise must operate in one of the following sectors:

- retail sale,
- supply of food and beverages,
- tourism

The granting of the tax credit follows the procedures and the criteria for the *de minimis* aids. The granting of the tax credit is linked to the acquisition costs of business assets (except for cars, motor vehicles, buildings, constructions and edifices of any kind). Paragraph 4, Art. 53 and Art. 54 of law no. 448 of 23 December 1998, extends the relief to purchases of computer programmes for systems of payment with electronic currency and, with reference to the scope of the rule, to the sector of wholesale, as from 1st January 1999.

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Tax Benefits

The tax credit amounts to 20% of the acquisition costs of qualifying business assets, net of VAT. The benefit must not exceed ITL 50 million (approx. EUR 25,800) a year (ITL 150 million (approx. EUR 77,400) in a three-year period). The tax credit can be offset against tax due, and used for the purpose of paying the following taxes: IRPEF, IRPEG and VAT. The tax credit cannot be refunded.

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EAM100 Specified collective investment undertakings Ireland

Conditions Attached

Collective investment funds include both undertakings for collective investment in transferable securities (UCITS) and other non-UCITS funds authorised and regulated by the Central Bank. Specified collective investment funds are such funds which are managed in the International Financial Services Centre or in Shannon and where all the unitholders are not resident in Ireland.

The assets of all collective investment funds must be entrusted to a trustee except where the Central Bank has expressly exempted a fund from this requirement. A trustee must be a bank licensed in Ireland with a share capital of at least IEP 5 million or be wholly owned and guaranteed by such a bank or be wholly owned and guaranteed by certain other financial institutions.

The management company of a UCITS fund must have its registered office and head office in Ireland. The manager of non-UCITS unit trust must be incorporated in Ireland or in another Member State of the European Union and must have a place of business in Ireland.

All funds are obliged to publish a prospectus which must be approved by the Central Bank in advance of publication. All amendments have also to be approved in advance. An audited annual report and a half yearly report containing prescribed minimum information must also be issued and supplied to the Central Bank.

There are a number of restrictions on investments applying to both UCITS and non-UCITS funds. These provide, *inter alia*, for restrictions on the proportion of the fund's assets which may be invested in various securities and types of securities.

Tax Benefits

Specified collective investment funds qualify for tax transparent treatment. The unitholders are not taxed in Ireland on their income from the fund.

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EAM103 Investment funds Luxembourg

Conditions attached

Collective Investment Undertakings (CIUs), whose purpose is to facilitate financial market access for small savers, are governed by the law of 30 March 1988 (transposing the Directive of 20 December 1985 (85/611/EEC) on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)).

A distinction should be made between statutory CIUs, which are investment companies with legal personality and contractual CIUs (either open-end (SICAVs) or closed-end (SICAFs)), which are common investment funds (FCPs).

Tax benefits

CIUs are liable only for an annual tax on net assets (*taxe d'abonnement* or wealth tax) and a capital duty collected on setting-up covering all subsequent forms of capital raised (only applied to statutory CIUs). The wealth tax base consists of the total net assets of the CIU calculated on the last day of each quarter. The tax rate is generally in the order of 0.06%. Private funds and funds invested in money market instruments and/or deposited in banks are taxed at the reduced rate of 0.01% (0.02% in 1997). The capital duty consists of a fixed duty of LUF 50 000.

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EAM109 Venture capital investment certificates Luxembourg

Conditions attached

The venture capital investment certificate system is based on the law of 3 April 1989, as amended by the Law of 22 December 1993.

Its aim is to encourage the provision of venture capital to new firms, set up as limited companies, introducing new manufactures or technologies.

Venture capital investment certificates are granted to shareholders or partners in the innovative company - which must be resident and fully taxable - in proportion to their cash contributions to the subscribed capital.

The capital thus raised must be used to finance the introduction of the new manufactures or technologies as well as their marketing.

The amount of the certificates is fixed according to the share capital of the innovative company. It may not be greater than the share capital nor exceed the maximum of LUF 500 million per company.

Venture capital investment certificates are registered. They may be issued to natural or legal persons of Luxembourg or foreign nationality. Substitute beneficiaries may be designated and the certificates endorsed once.

Certificates are issued on release of the capital contribution to the innovative company.

Tax benefits

Taxpayers who hold venture capital investment certificates at the end of a tax year are allowed relief ("venture capital investment relief") on taxable income on request. The relief is limited to 30% of the beneficiary taxpayer's taxable income.

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EAM112 Accelerated depreciation Portugal

Conditions Attached

This measure applies to any part of tangible assets which, because of regular and repetitive use (i.e. used in more than one shift), is subject to a faster wear and tear than is usual.

It may also be applied to parts of tangible assets which are subject to other kinds of wear and tear faster than usual (but not used in more than one shift) as a result of other, duly substantiated, causes which are recognised by the Tax Administration.

The measure does not apply to

- Buildings and other constructions
- Property that, by its nature or considering the business activity for which it is specifically used, is usually subject to intensive operating conditions.

Tax Benefits

Increased depreciation is allowed as an operating cost. The increased depreciation cannot exceed 50% of that provided for under the Regulatory decree.

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EAM116 Investment funds Portugal

Conditions Attached

Investment funds take the form of autonomous assets, without legal personality. They are established and regulated in accordance with domestic legislation which includes provisions as to the minimum qualifications of the management of the investment funds and restrictions on the investment powers of the funds. These restrictions result from the transposition of the EC UCITS Directive (85/611/EEC).

Tax Benefits

A special tax regime (Article 19 of the Statute of tax incentives) provides that the income of the fund is taxed as if it were directly derived by its own participants, i.e. they are transparent for tax purposes. Accordingly, no tax is levied on income when it is distributed to the persons participating in the fund.

Any income other than capital gains arising in Portugal shall be taxed independently either by way of withholding the tax at source at a rate of 25% or at a rate of 25% on the net increased value each year. In the latter case the tax is accounted for by the management entity of the investment fund.

Any income other than capital gains arising outside Portugal shall be taxed independently by way of withholding at source at a rate of 25%, under the same conditions as if the recipients of such income were individual persons resident in Portugal. If taxation at source is not possible, the tax is charged independently on such income at a rate of 25% In this case the tax is accounted for by the management entity of the investment fund.

Capital gains arising in Portugal or abroad are taxed in the same way as if they were derived by individual persons resident in Portugal. The positive difference between the capital gains and capital losses realised each year is subject to tax at a rate of 10%. The payment of the tax is accounted for by the management entity of the investment fund.

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EAM121 Tax allocation reserve of 20% Sweden

Conditions Attached

This measure applies to all corporate taxpayers with the exception of public utility housing institutions, investment funds, unit trust and certain securities holding companies. It also applies to self-employed taxpayers.

A particular year's allocation has to be brought back into tax no later than the sixth year after it was set off. The reserve can be released for taxation at the discretion of the company before the five-year limit, for example to cover a net operating loss.

Tax benefits

Corporate taxpayers may allocate up to 20% of the taxable income to a tax allocation reserve. The corresponding maximum percentage for self-employed taxpayers is 25%.

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EAM122 Scientific Research Allowances United Kingdom

In addition to the measures already considered (C10, C19, D21, D22 and E13) the Capital Allowances Act provides allowances for capital expenditure for scientific research.

Conditions Attached

This measure applies where a person carrying on (or about to commence) a trade incurs capital expenditure on scientific research related to that trade. The research may be undertaken directly by that person or on his behalf.

"Scientific research" is defined as "any activities in the fields of natural or applied science for the extension of knowledge". No allowances are available in respect of expenditure on the acquisition of land.

Tax benefits

100% tax relief is granted in respect of capital expenditure on scientific research.

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Z001 Measure aimed at determining the level of taxation of foreign companies operating in Belgium, without legal personality or probative accounts **Belgium**

Conditions attached

Articles 342, of the 1992 Income Tax Code (CIR 92) and 182 of the Royal Decree implementing that Code (AR/CIR 92) relate to establishing the minimum taxable profit (taxable net amount) for foreign firms operating in Belgium. These can be distinguished from the "cost-plus" method that is used to determine the gross profit of certain Belgian branches of foreign companies, under which agreements are sometimes concluded by the administration.

The provisions of Article 342, CIR 92, which were in existence before 1958 and were taken over in a law of 1962, stipulate;

– that where the administration has no conclusive evidence to determine the profits or gains of a taxable person, such profits or gains are determined on the basis of the profits or gains of at least three similar taxable persons and taking into account certain known facts, and

– that the Crown is empowered to determine, on the basis of the information referred to above, the minimum taxable profit for foreign firms operating in Belgium.

Article 182 of AR/CIR 92 stipulates that the minimum taxable profit is set either at a certain amount per member of staff employed or at a certain percentage of turnover, with an absolute minimum amount per member of staff employed, while specifying that the amount of taxable profit set may not under any circumstances be less than BEF 400 000.

This legislation applies both to foreign firms engaged in commercial, industrial or agricultural activities and to those engaged only in ancillary or preparatory activities. Where taxable persons or the administration fail to supply conclusive proof, the legislation still offers the administration the possibility of setting an absolute minimum taxable profit.

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In so far as this measure could, at its outset, be used, particularly but not exclusively, for the installation of foreign headquarter companies, it has become outdated.

On the contrary, it is nowadays used to determine the level of taxation of establishments operating in Belgium (representative or service offices, such as airline ticket offices). This measure should, according to the Belgian authorities, correspond to an absolute necessity for similar measures in all countries of the European Union.

It is appropriate to clearly distinguish this measure which has the objective of taxing foreign establishments from the method of taxation. The method in question, the cost-plus method, is based on the principles of Article 26, CIR 92. That provision allows the administration to increase the amount of the taxable profit declared, in particular when (a company established in Belgium or) a Belgian establishment fails to observe, in its transfer pricing policy, the principle of remuneration "at arm's length". On that basis, the tax authorities may deviate from the transfer prices mentioned in companies' books and use only higher, fully competitive prices. Article 182 (AR/CIR 92) quoted above gives a level of minimum taxation.

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The central authorities may conclude agreements in the context of the cost–plus method used to determine the gross profit of certain Belgian branches of foreign companies. Such agreements are concluded only with branches engaged in preparatory or ancillary activities, excluding commercial activities. Moreover, the administration reserves the right to reverse its decision if the real activities of the establishment should prove to be inconsistent with the description previously given. In the case where there is reliable information allowing a normal taxation, these techniques cannot be applied.

With regard to assessing the price of preparatory or ancillary activities, use of the cost-plus method enables the administration to ensure that the prices paid for the activities of the Belgian establishment will not be under-estimated. This is one of the three traditional transaction-based methods recommended by the OECD in its transfer pricing guidelines.

Tax consequences

Normally such decisions are only made by the Central fiscal Administration and are standardised, even if in the past decentralised authorities might have made a few decisions on the basis of these rules.

The agreement reached with the central authorities is aimed at guaranteeing for the taxpayer that its prices will not be challenged by the administration if its activities give rise to the gross profit stipulated in the agreement. In view of the method used, however, the agreement also ensures for the administration that the activities will be valued at a figure representing a fully competitive price.

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Z002 Finance Branches **Luxembourg**

Conditions attached

Fully taxable Luxembourg companies, whose principal activity is carried out by a foreign permanent establishment, can request a confirmation from the tax authorities regarding the division of profits proposed between the head office and the permanent establishment as the Luxembourg administration considers that a proportion of the profits realised through the permanent establishment should be attributed to the head office. One condition required by the administration is that both the head office and the permanent establishment have sufficient economic substance.

Tax consequences

The majority of the double taxation conventions concluded by Luxembourg envisage the exemption from tax in Luxembourg of the profits realised by a permanent establishment located in the other country covered by the convention. Under the terms of this principle, the profits exempted by the conventions are taken into account in the country of the head office only for determining the progressive rate of tax. The tax treatment therefore stems from the joint application of two legislations; that of the head office and that of the permanent establishment.

A limited number of operations as described above were carried out in the past between offices located in Luxembourg and permanent establishments located in Switzerland.

Currently, if dividends coming from such operations are paid by a Luxembourg head office to other countries, the Luxembourg administration exchanges information with these other countries.

Similar problems are faced by other Member States in their conventions with Switzerland.

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Z003 Non-standard rulings (including Greenfield-rulings) Netherlands

(see also the annexed note to measure A008)

Conditions Attached

A distinction should be made between so called standard situations and non-standard situations. In order to reflect the need for certainty in advance on a case by case-basis for cross-border activities it has been made possible to conclude/submit a request for a non-standard ruling. A non-standard ruling is subject to the same conditions and exclusions as a standard ruling[53]. Usually a non-standard ruling will just be a modified standard ruling because it takes a standard ruling as a starting point and will amend this to reflect the particularities of the situation in which a certainty in advance is requested. As a result of the non-discrimination principle the treatment of equal situations will be the same.

Greenfield-rulings as such do not exist. This term is used (usually by tax advisors) for cases where certainty in advance is provided and the Addressing-point for Potential Foreign Investors (APFI) takes part. The APFI has been set up to create one tax office for foreign investors. For practical reasons some thresholds have been introduced (there has to be a minimum investment of 10 million guilders that creates employment). However, for investors that do not meet these conditions equal treatment is assured due to the non-discrimination principle. They will address themselves to the tax inspector who is competent for the intended investment location. In the latter case it is also possible that the APFI assists the local tax inspector. If a foreign investor wants to have advance certainty for the tax consequences of its international activities (i.e. a ruling) the APFI will have to consult the Ruling team. It is not possible to give a ruling without the approval of the Ruling team. This means that a ruling concluded by the APFI will be no more than a normal ruling (be it standard or non-standard). APFI is also competent to provide advance certainty for other taxes (such as personal income tax and wage taxes). Advance certainty given by the APFI has to fall within the scope of the Dutch tax law, jurisprudence and administrative policy.

[53] As stated in Fiuggi the Dutch ruling practice (standard and non-standard) is subjected to a periodic evaluation. In the next evaluation the code of conduct shall be taken into account.

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Tax benefits

Non-standard rulings based on the Cost-plus ruling

As set out in the description of the cost-plus ruling (A8) the percentage of the mark-up to be applied will vary with the functions performed and the risks assumed. There will be a case by case evaluation based on the OECD guidelines on transfer pricing in which different circumstances will lead to different percentages. Equal cases will be treated equally. In this framework it is impossible to summarise all individual cases. Nevertheless (as is the case with all rulings be it standard or non-standard) adequate publication is foreseen and exchange of information with the Member States concerned is guaranteed.

It is possible to get certainty in the form of a cost-plus ruling for re-invoicing as an administrative activity. However, no cost-plus ruling will be granted for re-invoicing activities performed on behalf of a tax haven-company.

Non-standard rulings based on Intra-Group Finance activities

In the so-called standard situation (see measure A10) a finance company borrows funds from affiliated parties (or third parties) and re-lends them to affiliated parties. The profit is to be determined as an at arm's length spread calculated on the borrowed amount, provided that the finance company does not assume any risks, like foreign exchange or debtor risk. The spread to be used will start at 1/8% for borrowings from affiliated parties and at 1/4% in case of third parties.

In non-standard situations, rulings have been granted in the following situations:

- a spread of 1/8% applies to profit sharing-lending and profit sharing-re-lending, since the profit sharing does not have any impact on the profit of the company

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- a ruling will also be granted in the case of a loan with the right to convert the loan into shares of a subsidiary or a third party, provided that the affiliated parties who funded the loan are obliged to acquire the converted shares against conversion-prices and sell them back to the company at arm's length price

- in the case the foreign exchange or debtor risk is hedged within the group, e.g. the parent company, a spread of 1/8% (instead of 1/4%) is considered to be at arm's length in the case of third party borrowing

- if the interest is to be received in the future, it is allowed to credit the withholding tax on the interest at the time the interest is actually paid, on a pro rata basis on which the withholding tax deems to relate to the taxable spread over the past years

- a ruling has been applied in a case where the variable interest on both loan and the debt had been swapped into a fixed interest.

There have been some applications for certainty in advance in the form of a ruling for cases where it is clear that a company is seeking to exploit the 'black holes' between the tax systems of different countries (such as constructions with hybrid financial instruments). In these cases no ruling is given.

As set out in the description of measure B5 a ruling will be granted for Dutch finance companies whose main activity is carried out in a foreign branch for the allocation of profits between head office and branch. Requests for other activities than finance activities and requests for passive finance activities will not be granted.

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Non-standard rulings based on the Holding Companies ruling

As set out in the description of measure A14 certain statutory conditions have to be met in order to qualify for the participation exemption. One of them being that the participation has to be subject to a profit tax. A ruling can be obtained that answers the question whether this condition is met. Furthermore, rulings have been given in the following cases:

- a 25%-participation in a Netherlands Antilles subsidiary which exploits intangible assets towards third parties qualifies for the participation exemption

- sometimes the legal structure of a foreign juridical person raises questions. For instance, certainty has been provided that a participation in a Canadian Unlimited Liability Company can qualify for the participation exemption.

Non-standard rulings based on the Informal Capital Ruling

The standard ruling (see measure E4) concerns the situation in which a company receives an interest free loan from the parent company. The ruling gives certainty on the deductibility of the amount of interest that would be considered at arm's length.

In a non-standard situation the informal capital contributions by the parent company may have different forms/features. In case of a long term, not redeemable, interest free loan, the difference between the nominal value and the (at arm's length) net present value of the loans is considered as informal capital. The subsequent growth of the net present value will be deductible and equals the yearly amount of an at arm's length interest payment. If assets, tangible or intangible, are acquired at less than arm's length prices the ruling gives the certainty that the difference with the third party price is to be taken in to account as informal capital. The fair market value of the asset is the basis for computing the yearly depreciation. Furthermore, if certain costs have not been charged to the company, these costs, will be imputed as informal capital for their arm's length value.

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<u>Other</u>

In the following cases certainty was provided:

– for a company with a head office with expanding activities and a permanent establishment with other than finance activities outside the Netherlands, the taxable profit for the functions performed by the head office are set to an increasing percentage up to 50% of the overall profit

– in several cases the question has been answered whether or not the shares in a Dutch Company belong to the enterprise of the non-resident shareholder. If not, the shareholder would be liable to (corporate) income tax on the basis of article 49, 1, b and c, of our 1964 Income Tax Act.

– the existence of permanent establishment in the Netherlands for a American Limited Liability Company

Furthermore, some rulings have been concluded for a period longer than 4 years because it was clear from the long-term nature of the investment that the activities of the company would be the same for a longer period of time. These rulings (like all rulings) will no longer be valid if the facts and circumstances change. The facts and circumstances will be checked by the tax inspector as part of the yearly assessment process.

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Z004 Cost plus rulings **United Kindom**

Conditions attached

The OECD Transfer Pricing Guidelines have statutory effect in the UK and the cost plus method is therefore used in those circumstances in which it is approved by the Guidelines. The relevant section of the Guidelines is Chapter 2, and in particular Paragraphs 2.32 to 2.49. The overriding principle in the Guidelines is that the cost plus method should only be used in those situations where it gives a reliable measure of arm's length profits.

In a case where the cost plus method would give a reliable measure of arm's length profits, a company can ask for a ruling on the arm's length mark up to be used in the particular case.

Paragraph 2.32 of the Guidelines explains that the cost plus method is "most useful where semi-finished goods are sold between related parties, where related parties have concluded joint facility agreements or long-term buy-and-supply arrangements, or where the controlled transaction is the provision of services". These are also referred to as preparatory and auxiliary activities.

Tax Benefits

Any agreement as to the applicable arm's length mark-up is determined on the facts and circumstances of the case. All relevant costs must be taken into account. There are no fixed percentages or ranges and regular reviews are carried out on the continuing appropriateness of individual rulings.

The UK moved to a system of self-assessment for all companies in July 1999.

Prior to self-assessment, the Inland Revenue was responsible for making the appropriate tax assessment for a company each year following an examination of the company's annual tax return. The continuing appropriateness of any cost plus ruling was subject to that annual examination.

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Under self-assessment, companies are required to submit a return of their profits each year and self-assess the tax due. Two sorts of rulings are available under self-assessment:

- An Advance Pricing Agreement (APA): These normally run for 3 to 5 years. Companies have to provide regular reports that the underlying facts on which the APA was given remain unchanged. And penalties apply if they fail to make such reports, or if they provide incorrect information.

- A post-transaction ruling. After the end of the tax year (and before submitting their self-assessment) a company can ask for a ruling for that tax year. These rulings apply for one year only.

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European Territories for whose external relations a Member State is responsible under Article 299.4 of the EC Treaty

A017 Gibraltar 1992 Companies **United Kingdom:Gibraltar**

Conditions attached

1992 Companies must be incorporated in, or registered in, Gibraltar, and be ordinarily resident in Gibraltar. Their principal object must be to hold 5% or more participations in other companies. In any year of assessment, 51% of the company's income must be derived from investments.

No Gibraltar resident may have a beneficial interest in any share of the company (other than as a shareholder of a public quoted company).

The company must have:

- A debt/equity ratio to the satisfaction of the Financial and Development Secretary,
- A 400 sq. ft office in the territory,
- An adequate staffing level-not less than two staff members.

Tax Benefits

A 1992 company that is a parent company of a 25% subsidiary is exempt from tax (normally chargeable at 35%) in respect of the income of the subsidiary. Other income is taxed in a similar way to other companies.

The 1992 Company rules enact the Parent/subsidiary directive, which enables EU subsidiaries to pay dividends to a Gibraltar parent company without any withholding tax. The dividends can then be passed to the non-EU parent with a 1% withholding tax (dividends paid to a 25% EC parent are exempt). Interest payments are exempt from withholding tax.

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B010 Captive Insurance Companies **United Kingdom:Gibraltar**

Conditions attached

Captive insurance companies, which meet certain requirements as to their subscribed capital and their management expertise, can file a request for tax exempt or qualifying company status (see,B12 and B13 Gibraltar – Exempt Companies and Qualifying Companies).

Tax Benefits

No tax (otherwise chargeable at 35%) is payable on the profits of a captive insurance company.

No tax is payable on dividends payable to non-residents, nor is any stamp duty payable on policy issues.

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B012 Exempt (offshore) Companies and Captive Insurance United Kingdom: Gibraltar

Conditions attached

Benefits are available to companies incorporated, or registered branches of non-resident companies, in Gibraltar. The main requirements are that no Gibraltar resident should have any beneficial interest in the shares of the company, and that the company should not trade (or carry on a business) with Gibraltarian resident individuals or resident corporate entities.

The directors and nominee shareholders may be Gibraltarian, and, in fact, either the Company Secretary or one director must be a Gibraltar resident (a service usually provided by local law or accountancy firms). Local laws provide for secrecy as to the identity of the actual beneficial owners. Audited annual accounts are not required.

Tax Benefits

A Gibraltar incorporated company may apply for tax exempt status. Such registration entitles the company and beneficial owner to exemption from all income tax and estate duty for 25 years. (The normal corporate tax rate is 35%).

Accordingly no tax is payable on profits, dividends, interest, directors' fees etc payable to non-residents of Gibraltar (other than permitted individuals). Instead there is a fixed annual tax of £225, if ordinarily resident, £200 if not so resident, or £300 if it is a registered branch of an overseas company.

Gibraltar has no double taxation treaties and despite of the implementation of the Mutual Assistance Directive (77/799/EEC), in practice, the local legislation allows very little or no information about trade or investment to be passed to any other Member States' tax authority.

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B013 Qualifying (offshore) Companies and Captive Insurance United Kingdom:Gibraltar

Conditions attached

Qualifying Companies are either companies incorporated in Gibraltar or registered in Gibraltar as branches of foreign companies. Share registers must be kept in Gibraltar.

They cannot trade or carry on business operations in Gibraltar unless income arises from outside Gibraltar (they may, however, carry out business operations with other Qualifying Companies or Exempt Companies). They are often used for fund and company management.

No Gibraltarian or resident of Gibraltar can have a beneficial interest in the Qualifying Company.

Tax Benefits

The tax rate is determined by the Financial and Development Secretary and is valid for 25 years.

Tax is charged on profits at a rate between 2 and 18% (usually at a rate of 5%) instead of 35%. This flexibility allows subsidiaries of MNEs to escape CFC legislation.

The same rate is applied to the withholding tax on directors' fees and royalties, and is the rate at which dividends paid 'net' of tax are grossed up. There is no withholding tax on interest paid to a non-resident by a qualifying company.

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C011 Shipping and Aviation United Kingdom:Gibraltar

Conditions attached

A specific exemption is granted to non-resident shipowners. The main tax advantages comprise the opportunity for a company to elect to be an exempt or qualifying company as described in category 2 (Financial Services and Offshore Services).

Tax benefits

Non-resident companies are taxable on income arising in Gibraltar. However, there is a specific exemption for income from the ownership, chartering or operating of any ship.

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Conditions Attached

The Development Aid Ordinance gives tax incentives for both residents and non-residents. Licences may be granted for development projects which meet the following requirements:

The projects must be new projects which create immovable property in Gibraltar. They must either, create 3 houses, benefit tourism, create employment, or improve Gibraltar's economic or financial infrastructure. The applicant must prove the economic benefit to Gibraltar and the project must require an investment of at least GBP 200,000 over 2 years or at least GBP 500,000 over 5 years.

Tax Benefits

If a licence is granted, the company is exempt from corporate income tax in respect of profits arising from the development until the profits exceed the expenditure on the project. In addition, the shareholders are exempt from tax on the distributed profits which have been exempt from the corporate income tax at the hands of the company carrying out the project.

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Dependent or Associated Territories

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F001 -002 Greenland

General

Companies resident in Greenland are liable to pay tax on their global income. The taxable income is gross income less necessary expenses. Interest payments are always deductible. Dividends are deductible insofar as they are paid out of earnings. Buildings, machinery and equipment, ships and intangibles (such as goodwill, patents, copyrights, etc.) are depreciable on the basis of the acquisition cost and cost of improvement, if any. The owner is free to decide when the assets shall be depreciated. Thus, an asset may be fully depreciated in the year of acquisition. Losses may be carried forward for five years. The taxable income is taxed at 35 per cent. A surcharge of 6 per cent is due on the amount of corporate income tax because the tax is paid in the year after the tax year in question.

Tax measures

F001 Deduction for investment in mineral processing

Companies engaged in advanced processing of minerals are entitled to a deduction of up to 10 per cent of the cost of direct investments in the processing of mineral raw materials beyond the usual processing activity. Such a deduction is granted in excess of depreciation.

F002 Surcharge exemption for raw material concession holders

Concession holders under the Greenland Law on Raw Materials are also entitled to a more favourable tax treatment than other taxpayers. Losses can be transferred between accounting periods without limitation. The concession holder may also be exempt from the 6% surcharge on the payment of corporate tax.

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F003 The Faroe Islands

General

Companies resident on the Faroe Islands are liable to pay tax on their global income. The taxable income is gross income less necessary expenses. Buildings, machinery and equipment, ships and intangibles (such as goodwill, patents, copyrights, etc.) are depreciable on the basis of the acquisition cost and cost of improvement, if any. Machinery and equipment are depreciated at 30 per cent according to the diminishing balance method. Buildings are depreciated at 1-7 per cent. The taxable income is taxed at 27 per cent.

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F004 -009 New Caledonia (population 164 173)

General

Legal persons are subject to corporation tax in respect of activities carried out in New Caledonia, at the standard rate applied in the territory:

- 35% for companies involved in the exploration or extraction of substances covered by a concession or in metal-working activities;

- 30% for other companies.

Tax measures

Tax incentives are granted in order to revitalise certain areas of the island or to encourage certain industrial or commercial activities which are of particular importance for the economic development of the territory:

F004 Temporary exemption for agriculture, fisheries and craft industries

- companies which set up in the municipalities of Poya, Pouembout and Koné between 1 January 1998 and 31 December 2001 in order to carry on business there enjoy exemption from corporation tax, subject to approval, for eight years in the case of activities in the processing, fisheries, agriculture and craft production sectors;

F005 Legal certainty

- companies in the ore-processing sector may, subject to approval, take advantage of a tax freeze;

F006 Limited taxation on certain rental income

- net income from the rental of buildings offered for use as dwellings through a real-estate company is exempt from corporation tax or taxed on a 50% reduced base for buildings situated in the municipalities of Nouméa, Dumbéa and Mont-Doré;

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F007 *Temporary exemption for the hotel and tourist industry*

- businesses in the hotel and tourist trade enjoy, subject to approval, exemption from corporation tax for up to 10-15 years;

F008 *Deduction for productive investment*

- companies subject to corporation tax investing in New Caledonia in businesses involved in industry, fisheries, the hotel industry, tourism, new energies, agriculture, construction, public works, transport and craft production may deduct from their taxable income during the accounting period in which the investment is carried out an amount equal to the total amount of productive investment carried out in the territory on the occasion of business start-ups or the expansion of existing businesses;

F009 *Share in the subscribed capital of certain companies*

- companies subject to corporation tax may deduct from their taxable income an amount equal to the total amount of their capital subscription to:

  · companies having their head office in the territory which carry out investment in certain sectors;

  · semi-public companies of importance for economic development;

  · regional development companies.

These companies are established in the territory, provinces or municipalities with financial autonomy.

Other taxes are also payable by companies such as the trading tax (fixed duty and proportional duty depending on customs operations) and registration duties.

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F010 **French Polynesia** (population 219 521)

General

Corporation tax applies to profits or income realised in the territory or abroad by companies resident in Polynesia, and to profits realised in the territory by fixed establishments set up in Polynesia by non-resident companies.

The rate varies from 35% to 45% depending on a ratio which takes into account investment and staff expenditure relating to the employment of persons in the territory, excluding managers (the higher the investment and the number of employees, the lower the tax).

However, the tax rate is fixed at:

- 50% for mining companies;
- 45% for financial and credit institutions and for leasing companies.

Tax measures

F010 *Exemption for investment*

By way of derogation, certain tax incentives are provided for by the Investment Code, introduced by the Territorial Government, in order to establish exemption arrangements aimed at stimulating economic activity and encouraging private initiatives and investment in French Polynesia (by encouraging investment and creating employment).

- In order to qualify, on express condition of a minimum job-creating investment, companies must belong to one of the following sectors:
- tourism;
- animal breeding and agriculture;

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- local maritime activity;
- renewable energies;
- intra-island communications;
- production and processing activities;
- exports (at least 50% of local production), transport auxiliary services (loading and unloading of goods in ports), audiovisual activities (production, distribution).

They may receive aid in the form of exemption from tax (whether corporation tax, trading tax, property tax, registration tax, etc.) up to a maximum of 30% of the approved investment.

The investments concerned include expenditure on buildings, infrastructure, environmental management, equipment, movable property, plant, initial livestock or tools necessary for or directly linked to the business.

The companies concerned must be approved. The decision on approval, following verification of the conditions required, is the subject of an order by the Council of Ministers, after consulting the Investment Board where the investment exceeds a certain limit.

Banking and insurance business is not eligible.

In addition to corporation tax and the trading tax, various taxes have been introduced:

- a tax on technical insurance reserves (6%);
- a tax on insurance business (3%) which is added to corporation tax;
- a tax on net banking income (2%) which is added to corporation tax.

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F011 **Wallis and Futuna Islands** (population 13 705)

General

There is no corporation tax in the islands. Only two direct taxes are levied:

- the trading tax comprising a fixed duty, a proportional duty (2% of the market value of imported goods) and an additional duty. It is compulsory for any natural or legal person who pursues in the territory a business, industry or profession on his own behalf and on a profit-making basis;

- the tax on companies which have their head office in the territory but do not carry on business there. It is an annual flat-rate tax. In 1997 a total of 48 companies were liable for this tax.

Tax measures

F011 *Exemption from trading tax and allowances*

Agriculture, fisheries and the craft sector are exempt from trading tax.

In addition, an incentive is provided for under the local Investment Code for approved companies in the Wallis and Futuna Islands (allowance of 5% per job created, with a ceiling of 50% of the amount of the investment).

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F012 French Southern and Antarctic Territories (no permanent population)

General

There is no tax on profits in the French Southern and Antarctic Territories.

Income tax similar to that imposed in mainland France is collected from some 170 taxable persons resident in these territories.

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F013 -015 Mayotte (population 131 200 in 1997)

The tax system in Mayotte broadly follows that laid down in mainland France for taxes on profits.

Companies referred to in Article 206 of the Mayotte General Tax Code which pursue a business or activities on a profit-making basis in Mayotte are liable for corporation tax at a rate of 33.33%.

A trading tax is also payable by all natural and legal persons pursuing a business, industry or profession.

It comprises a fixed duty and a proportional duty based on the rentable value of the premises used to carry out the taxable activity.

The trading tax for importers is payable by importers of goods and comprises a fixed duty and a variable tax.

Tax measures

F013 Temporary exemption from corporation tax

In order to encourage the economic and social development of Mayotte and to create new jobs in accordance with the guidelines of the modernisation and amenities plan, profits realised by companies liable for corporation tax which were established between the entry into force of Law No 60-1368 of 21 December 1960 and 31 December 1996 may be exempt in full or in part from corporation tax for a period of ten years from the date on which their business became effectively operational, provided that the object of such companies and their programme of activity have received the approval of the Prefect representing the Government in Mayotte, after consulting the Board of Approval of the Territorial Community.

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F014 Deduction for productive investment

Undertakings liable for corporation tax or subject to a property-based tax scheme may, subject to approval, deduct from their taxable income an amount equal to the total amount of productive investment carried out in Mayotte on the occasion of business start-ups or the expansion of existing businesses in certain sectors (hotel industry, tourism, transport, audiovisual and cinematographic production).

F015 Share in the subscribed capital of certain companies

The same companies may also deduct from their taxable income an amount equal to the total amount of their capital subscription to companies carrying out productive investment in the same sectors.

These arrangements are applicable from 15 December 1986 to 31 December 2001.

These companies may also deduct from their taxable income an amount equal to the amount of their capital subscription to companies whose object is to build new housing in Mayotte that is to be let for use as the tenant's principal place of residence.

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F016 -019 Territorial Communities of Saint Pierre and Miquelon (population 6 392)

General

Corporation tax comprises a single rate of 33.33%, plus, with effect from 1 January 1995, a supplementary tax of 10%. This applies to profits realised in the territory.

A trading tax is also payable by all natural and legal persons habitually pursuing a professional activity on their own account.

Tax measures

In order to promote the economic diversification of the archipelago and the creation of new jobs, companies which set up or invest in Saint Pierre and Miquelon may enjoy tax concessions under the conditions laid down by the local Investment Code.

F016 Temporary exemption for certain sectors

Exemption from corporation tax is granted for the first five or ten accounting periods (solely for industry, fisheries, the hotel and tourist trade, agriculture, aquaculture and the agri-foodstuffs sector).

The approval decision focuses first on the purpose of the creation or expansion of the business, the programme of investment and recruitment, the timetable to be followed, the percentage of personal financial participation by the applicant and his financing plan.

The decision is taken by order of the President of the General Council, after consulting the local Investment Aid Board.

The commitments made by the companies essentially concern the amount of investment by sector (between FRF 100 000 and FRF 500 000, which must be invested at the latest by the close of the third accounting period following the establishment of the company or of the first branch) and the number of employees taken on (a minimum of 1 to 3 jobs created depending on the sector, at the latest by the close of the first accounting period following the establishment of the company or of the new branch of business).

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F017 Partial exemption from distribution tax

Profits distributed by an approved company are also exempt from distribution tax for decisions made in the nine months following the end of the first five or ten accounting periods.

A total of 59 companies have taken advantage of the various exemption arrangements since 1974.

F018 Deduction for productive investment

Article 112 bis of the local Tax Code stipulates that companies liable for corporation tax may deduct from their taxable income an amount equal to the total amount of productive investment carried out in Saint Pierre and Miquelon on the occasion of business start-ups or the expansion of existing businesses in the following sectors: industry, fisheries, tourism, new energies, agriculture, transport outside the archipelago, maintenance for industrial activity, and audiovisual and cinematographic production and distribution).

The deduction applies to the income for the accounting period in which theinvestment is carried out.

F019 Share in the subscribed capital of certain companies

The same companies may also deduct from their taxable income an amount equal to the total amount of their capital subscription to companies carrying out productive investment in the above sectors within twelve months of the close of the capital subscription.

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F020 -026 The Netherlands Antilles

(See attached note to F027-033)

General

The Netherlands Antilles consist of two groups of five islands separated by about 800 km. The two Leeward Islands - Curaçao and Bonaire - are situated approximately fifty miles off the coast of Venezuela. The three Windward Islands - Saba, St. Maarten and St. Eustatius - lie in the east of the Caribbean Sea, approximately two hundred miles east of Puerto Rico. Curaçao is the largest island of the Netherlands Antilles and has an area of 472 square km. Bonaire measures 281 square km while the two smallest islands, St. Eustatius and Saba measure 21 square km and 13 square km respectively. St. Maarten measures 86 square km, 34 km of which belongs to the Netherlands Antilles; the remaining 52 square km is an overseas department of France.

The Netherlands Antilles has a profit tax which charges profits at rates between 32 % and 48 %.

Tax measures

F020 Offshore companies

Corporations formed under Netherlands Antilles law which engage in activities outside the Netherlands Antilles and of which all the shareholders are non resident are defined as off shore companies. The profits of these companies are taxes up to NAF 100.000 at 2.4 % and over NAF 100.000 at 3 %.

F021 New businesses

New industries that do not qualify as export industries can qualify, on request, for a reduced rate of profit tax of 2% on all profits, exemption from import duties in respect of materials and goods used in constructing or furnishing business property and exemption from land taxes.

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F022 Mutual Funds

A general tax ruling providing tax benefits for mutual funds was introduced with effect from 1 January 1998. Under the general ruling, profits of qualifying mutual funds which have a net investments of at least US$ 50 million, employ at least 4 Netherlands Antilles nationals locally and have a minimum of 50 investors and those which have net assets of US$ 300 million and employ 2 Netherlands Antilles nationals locally are exempt from profit taxation. Mutual funds that do not meet either of these two sets of conditions will be subject to tax at rates of 2.4% to 3%.

F023 Captive Insurance

A Netherlands Antilles offshore entity whose activities consist exclusively of insuring risks of other affiliated corporations may obtain a Captive Insurance ruling from the tax authorities.

For income from a non-treaty country, a ruling can be obtained which fixes the annual insurance income at ANG 100,000, taxed at 2.4%. For insurance income from a treaty country, an offshore trading ruling can be obtained which exempts 80% of the income and taxes the remaining 20% at a rate of between 24% and 30%.

F024 Free Zones

Profits derived by an enterprise from its activities within the designated free zones are subject to a reduced profit tax of 2% (including island surcharges). The reduced profit tax rate is guaranteed until the year 2000. Profits derived from activities outside the designated free zones are taxed at the normal corporate tax rate.

F025 Rulings

The term 'ruling' relates to an administrative document issued by an Inspector of Taxes which grants or clarifies the 'special' tax treatment to be applied to a particular category of taxpayer.

General tax rulings are applicable to a broad category of taxpayers who qualify under the terms of the ruling in question (e.g. mutual fund and insurance rulings). General tax rulings are usually made public.

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Individual tax rulings are those requested by a taxpayer corporation in order to determine whether it qualifies for special tax treatment with regard to tax rates, the tax base or whether it qualifies as a particular type of entity which benefits from a favourable tax regime in the tax legislation or a general tax ruling. Individual tax rulings are usually granted for a period of 3 years and are not made public.

F026 Shipping and Air Transport

Shipping entities may opt to be taxed on a tonnage tax system. The tonnage tax amounts to ANG 0.4 per gross registered tonne, with a minimum payable of ANG1,000.

Alternatively there is a special regime for shipping and air transport businesses, whereby 80% of the profits are deemed to arise outside the Netherlands Antilles and are taxed at 10% of the usual corporate tax rates. The remaining 20% is taxed at the normal corporate tax rate. The company must be incorporated and managed in the Netherlands Antilles, day to day management must be from the Netherlands Antilles and the vessels and aircraft must be registered in the Kingdom of the Netherlands (or in a third country with equivalent safety rules) Equalisation and insurance reserves are allowed. A capital replacement reserve may also be created on the basis of a general ruling issued to that effect.

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F027 -033 Aruba

(See attached note)

General

Aruba is 31 kilometres long and 8 kilometres wide, with an area of 193 square kilometres. Aruba is located approximately 30 kilometres north of Venezuela.

Aruba has a profit tax that charges profits at rates between 32 % and 48 %.

Tax measures

F027 Offshore Companies

Offshore companies are defined as corporations formed under Aruban law which engage in activities outside Aruba and of which all the shareholders are non resident (this includes offshore banks and investment corporations). On the basis of a ruling from the Tax Inspector, the profits of these companies are taxed up to AWG 100.000 at 2.4 % and over AWG 100.000 at 3 %.

F028 Exempt Companies (AVVs)

The *Aruba Vrijgestelde Vennootschap (*Aruban Exempt Corporation) or AVV is an alternative vehicle for offshore operations and investments. It is fully exempt from taxes and from filing annual returns in Aruba. The shares in an AVV cannot be held by individuals or companies resident in Aruba and its business must not be conducted in Aruba. An AVV is not allowed to operate as an insurance or banking institution.

F029 Tax exemptions and holidays for new businesses

Tax exemptions and holidays are granted to new industries engaged in certain industries, especially the manufacturing industry. Corporations which establish a non-traditional manufacturing industry that is expected to broaden the economic base of Aruba, and which invest AWG 100,000, are entitled to a reduced tax rate of 2% - in practice a zero tax rate is applied.

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F030 Free Zones

There are two designated free zones. Qualifying enterprises must be legal entities established under Aruban law and which will increase employment and enhance the position of Aruba as an international distribution centre. Profits from the qualifying activities of storage, processing assembly, packaging and display of goods are taxed at the reduced rate of 2% (guaranteed until 2000).

F031 Rulings

The term 'ruling' relates to an administrative document issued by an Inspector of Taxes which grants or clarifies the 'special' tax treatment to be applied to a particular category of taxpayer.

General tax rulings are applicable to a broad category of taxpayers who qualify under the terms of the ruling in question. General tax rulings are usually made public.

Individual tax rulings are those requested by a taxpayer corporation in order to determine whether it qualifies for special tax treatment with regard to tax rates, the tax base or whether it qualifies as a particular type of entity which benefits from a favourable tax regime in the tax legislation or a general tax ruling. Individual tax rulings are usually granted for a period of 3 years and are not made public.

F032 Captive Insurance

An Aruban offshore entity whose activities consist exclusively of insuring risks of other affiliated corporations may obtain a Captive Insurance ruling from the tax authorities. A ruling can be obtained which fixes the annual insurance income at ANG 100,000, taxed at 2.4%.

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F033 Shipping and Air Transport

There is a special regime for shipping and air transport businesses, whereby 80% of the profits are deemed to arise outside Aruba and are taxed at 10% of the usual corporate tax rates. The remaining 20% are taxed at the normal corporate tax rate. The company must be incorporated and managed in Aruba, day to day management must be from Aruba and the vessels and aircraft must be registered in the Kingdom of the Netherlands (or in a third country with equivalent safety rules). Additional reliefs are granted by way of accelerated depreciation, investment allowances, equalisation reserves, carry forward of losses and a capital replacement reserve.

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Tax reform - the New Fiscal Framework for the Netherlands Antilles and Aruba

The Netherlands Antilles and Aruba are aware of the image of a tax haven imposed on its jurisdictions. In 1993 both countries expressed their intention to counter balance this negative perception and in an attempt to interest other countries in concluding tax treaties with the Netherlands Antilles and Aruba. Both countries have worked on tax bills forming the New Fiscal Framework (NFF). The former government of the Netherlands Antilles presented to Parliament an outline of the tax reform in May 1998. In the summer of 1998 in both countries new governments came into office. The Netherlands Antilles and Aruba are now in the final state of finishing the bills. Both countries have a bill to amend the profit tax and also a bill to introduce a Dividend Tax. It is their aim that the tax reform will come into force on 1 January 2000.

The principal reasons for submission of these bills are the objective of the Netherlands Antilles and Aruba to broaden the scope of the tax base and create features to facilitate investment through domestic factors and thus to free their jurisdictions of the tax haven image

The main characteristics of NFF are:

According to the aim of the Netherlands Antilles and Aruba to free themselves of the tax haven image, all existing offshore regimes will be abolished (with due observance however of a grandfather clause to accommodate and grant current structures a phase out period).

A flat rate of profit tax applicable to all taxpayers will be introduced. Although the rate is yet to be determined, 30 % has been indicated as a likely rate.

A dividend withholding tax at a rate of probably 10 % for the Netherlands Antilles and 5 % for Aruba will be introduced.

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A Special Exempt Company (SEC) will be introduced. The SEC will be exempt from profits tax and withholding tax. The SEC will be treated a special regime vehicle which will be excluded from all benefits under tax treaties. However under future tax treaties, exchange of information with regard to this form of exempt company will be possible by virtue of clearly defined provisions stipulated in such treaties.

The new regime will also aim to have the following features:

It will be transparent and have clearly defined texts of laws, rules and regulations that formulate an adequate tax administration practice which closely follows and interprets the new laws.

No ring fencing so as to avoid harmful spillover effects.

Clearly defined exchange of information.

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F034 East Timor

General

Under the terms of the Constitution of the Portuguese Republic, Portugal is committed to the promotion and assurance of East Timor's self-determination and independence. East Timor is, however, in the possession of Indonesia and in a state of war.

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F035 Macao

General

Macao lies on the South East coast of China, about 40 miles south-west of Hong Kong. It was officially founded by Portugal in 1557. The territory comprises a peninsula and two hilly islands. Tourism is a major industry.

On 20 December 1999 sovereignty over Macao will revert back to China from Portugal and will become a Special Administrative Region of China. Under the terms of the agreement between Portugal and China, Macao will retain its current economic, monetary, legal and administrative systems.

Companies and individuals carrying on commercial or industrial activities in Macau are subject to complementary tax on their income derived from Macao. No distinction is made between residents and non-residents for tax purposes.

Taxable profits below Ptc (Pataca) 300 000 are taxed at marginal rates from 2% to 28%. Profits in excess of Ptc 300 000 are taxed at a flat rate of 15%. Stamp duty on the marginal taxes on profits is charged at 5%. The 15% tax is, for example, thus effectively increased to 15.75%.

Tax Measures

F035 Offshore Banking

'Offshore Banking Units' are exempt from the complementary tax but instead pay an annual supervision tax of Ptc 100 000 and a special annual business tax of 180 000 Ptc.

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F036 Anguilla

General

Anguilla is a 35 square mile island located in the Eastern Caribbean. It has few natural resources. The population is around 10,000. The main industries are tourism and fishing. The financial services industry is small, but growing.

Anguilla has no income or corporation taxes.

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F037 -043 Bailiwick of Guernsey (including Alderney)

General

There is no separate system of corporation tax in the Bailiwick of Guernsey. A company is subject to income tax (at a rate of 20 %) in the same way as an individual. All companies incorporated in Guernsey are resident for tax purposes (unless they have been granted tax-exempt status), as are companies where shareholder voting control is exercised by Guernsey-resident shareholders.

For the purposes of this report, references to "Guernsey" include Alderney but not Sark, which is covered separately in the final paragraph of this section.

Tax measures

F037 Exempt companies

A resident company may apply for exempt company status which exempts all non-Guernsey-source income and Guernsey bank interest from tax. To qualify none of its shareholders can be Guernsey-resident. Exempt companies pay annual fees to the Income Tax Authority of £600.

F038 International loan business

By an extra-statutory concession, banks, including companies with international loan business, may deduct from profits arising out of international loan business a 90 % management charge, effectively reducing the tax rate from 20 % to 2 %.

F039 Unit Trusts and collective investment funds

Certain unit trusts and investment companies (collective investment funds) may qualify for exemption from income tax as long as the management and administration is based in Guernsey. An annual fee of £600 is payable to the Income Tax Authority.

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F040 International Bodies

International Bodies (IBCs) may be established by companies which do not trade with Guernsey residents and which are wholly owned by non-residents. Banks may not apply for IBC status and nor may insurers unless their domestic premiums do not exceed 5 % of total premiums. An IBC has the choice of paying an agreed rate of tax which must be more than zero but not more than 30 %. It is subject to review at least every 5 years. Existing companies are not permitted to convert into IBCs. IBC status is only available to new operations.

F041 Captive Insurance

Up until 1990 a captive insurance company had the option to elect to have its activities treated as a mutual insurance company. Underwriting profits were not taxed but profits from underwriters' investments were. Capital gains on disposals of shareholders' investments were not taxable unless there had been dealing in the investments. Since 1990 this option has no longer been available, but a captive then assessed on this basis may continue until it opts for another basis.

F042 Offshore Insurance companies

Offshore insurance companies not carrying on "long-term" business may elect to be taxed :

a) as exempt companies;

b) as International companies; or

c) on a sliding scale (see below).

The sliding scale charges no tax on underwriting activities or on Guernsey-source bank interest, but charges other income on the following scale :

The first £250,000	-	20 %
the next £250,000	-	1 %
the next £500,000	-	0.5 %
the next £2,000,000	-	0.3 %
the balance	-	0.1 %.

F043 Insurance Companies

Insurance companies may elect to have profits treated on the following basis: the results of the business are computed in accordance with ordinary commercial principles but the payment of the tax liability may be deferred until such time as claims are actually finalised or the period of risk expires. This basis is not available to any insurer electing for the sliding scale basis of assessment.

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F044 Sark

General

Sark does not levy income or corporation tax. It is not possible to incorporate a company on Sark, but as no tax is levied on companies incorporated elsewhere, many companies claim (in other jurisdictions) to be resident there on the basis of management and control, for example, by holding directors meetings there.

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F045 -048 Bailiwick of Jersey

General

There is no separate system of corporation tax in Jersey. A company is subject to income tax in the same way as an individual. All companies incorporated in Jersey are resident for tax purposes, as are companies where central management and control is exercised by Jersey resident directors.

Tax measures

F045 Tax exempt companies

A resident company may elect to be treated as tax-exempt within Jersey. A tax-exempt company must either be beneficially owned by non-residents or be a collective investment fund. Income tax is not payable on income arising to a tax-exempt company outside Jersey nor on bank interest arising in Jersey. The fees for an exempt company total £600 a year.

F046 International Treasury operations

An international treasury operation based in Jersey as a branch of an international bank may deduct, in arriving at taxable income, a percentage of profits deemed to be applicable to the cost of outside expertise and other costs.

F047 International Business Companies

An International Business Company (IBC) is subject to tax on profits from international activities at the following rates:

Profits up to £3 million - 2 %

£3 - £4.5 million - 1.5 %

£4.5 - £10 million - 1 %

Over £10 million - 0.5 %.

Jersey source income and all other income of an IBC is taxed at 30 %. No Jersey resident may have any interest of any sort in the company.

F048 Captive Insurance Companies

Jersey applies the principle that captive insurance, to the extent that it insures only the risks of its shareholders (parent, partnership or sole proprietor) is mutual business and consequently not taxable. The captive's investment income is taxed at a rate of 20 %, subject to a deduction for management expenses and foreign tax. A captive may, however, operate as an exempt company if it can demonstrate to the Jersey fiscal authority that it will bring 'adequate economic benefit to the island'.

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F049 Bermuda

General

Bermuda is located 680 miles east of North Carolina in the US. It comprises eight major islands and 130 smaller ones, totalling 21 square miles. It has a population of around 60,000. Bermuda is a major centre for financial services. It is the world's third largest centre for insurance and re-insurance.

Tax measures

F049 Tax Exemption Guarantee

No income or corporation tax is levied in Bermuda. An assurance can be given, on application, to an Exempted Company that, in the event of there being enacted in Bermuda any legislation imposing tax on profits, income or capital gains, the imposition of any such tax will not be applicable to that undertaking. The assurance may be for any period up until the year 2016.

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F050 British Antarctic Territory

General

The British Antarctic Territory comprises a sector of the Antarctic continent south of latitude 60 bounded by longitudes 20°W and 80°W. It covers 1,709,400 square kilometres. While the British Antarctic Survey maintains a permanent presence at its scientific research stations, there is no permanently resident population. There is very little commercial activity in the territory and no business tax system.

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F051 British Indian Ocean Territory

General

The British Indian Ocean Territory does not have a permanent population; There is a military presence but very little commercial activity and no business tax system.

F052 -056 British Virgin Islands

General

The British Virgin Islands (BVI) comprise a group of 40 islands, 20 of which are inhabited, located in the Eastern Caribbean 60 miles east of Puerto Rico. The total land area is 59 square miles. The population is around 18,000. Financial services account for 40 % of all economic activity.

Tax measures

There is no separate system of corporate income tax; companies are chargeable to income tax at a rate of 15 %. A company incorporated in BVI but managed and controlled elsewhere is regarded as non-resident. Resident companies pay an annual licence fee of $25; non-resident companies pay $250. In addition, fees of 0.1% of the gross book value of assets outside BVI is chargeable, up to a maximum of $10,000.

F052 Arising and remittance basis

A foreign company whose management and control is in BVI is not domiciled and is taxed only on income arising within or remitted to BVI.

F053 1% rate

A 1% tax rate applies to investment income derived by resident companies from outside the BVI if the income is exempt from tax in any foreign jurisdiction

F054 Pioneer industry exemption

A "pioneer" industry (one which is not already being conducted in the territory on a commercial scale) may be exempted from income tax for five years.

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F055 Exemption for new hotels

The income from a newly constructed hotel is exempted from income tax for a period of 10 years. A pioneer service or enterprise may be exempted from tax for a period of 10 years if it is considered in the public interest to do so, having regard to the number of similar service providers or enterprises already established on the islands.

F056 International Business Companies

International Business Companies may not carry on business with persons resident in BVI or carry on an insurance or re-insurance business. No income tax is payable, but annual fees of US$1000 are payable.

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F057 Cayman Islands

General

The Cayman Islands comprise a group of three islands, Grand Cayman, Cayman Brac and Little Cayman, situated in the Western Caribbean 475 miles south of Miami. The population is around 36,600. Its fiscal regime is based largely on indirect taxes, and in particular consumption taxes. The Cayman Islands does not have income or corporation taxes.

The Cayman Islands is a major international centre for financial services. Over 575 banks and trust companies and 400 insurance companies are licensed in the Cayman Islands and over 37,000 companies are registered there.

Tax measures

F057 Tax Exemption Guarantee

Exempted Companies can obtain an undertaking against the future imposition of direct taxation. Such undertakings are usually given for 20 years.

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F058 Falkland Islands

General

The Falkland Islands are situated in the South Atlantic, 882 kilometres north-east of Cape Horn. The islands comprise 12,173 square kilometres and have a population of around 2,200 excluding the military garrison. The economy is largely based on sheep farming and fishing, although exploration for oil has commenced in recent years.

The Falklands Islands have a partial imputation system of corporation tax which charges profits at rates between 25% and 32.5%.

Tax measures

F058 Tax holidays

The Taxes and Duties (Special Exemptions) Ordinance provides for tax holidays for up to 15 years in respect of activities which would bring social, economic or other benefits to the Falklands.

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F059 -069 Isle of Man

General

The Isle of Man has no separate system of corporation tax and a company is subject to income tax (at a rate of 20 %) in the same way as an individual. All Manx-incorporated companies are deemed to be resident for tax purposes unless they file an annual declaration of non-residence together with annual fees totaling £750. Companies whose central management and control is exercised within the Isle of Man are also resident for tax purposes.

Tax measures

F059 Free depreciation and Balancing charges on ships

The normal depreciation rules for plant and machinery is to allow an initial 100 % allowance in the year of acquisition with any part not claimed is transferred to a pool and the balance claimed at 0 % to 25 % a year. The pool is reduced by proceeds from disposal and if they exceed the written-down value of the pool a balancing charge is taxed. However, separate rules on balancing charges apply to ships: the company may claim the cost in any period or periods it chooses. A balancing charge on the disposal of a ship may be deducted from the cost of a ship acquired within a 75 % group within the next 5 years.

F060 Special Depreciation for tourist premises

For tourist premises a specific incentive exists which extends relief for depreciation to a total of 150 % of the cost.

F061 International Business Companies

An International Business Company may be a Manx-incorporated company, a foreign company registered and controlled in the Isle of Man or a Manx branch of a non-resident company. An IBC pays a negotiable tax on profits at a rate between 1 % and 35 %, subject to a minimum tax charge of £1200. No Manx resident may have a beneficial interest in the company but it must have a resident director and secretary. All the company's income must arise outside the Isle of Man except for Isle of Man-source bank interest. It may not trade within the Island nor with Manx residents (except in international business).

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F062 Exemption for non-resident companies

Manx resident companies owned by non-residents and which do not trade in the Isle of Man and do not have any source of income in the island (apart from interest from the IOM Government or bank interest) are exempt from tax, but are subject to an annual fee of £400.

F063 Exempt Insurance companies

A resident insurance company can be exempted from tax on the whole or part of its profits to the extent that its underwriting profits arise on risks outside the island. An exempt insurance company must pay an annual income tax exemption fee of £2000 plus a licence fee of £500.

F064 Tax holidays for industrial undertakings

A tax holiday may be granted to a company for a period up to 5 years where it is broadly in the interest of the island, is necessary for establishing or developing an industrial undertaking in the island, and will create additional employment.

F065 International loan business

Under an unpublished concession the Assessor of Income tax may allow a 90 % management charge deduction against international loan business profits, effectively reducing the tax on such profits from 20 % to 2 %.

F066 Offshore Banking Business

Exemption from income tax may be granted for profits arising from offshore banking business. Annual fees up to £ 35,000 are payable.

F067 Fund Management

A company which carries on a trade of fund management enjoys a 75 % exemption from tax on annual fee income.

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F068 Exempt Public Companies

The tax treatment applied to International Business Companies (IBC) dealt with above cover also Exempt Public Companies.

F069 Film Industry Tax Credits

The Film Industry Tax Credit Scheme no longer exists, having been discontinued in June 1998.

F070 -073 Montserrat

General

Montserrat is located in the East Caribbean. The island has in area of 39 square miles and its population in 1995 was around 10,000. Serious volcanic activity took place in 1997 causing loss of life and destruction of many villages and part of the capital, Plymouth. The local economy has been devastated. Following evacuation the population is now estimated at around 3,500.

Tax measures

F070 Reduced rate for industrial and offshore companies

Resident companies pay tax at a rate of 40 %. However, "industrial companies" as defined under the Development Incentives Ordinances and offshore companies only pay at a rate of 20 %.

F071 International Business Companies

International Business Companies (IBS) are exempt from tax for a minimum of 25 years. They are prohibited from trading or owning real property within Montserrat. IBSs are subject to annual fees between $100 and $1000 or alternatively may elect to pay 0.25% of its taxable profit.

F072 Tax holidays for approved enterprises

A manufacturer of an "approved products", if it is considered to be in the public interest, can be designated an "approved enterprise" and obtain a tax holiday from 10 to 15 years. After the holiday, an allowance of up to 20 % of capital expenditure incurred can be taken and tax relief of between 25 % to 50 % is granted on export profits where export profits account for a least 61 % of total profits.

F073 Exemption for new hotels

For hotels which are newly constructed or enlarged, income is exempt from tax for the first five years.

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F074 Pitcairn Island

General

Pitcairn Island is located in the Pacific Ocean. It is 3 kilometres long and 1.5 kilometres wide and has a population of 47. The economy is based on subsistence fishing and the sale of dried fruit and handicrafts. There is no taxation of any kind.

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F075 -076 St Helena and dependencies

General

St Helena is an island of 47 square miles in the South Atlantic, 1200 miles from Africa. It lacks natural resources and has no airstrip. It has a population of 5,000. Its main economic activities are agriculture, the sale of fishing licences and tourism. Only two large businesses are located in St Helena - Solomon & Co which is a general trading company and Cable and Wireless which has developed the local telephone network. A third - Argos Helena is in the process of setting up a fish processing plant. Most businesses on the island are small and are run by self-employed St Helenians. There is very little financial services activity - St Helena does not even have a commercial bank.

St Helena has two dependencies - Tristan da Cunha and Ascension Island:

Tristan da Cunha has an area of 38 square miles and lies 2,000 miles West of Cape Town, mid way between South America and South Africa. It is the most remote inhabited island in the world. There is no airport. Its 300 inhabitants live by farming and fishing. There is no corporate tax system.

Ascension Island lies 700 miles North-West of St Helena. It has a resident population of 1100, mostly Royal Air Force and US Air Force and supporting personnel. There is no corporate tax system.

Tax measures

F075 Tax holidays

Companies on St Helena pay tax at a rate of 30 %. Tax holidays and allowances are granted for certain projects or for new businesses. A tax holiday from all taxes may be granted for a project or business which increases tourist facilities, exports, agricultural production or otherwise benefits the economy of the island.

F076 150% deductions

For certain other approved projects which will enhance facilities, products or services available on the island, or which are of historic interest, or are environmentally desirable, a tax deduction of 150 % of the actual cost is allowable.

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F077 South Georgia and the South Sandwich Islands

General

The South Georgia and the South Sandwich Islands are located in the South Atlantic. Although they are administered from Stanley, Falkland Islands, they are completely separate from the Falkland Islands constitutionally. There is no permanent population on South Georgia or on the South Sandwich Islands, very little commercial activity, and no business tax system.

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F078 Turks and Caicos Islands

General

The Turks and Caicos Islands are located in the Caribbean, south-east of the Bahamas. They comprise eight main islands and numerous small ones, with a total area of 193 square miles. The population is around 19,000. It is few natural resources and historically relied on fishing and tourism.

There is no direct taxation system.

In recent years the Turks and Caicos have become known for their offshore financial services sector, particularly in the insurance field. More than 2000 licences have been issued to (mostly life re-) insurance companies which have been granted certain exemptions from the Insurance Regulations.

International Business Corporations can be created when the principal business takes place offshore. They are principally holding companies, offshore trading companies and leasing companies. No banking or insurance business is permitted. No returns or accounts are required. They are required to pay a registration fee of $100 and an annual licence fee of $300. They are automatically granted a 20 year exemption from any future taxation.

Tax measures

F078 Tax Exemption Guarantee

Exempted Companies are automatically granted, upon incorporation, a certificate which exempts them for 20 years from certain taxes, in the event of those taxes being introduced in the Turks and Caicos Islands.

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F079 UK Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus

General

The Sovereign Base Areas in Cyprus comprise those parts of the island which remained under British jurisdiction when the Republic of Cyprus became independent in 1960. These areas are under military control and the establishment of civilian commercial or industrial enterprises is very limited and subject to strict controls. No businesses are incorporated in the Sovereign Base Areas. The limited number that operate there are incorporated in the Republic of Cyprus and are subject to Republic of Cyprus taxation.

ANNEX B

Code	**Measures**	**i. Member States**	On List ?	Features
A001	Co-ordination Centres	B	V	Substantially reduced base/cost plus 8%. Withholding tax exemption for dividends, interest, royalties. Requirement to be part of international group
A002	Distribution Centres	B	V	Reduced base/cost plus 5%.
A003	Service Centres	B	V	Reduced base. Cost plus 5-15% depending on type of activity/resale minus 5%.
A004	Basque Country Co-ordination Centres	E	V	Reduced base/cost plus 25% (excludes financial expenses). Requirement to be part of international group.
A005	Navarra Co-ordination Centres	E	V	Reduced base/cost plus 25% (excludes financial expenses). Requirement to be part of international group.
A006	Headquarters and Logistic Centres	F	V	Cost plus 6-10%. Requirement to be part of international group.

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A007	Co-ordination Centres	L	V	Cost plus 5%. Requirement to be part of international group. For a few remaining companies qualified up to February 1996, benefits continue to 2001.
A008	Cost Plus Ruling	NL	V	Cost plus 5-15%.
A009	Resale Minus Ruling	NL	V	Resale minus 1-3%.
A010	Intra-Group Finance Activities	NL	V	Fixed margin, is not adjusted as interest rates move.
A011	Holding Companies (ETVE)	E	X	Exemption for qualifying foreign source profits. Comparable taxation required. Exemption from withholding tax and capital gains in respect of qualifying non-resident subsidiaries. Requirement to be part of international group.
A012	Royalty Income - Patents	F	V	Reduced tax rate on income 19%. Does not apply to French source income.
A013	1929 Holding Companies	L	V	Exemption from most taxes. But no commercial activities permitted. And no treaty access.
A014	Holding Companies	NL	V	Participation exemption for dividends includes low tax foreign source. Capital gains exemption and relief for capital losses in certain circumstances

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A015	Royalties	NL	V	Fixed rate margins: 7% or less depending on the net royalty income, for royalties and management fees.
A016	International Headquarters Companies	UK	X	Abolished with effect from 4/99.
AAM002b	Holdings (Schachtelbegunstigung - Intra-Group Relief)	A	V	Exemption for foreign source dividends of 25+% subsidiaries includes low tax foreign source. Relief for capital losses and exemption for capital gains
AAM008	Private Foundations (Stiftungen)	A	X	Applies to non-business activity. Exemption for dividend income.
AAM010	Holdings	B	X	95% exemption for dividend income. Exemption from capital gains. Comparable taxation required.
AAM019	Control- and Co-ordination Centres of Foreign Companies in Germany	D	V	Cost plus 5-10%. Requirement to be part of international group.
AAM020	Holding Companies	D	X	Dividend and capital gains exemption for treaty country participations.

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AAM021	Holding Companies	DK	V	Exemptions for dividends includes low tax foreign source, except for financial activities.
AAM052	Holding companies with shareholdings in foreign companies.	F	X	Exemption from precompte for foreign source dividends. But no pass-through of credit.

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AAM108	Application of the parent company/subsidiary system to resident companies with share capital (commonly known as SOPARFI).	L	X	Exemption from tax on dividends and capital gains where similar tax regime applies to source.
AAM114	Holding Companies (SGPS)	P	X	95% income exemption for dividends. Comparable taxation required.
B001	The International Financial Services Centre (Dublin)	IRL	V	10% CT rate, double deduction for rent expense, 100/54% First Year Allowances for new buildings. 10% rate until 2002 for companies qualified up to 1999 (quota for 1998/99). 10% rate until 2005 for companies qualified up to May 1998.
B002	Trieste Financial Services and Insurance Centre	I	V	Exemption from corporation tax. Reduction in local income tax. Applies to Eastern European Investment.
B003	Luxemburg Finance Companies	L	V	Tax applied to fixed margin of 0.25% or 0.125%. Requirement to be part of international group. For a few remaining companies qualified up to February 1996, benefits continue to 2001.

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B004	International Financing Activities	NL	V	Facility to create tax-effective reserve equivalent to 80% of profit. Requirement to be part of international group.
B005	Finance Branch	NL	V	Facility to allocate 90% of profits to foreign branch. Not available for passive income from 1999 onwards.
B006	Madeira and Sta Maria (Azores) Free Zones	P	V	Exemption from: CT, municipal & local taxes, withholding tax on interest and tax on royalties. Available to transactions with non residents & financial activities. Companies may qualify up to 2000. Benefits continue until 2011.
B007	Provisions for fluctuations in reinsurance	L	V	Facility to create tax-effective reserve equivalent 20 times premium income.
B008	Aland Islands Captive Insurance	FIN	V	Reduction of local tax from 11.2% to 1.2%, giving 18% tax rate.
B009	Foreign Insurance Companies	S	X	Taxable income of non-resident insurers is calculated as 2% of gross premium income. Applies only to domestic market.
B011	Offices of Foreign Companies under the Law 89/67	GR	V	Exemption from income tax and other direct taxes. Applies only to offices of foreign companies.

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BAM00 6	Certain Exemptions from Corporation Tax	A	X	(a) Exemption for non-profit seeking credit institutions. (b) Exemption from corporation tax for first five years for associations providing financing for SME's.
BAM01 7	Provisions for fluctuation in insurance and re-insurance	D	X	System of reserves to cover liabilities.
BAM02 3	Banks and Finance Entities	E	X	More flexible provisions for treatment of bad debts,etc
BAM03 1	Business share capital companies (Law 2367/1995, Article 5)	GR	X	Exemption for undistributed profits on SME financing. Restriction of tax to 15% of distributed profits.
BAM03 4	Long Term Loans in Foreign Currency	GR	X	Exemption from tax of interest paid on foreign source loans to finance productive investment in Greece.
BAM04 4	Finance Centres	F	X	More favourable treatment (deductibility and withholding rules) than the normal regime for interest paid out of France.

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BAM061	Provisions for risks relating to medium and long term credit operations carried out by banks and credit institutions.	F	X	Sets limits for deduction for credit risk provision.
BAM062	Technical provisions for insurance and reinsurance undertakings.	F	X	Provides specific limits on deductibility of reserves for different kinds of risks.
BAM082	Incentives for the restructuring of the Banking Sector	I	X	Reduction in corporate tax rate where Italian banks have merged, from 37% to 12.5%
BAM093	Tax Deduction for Interest on Additional Capital Contributions from Foreign Head Offices to Italian PE	I	X	Provides for deductibility of interest on head office loans.

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BAM096	Exemption of Income on Government Securities	IRL	X	Exemption from tax for the local subsidiary or branch of a non-resident, on income from Irish Government Securities.
BAM098	Non-resident Companies	IRL	X	Sets conditions for determining residence where there is overseas ownership,etc.
BAM118	Reinsurance companies	P	X	Part of general tax system.
BAM123	Independent investment managers	UK	X	Applies the OECD Model Tax Treaty provision for independent agents of non-residents - Article 5 (6).
C001	Scheme for early depreciation of vessels	DK	X	Advance depreciation measure giving relief of up to 30% of total cost spread across the two years prior to delivery.
C002	Shipping Regime - Tonnage Tax	D	X	See paragraphs 62-63 of the Final Report. Replaces normal profit calculations with formulaic measure linked to tonnage.
C003	Ship Management Offices (Law 89/67 and 378/68)	GR	X	See paragraphs 62-63 of the Final Report. Exemption for management of deep sea shipping activities.

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C004	Shipping Regime (Law 27/75)	GR	X	See paragraphs 62-63 of the Final Report.. Exemption from corporation tax for vessels flying Greek flag. Replacement with formula-based tax linked to age, tonnage and type of vessel.
C005	Shipping Regime	F	X	Accelerated deduction for investment in jointly owned vessels. Required approval prior to 15 September 1997.
C006	Shipping Regime (Tax regime for shipping companies)	I	X	See paragraphs 62-63 of the Final Report. Only 20% of profits taxable.
C007	Shipping Regime	NL	X	See paragraphs 62-63 of the Final Report. Replaces normal profit calculations with formulaic measure linked to tonnage.
C008	Shipping Regime	P	X	See paragraphs 62-63 of the Final Report. (a) Exemption from CT for Madeira registered vessels. Exemption from tax on dividends for shareholders in such companies. Benefits continue until 2011. (b) 70% exemption from CT for Portugese resident companies.
C009	Ice-Class Investment Allowance	FIN	X	Allowance for 3% of cost of investment in vessel in each of first two years after commissioning.

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C010	Rollover Relief on Disposal of Ships	UK	X	Clawback of tax depreciation deferred where there is reinvestment in ships.
C012	Supplementary staff assigned to scientific research and export management	B	X	Flat rate reduction of taxable profits per supplementary unit of staff.
C013	Tax Credit for Research	F	X	Tax credit given for additional expenditure on research, etc. equal to 50% of additional amount. Reduces corporation tax or income tax.
C014	Research and Technical Development	IRL	X	Exemption from tax on royalty income from patents developed in Ireland. No restriction on deductibility where royalties exempt.
C015	Credits for Investments in Energy Saving Equipment	NL	X	Deduction for expenditure on qualifying energy saving business assets.
C016	Research and Development Expenses	P	X	Additional deduction for incremental research and development expenditure.
C017	Calculation of Net Revenue	GR	X	Deductions on formulaic basis for otherwise non-deductible expenses related primarily to export and tourist businesses and the media.

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C018	Audiovisual Investment. Certificates	L	X	Relief for certified audio-visual investment.
C019	Film Industry	UK	X	Accelerated write-off of production costs of qualifying films.
C020	Investment Deductions	B	X	Deductions for various types of investment, with rate dependent on type. Aimed at natural persons, SME's and particularly innovative SME's.
C021	Special Depreciation and Allowances - Agriculture and Forestry	D	X	Investment allowances and other reliefs targeted on small agricultural and forestry businesses.
C022	Incentives for Mining Enterprises	E	X	Free depreciation for mining assets, subject to cap of 30% of tax base.
C023	Mining taxation	IRL	X	Accelerated depreciation and investment allowances for capital expenditure, exploration costs, etc.
C024	10% Manufacturing Rate	IRL	V	10% rate for widely defined class of activities. Benefits expire 2010. New projects eligible for this rate until 2002.
C025	Petroleum Taxation	IRL	V	25% rate for income from production of petroleum.

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CAM007	R&D Allowance	A	X	Deduction for expenditure (other than on fixed assets) for own-use (18%) or third party (12%) research.
CAM015	Investor model/Film funds	D	X	Accelerated allocation of production phase losses to investors.
CAM016	Rules for Self-generated Intangibles	D	X	Accelerated deduction of costs incurred on self-generated intangibles.
CAM024	Relief for Investments in Films and Audiovisual Productions	E	X	Relief for production costs, subject to a cap.
CAM025	Investigation and Exploitation of Hydrocarbons	E	V	Up to 100% reduction in tax base - mitigated by more limited depreciation, less flexible relief for losses, and a tax rate of 40% (normally 35%)
CAM027	Shipping	E	X	See paragraphs 62-63 of the Final Report. 90% reduction in corporation tax liability. Restricted to shipping companies located in Canaries and companies operating regular services between Canaries and Spain.

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CAM040	Accelerated Depreciation for Purchases of Software	F	X	Accelerated depreciation.
CAM041	Accelerated Depreciation for Energy-Saving Equipment	F	X	Accelerated depreciation.
CAM042	Accelerated Depreciation for Environmental Protection	F	X	Accelerated depreciation.
CAM046	Deduction of Cooperative Dividends	F	X	Deduction of dividends paid to members in proportion to business with the cooperative.

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CAM048	Tax Exemption of Capital Gains on the Sale of Securities of Companies Established by Special Agreement to Promote Industry, Business and Agriculture	F	X	Targeted capital gains relief, subject to reinvestment requirement.
CAM049	Exemption from Corporation Tax for the Oil Storage Agency	F	X	Deferral of taxation of profits of government controlled Oil Storage Agency.
CAM050	Corporation Tax Exemption for Agricultural Cooperatives	F	X	Exemption from corporation tax of mutual activities.
CAM058	Provisions for Renewal of Mineral Reserves	F	V	Facility to create tax effective reserve up to 50% of taxable profits or 15% of sales proceeds (with reinvestment requirement within 5yrs)

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CAM059	Provisions for Renewal of Oil and Gas Reserves	F	V	Facility to create tax effective reserve up to 50% of taxable profits or 23.5% of sales proceeds (with reinvestment requirement within 2 years)
CAM063	Press	F	X	Facility to create tax-effective reserve up to 60/80% of profits.
CAM065	Special Depreciation Rules for the Audiovisual Sector	F	X	Write off of investment in SOFICAs.
CAM070	Business and Industrial Real Estate Companies	F	X	Measure no longer applicable.
CAM071	Companies Authorised to Provide Energy-Saving and Heat Recovery Financing (SOFERGIE)	F	X	Exemption for leasing income and capital gains.

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CAM073	Exceptional Depreciation for Participating Interests in Companies Financing Non-Industrial Fishing (SOFIPECHE)	F	X	Write off of investment in SOFIPECHE.
CAM077	Securities in Innovation Financing Companies (SFI)	F	X	Write off of investment in SFIs.
CAM080	Incentives for Scientific Research	I	X	Tax credit for additional employment on research and development in SMEs, etc.
CAM094	Film	IRL	X	Deduction for investment in film production company. (See also C024)
CAM097	Investments in renewable energy projects	IRL	X	Deduction for investment in company undertaking a renewable energy project.

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CAM101	Tax Exemption for Profit/Gain from the occupation of woodlands	IRL	X	Exemption from tax of profits of commercially managed woodlands.
CAM106	Depreciation of equipment and tools used solely for scientific or technical research operations.	L	X	Accelerated depreciation.
CAM107	Shipping Regime	L	X	See paragraphs 62-63 of the Final Report.. Accelerated depreciation. 14% tax credit. Exemption from municipal tax. Capital gains rollover relief on reinvestment.
CAM110	Film Industry	NL	X	Accelerated depreciation
D001	Employment (T) Zones	B	X	No new qualifying companies since 1990. Benefits expire 2000.
D002	Incentives for Investment in Certain Regions	B	X	Accelerated depreciation and exemption from (local) immovable property withholding tax.

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D003	Re-conversion Zones	B	X	Limited exemption for distributed profits. Deduction for certain share repurchases. No new qualifying companies since 1990. Benefits expire 2000-2005.
D004	Enterprise Zones	DK	X	Accelerated depreciation. Benefits expire 2000.
D005	Special Depreciation - Business Investment in Former GDR and West Berlin	D	X	Accelerated depreciation . No new qualifying expenditure after 1998.
D006	Investments Grants - Equipment in Former GDR and West Berlin	D	X	Investment grants.
D007	Tax Advantages - Commercial Investment in FRG/GDR Border Area	D	X	Special depreciation.
D008	Canary Islands REF	E	X	Allowance of 50% of corporate/income tax liability, for sale of locally produced goods. Applies till 2001. Allowance 40% in 2002; 30% in 2003. Facility to allocate 90% of undistributed profits to reserve for investment in Canary islands.

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D009	Basque Country - Start Up Relief	E	X	Exemption from corporation tax. No new qualifying companies since 1994. Benefits expire 2004.
D010	Navarra - Start Up Relief	E	X	Exemption from corporation tax. No new qualifying companies since 1994. Benefits expire 2004.
D011	Regional Development Companies	E	X	Capital gains exemption (except for investments lasting 10 years or longer).
D012	Corsica Incentive Regimes I, II, III	F	X	Regime 1: CT and capital gain exemption. Qualifying period ends 2001. Benefits expire 2006. Regimes 2 and 3: CT exemption. No new qualifying companies after 1998. Benefits expire 2006. (Financial services excluded from all 3 regimes).
D013	Tax Free Zones - ZFU	F	X	Capped (Ffr 400,000) exemption for taxable profits. Qualifying period ends 2001. Benefits expire 2006.
D014	Enterprise Zones	F	X	No new qualifying companies since Jan 1992. Benefits expire Jan 2001. 10 year exemption from corporation tax. (Financial services excluded.)
D015	Overseas Départements (OD)	F	X	Range of measures: variously provide for 10 year or 25 year exemptions from CT, investment incentives, etc. (Excludes financial services activity.)
D016	Nord-Pas de Calais - Privileged Investment	F	X	Financial services activities excluded. Provided tax credits for fixed investment.

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	Zone			10 year life: expired May 1998.
D017	Shannon Airport Zone (SAZ)	IRL	V	10% corporation tax rate. Includes financial services activity. Companies qualify up to 1999; eligible for benefits to 2002. Companies qualified up to June 1998 eligible for benefits until 2005. No quotas.
D018	New Investments - Buildings in Run-down Urban Areas	IRL	X	Accelerated write off of construction and refurbishment costs.
D019	Accelerated Depreciation of new buildings in certain regions	NL	X	Accelerated write off of construction costs.
D020	Accelerated Depreciation; Investments in Developing Regions	FIN	X	Accelerated depreciation for qualifying investments before 2001. Benefits restricted to SMEs in manufacturing and tourism.
D021	Enterprise Zones	UK	X	Accelerated deprciation for industrial and commercial property. Benefits given for a 10 year period.

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D022	SMEs in Northern Ireland	UK	X	Accelerated depreciation on machinery and plant acquired before 12 May 2002.
DAM022	50% Profit Exemption in Ceuta & Melilla	E	X	50% profit exemption on locally generated income.
DAM043	Exceptional Depreciation for Buildings Constructed under Urban and Rural Planning Arrangements	F	X	Exceptional depreciation on new construction. Limited to SMEs. Applies to buildings finished before 2000.
DAM086	Regional Incentives South of Italy (Mezzogiorno)	I	X	Tax credit against personal business income for the former unemployed. Expired before 1999.
DAM115	Industrial Free Zones	P	X	Exemption from tax, including tax on dividends, up to 2011. Applies to industrial activities and complementary activities.
E001	US Foreign Sales Companies Ruling	B	V	Available only for US export sales. Limited usage. Cost plus 8% on reduced base.

E002	Informal Capital Ruling	B	V	Up to 90% of profit exempted by reference to notional value of informal capital.
E003	US Foreign Sales Companies Ruling	NL	V	Available only for US export sales. Limited usage. Cost plus 5-15%.
E004	Informal Capital Ruling	NL	V	Profit reduced by reference to notional return on informal capital.
E005	Foreign Business Operations Relief	DK	X	Measure being phased out. In 2000, benefit will be 1/7 of former level of relief. Previously allowed 50% reduction in tax attributable to foreign business operations.
E006	Benefice Mondial and Benefice Consolide	F	X	Consolidation of profits and losses of all branches etc (Mondial) or subsidiaries (Consolide).
E007	Foreign Income	IRL	V	Exemptions for foreign source dividends where the Irish parent/Head Office has a certified investment plan involving additional employment in Ireland.
E008	Newly Created Companies	F	X	Two year tax exemption for start-ups, with relief tapered away over next 3 years.
E009	Tax Holidays for New Businesses	L	X	Relief for 8 years at maximum of 25% of taxable profits. Limited to investment in fixed assets.
E010	Special Depreciation for SMEs	D	X	Additional depreciation of 20% (benefit expires 1999). Advance write-off of anticipated fixed assets acquisitions.

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E011	Incentives for SMEs	E	X	Range of SME measures, including:accelerated depreciation; tax deductible provision for bad debts (1%); reduced CT rate of 30%.
E012	Micro and Small Enterprises	P	X	Range of small and microbusiness measures, limited to investment and profit retention. Measures to help the young start businesses, with reduced rate.
E013	Special Scheme for Accelerated Depreciation	UK	X	Temporary increase in rate of tax depreciation from 25 to 40% (for one year) for SMEs only.
E014	Scheme for Early Depreciation of Certain Assets	DK	X	Pre delivery depreciation for fixed assets, limited to 30% of excess over DKK 1,047,200.
E015	Incentives for Investment. (Law 2601/98 ex 1892/90)	GR	X	Facility to make tax exempt reserves from undistributed profits, with the size limited to the scale of the investment and the region.
E016	Investments Tax Credits	E	X	System of tax credits ranging from 5-25% for investment in fixed assets, in export related activities, research and development, training, etc. All capped at 35% of the CT liability.

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E017	Special Depreciation Arrangements for Assets Intended for Environmental Protection and Energy Saving, and for Assets Adjusting Work Places for Disabled Workers	L	X	Special accelerated depreciation for assets that are environmentally beneficial, etc.
E018	Investment Allowance	NL	X	Deductible allowance for fixed asset investment; sliding scale, tapering to zero at 556,000 NLG.
E019	Tax Incentives for Contractual Investment	P	X	Investment tax credit of 5-20% for domestic projects; 10-20% for direct investment overseas. Requires contract with State and, for domestic projects, minimum 1 billion PTE.
E020	Tax Credit for Investment	P	X	Capped investment tax credit. Measure expired 1998.
E022	Rollover of Capital Gains	D	X	Relief from capital gains on reinvestment in real estate.

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E023	Reinvested Capital Gains	P	X	Relief from capital gains on reinvestment in tangible fixed assets.
E024	Small Islands Income Tax Reduction	GR	X	Reduction of 40% of normal tax rates for operations on islands with fewer than 3100 inhabitants.
E025	St Martin and St Barthelemy	F	X	Series of measures to promote local activites (tourism, agriculture, fishing, mineral exploitation, etc) through temporary exemptions, reduced tax base, etc.
E026	Mutual Funds / Portfolio Investment Companies	GR		No assessment required.
E027	Venture Capital Funds and Companies	E	X	Exemptions from corporation tax on dividend income, exemption from withholding tax on dividends, up to 99% relief for capital gains.
E028	Venture Capital Companies	F	X	Exemptions from corporate tax on dividend income and capital gains.
E029	Participation Fund Companies	A	X	Exemption from corporate tax on income. Exemption from withholding tax on inbound and outbound dividends.
E030	Investment Companies	S		No assessment required.

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E031	Limits on Taxes on Commercial Income	D	X	Limits maximum marginal tax rate on individuals commercial income to 47% rather than 53%.
E033	Representative Office	E	X	Cost plus 15% on intra-entity activity involving Spanish branch or representing office.
E034	Tax Credits for Job-creating Investment	F	X	Tax credit for additional employment, may be off-set only against the supplementary 10% CT. Expires 2000.
E035	Tax Credits for Staff Training Costs	F	X	Tax credit for additional expenditure on training.
E036	Listed Companies - Reduced Rates	I	X	Reduction of rate during first three years after listing commences.
E037	SGII Companies	P	X	Reduction in rate for 7 years following incorporation, for qualifying real estate investment and management companies.
E038	SCR, SDR and SFE Companies	P	X	Exemption from corporate tax for venture capital, regional development and business production companies. Benefits expired in 1997.
EAM004	Investment Allowance	A	X	Investment allowance for fixed asset acquisitions.

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EAM009	Tax Exemptions	A	V	Exemption for dividends possible even where from low tax foreign source.
EAM011	Investment Funds	B		Assessment not required.
EAM033	Large Scale Productline Investments Financed with Foreign Capital	GR	X	Provision not in force.
EAM035	National Infrastructure	GR	X	Taxation of foreign companies on basis of withholding applied to gross renumeration because net difficult to ascertain.
EAM045	Tax Credit for Membership of a 'groupement de prevention agree'	F	X	Tax credit for expenditure on specified financial analysis and support activity during first two years of membership of groupement.
EAM051	Exemption from Corporation Tax on takeover of ailing companies	F	X	Two year exemption from corporation tax where failing company taken over.

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EAM053	Legal Persons Liable for Corporation Tax whose Objects are to Transfer Use and Benefit of Movable or Immovable Property to its Members Free of Charge	F	X	No application to income generating activities with third parties.
EAM054	Distribution by Certain Companies of Capital Gains Arising on Liquidation	F	X	Provides lower rate of tax to capital gains and liquidation distributions.
EAM055	Provisions to Cover Price Increases	F	X	Permits tax-deductible reserve for price rises in excess of 10%.
EAM056	Provision for Setting up Foreign Branches	F	X	Permits tax-deductible provision for losses of foreign branches/subsidiaries, capped at level of investment.
EAM057	Provision for Employee Start-Up Loans	F	X	Permits tax-deductible provision for loans, etc. to firms set up by employees.

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EAM060	Provisions for Risks Relating to Medium-Term Credit Transactions by Firms Carrying Out Works or Selling Abroad	F	X	Permits tax deductible provision (up to 10%) for medium term loans to support business abroad.
EAM064	Regime for Long-Term Capital Gains on FCPR and SCR Securities	F	X	Applies reduced long term capital gains rate to disposals of shares in unit trusts,etc.
EAM066	Carryover of Losses on Merger (Consent)	F	X	By derogation (with consent) from the normal rules, permits carry over of losses on a merger.
EAM067	Deferred Taxation in the Event of Merger and Partial Asset Transfer	F	X	Sets conditions for tax deferral on a merger.
EAM068	Authorised Telecom Financing Companies	F	X	Exemption from CT on profits from transactions with the Post and Telecoms administration. No licences issued since 1989 and applies only to leasing agreements entered into before 1993.

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EAM069	Investment Companies	F		No assessment required.
EAM074	Reduced rate of 19% on Reinvested SME Profits	F	X	Reduced rate for small companies. Applies to maximum of Ffr 200,000 or one quarter of profit.
EAM078	Dual Income Tax	I	X	Part of general system that recognises part of profits as the ordinary return on new equity and taxes it at a reduced rate.
EAM083	IRAP Exemptions	I	X	Exemption relates to productive investment. No new qualifying companies since period 1990-95. Benefits expire before 2005.
EAM085	Regime for small and medium-sized enterprises	I	X	Tax credit for additional employment in SMEs in certain regions.
EAM088	Special Depreciation Regime	I	X	Accelerated depreciation to reflect abnormal actual usage.
EAM089	Special Regime for Investment Funds	I		No assessment required.

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EAM090	Substitute Tax Regime for Corporate Reorganisations	I	X	General regime, at taxpayer option, for taxation on basis of substitute tax at 27%.
EAM091	Tax Advantages for Certain Trade and Commercial Activities	I	X	Tax credit for SMEs in retail, food and tourism sectors, limited to acquisition of assets.
EAM100	Specified Collective Investment Undertakings	IRL		No assessment required.
EAM103	Investment Funds	L		No assessment required.
EAM109	Venture Capital Investment Certificates	L	X	Relief for holder of venture capital certificates up to maximum of 30% of taxable income of recipient.
EAM112	Accelerated Depreciation	P	X	Accelerated depreciation to reflect abnormal actual usage.
EAM116	Investment Funds	P		Assessment not required.

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EAM121	Tax Allocation Reserve of 20%	S	X	General facility to allocate 20% of taxable income to a tax-effective reserve.
EAM122	Scientific research allowances	UK	X	Accelerated relief for expenditure on scientific research.
Z001	Measure aimed at determining the level of taxation of foreign companies operating in Belgium, without legal personality or probative accounts.	B	X	Sets standard methods of calculating minimum taxable profit
Z002	Finance Branches	L	V	Facility to allocate profits between head office and branch
Z003	Non-standard rulings (including Greenfield-rulings)	NL	V	Variation on standard rulings to deal with specific situations

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Z004	Cost Plus Rulings	UK	X	Case by case assessment of arm's length mark up. OECD guidelines incorporated into legislation
		ii. European territories under Art. 299.4 of the EC Treaty		
A017	Gibraltar 1992 Companies	UK: Gibraltar	V	Exemption for all income from 25% subsidiaries includes low tax foreign source. No Gibraltar shareholder permitted except where public company. 1% withholding tax applies to dividend to non-EU parent
B010	Captive Insurance Companies	UK: Gibraltar		No separate measure. B12 or B13 applies
B012	Exempt (offshore) Companies and Captive Insurance	UK: Gibraltar	V	Exemption from tax on profits. No Gibraltarian shareholders allowed. No trade permitted with Gibraltar residents. No tax on dividends paid to non-residents.

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B013	Qualifying (offshore) Companies and Captive Insurance	UK: Gibraltar	V	Flexible tax rate between 2% and 18%. No Gibraltarian shareholders allowed. No trade permitted with Gibraltar residents. No withholding tax on interest paid to non-residents.
C011	Shipping and Aviation	UK: Gibraltar	X	See paragraphs 62-63 of the Final Report. Non-resident companies' exemption for Gibraltar source income from shipping.
E021	Development Incentives	UK: Gibraltar	X	Exemption from tax on first tranche of development profits and exemption at shareholder level on these profits when distributed.
		iii. Dependent or Associated Territories		
F001	Deduction for Investment in Mineral Processing	Greenland	X	Additional depreciation for cost (10%) of investment in raw material processing.
F002	Surcharge Exemption for Raw materials Concession Holders	Greenland	X	Special relief for raw material processors: flexibility in loss relief; exemption from 6% surcharge.

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F003	-	Faroe Islands		No Measure
F004	Temporary exemption for agriculture, fisheries and craft industries	New Caledonia	X	Temporary exemption from CT for fishery, agriculture and other local activites.
F005	Legal certainty	New Caledonia	X	Tax freeze for metallurgical companies.
F006	Limited taxation on certain rental income.	New Caledonia	X	Exemption/reduced base for rental income from dwellings.
F007	Temporary exemption for the hotel and tourist industry.	New Caledonia	X	Exemption: local hotel and tourist business
F008	Deduction for productive investment.	New Caledonia	X	Immediate deduction for productive investment in local business.
F009	Share in the subscribed capital of certain companies.	New Caledonia	X	Deduction for subscription to the capital of certain local companies.
F010	Exemption for	French Polynesia	X	Exemption from corporation tax for local businesses up to maximum of 30% of

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	investment.			approved investments.
F011	Exemption from trading tax and allowances	Wallis and Futuna Islands	X	Agriculture, fisheries, craft exempt from corporation tax. Allowance for job creation.
F012	-	French Southern & Antarctic Territories		No measure
F013	Temporary exemption from corporation tax	Mayotte	X	10 year exemption from CT for companies with approved plans. No new qualifying companies since 1996. Benefits expire 2006.
F014	Deductions for productive investments	Mayotte	X	Deduction for productive investment, applies to hotel, tourism, transport and audio visual sectors.
F015	Share in the subscribed capital of certain companies	Mayotte	X	Deduction for subscription to share capital of companies in F104 or housing companies.
F016	Temporary Exemption for Certain Sectors	Saint-Pierre and Miquelon	X	Exemption (for 5-10 accounting periods) from corporation tax for companies investing in local business activities. Requires approval.
F017	Partial Exemption from	Saint-Pierre and	X	Exemption from distribution tax for up to 10 accounting periods and 9 months.

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	Distribution Tax	Miquelon		
F018	Deduction for Productive Investment	Saint-Pierre and Miquelon	X	Immediate deduction for productive investment in local activities.
F019	Share in the Subscribed Capital of Certain Companies	Saint-Pierre and Miquelon	X	Deduction for subscription into companies with productive investment in local activities.
F020	Offshore Companies	Netherlands Antilles	V	Companies with non resident shareholders and activities outside Antilles taxed at 2.4/3%.
F021	New Businesses	Netherlands Antilles	X	New industries not qualifying as export industries, eligible for 2% CT rate on profits.
F022	Mutual Funds	Netherlands Antilles		No assessment required.
F023	Captive Insurance	Netherlands Antilles	V	Either taxed on basis of (a) ruling fixing income of ANG 100,000 - taxed at 2.4%; or (b) exemption for 80% with remainder taxable at 24-30%
F024	Free Zones	Netherlands Antilles	V	Profits from Free Zone taxed at 2%.

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F025	Rulings	Netherlands Antilles		Awaiting conclusion of work on study of administrative practices.
F026	Shipping and Air Transport	Netherlands Antilles	X	Tonnage tax optional. Alternatively 80% of profits can be deemed to arise outside Antilles and taxed at 10% of normal CT rates. Remaining 20% is taxed at normal rate. Consistent with issue of international competition.
F027	Offshore Companies	Aruba	V	Companies with non resident shareholders and activities outside Aruba taxed at 2.4/3%.
F028	Exempt Companies (AVVs)	Aruba	V	Full tax exemption. Must have only offshore activities. Insurance and banking excluded.
F029	Tax Exemptions and Holidays for New Businesses	Aruba	X	Exemption for new business in certain industries, especially manufacturing. New non-traditional manufacturing entitled to 2% rate (in practice, nil).
F030	Free Zones	Aruba	V	Profits from Free Zone taxed at 2%.
F031	Rulings	Aruba		Awaiting conclusion of work on study of administrative practices.
F032	Captive Insurance	Aruba	V	Ruling fixes income of ANG 100,000 taxed at 2.4%.

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F033	Shipping and Air Transport	Aruba	X	80% of profits can be deemed to arise outside Aruba and taxed at 10% of normal CT rate. Remaining 20% is taxed at normal rate.Consistent with issue of international competition.
F034	-	East Timor		No measure
F035	Offshore Banking	Macao	X	Exemption for offshore banking units. (Sovereignty reverts to China on 20 December 1999.)
F036	-	Anguilla		No measure.
F037	Exempt Companies	Bailiwick of Guernsey (including Alderney)	V	Exemption for non Guernsey source income and local bank interest. No Guernsey shareholders permitted.
F038	International Loan Business	Bailiwick of Guernsey (including Alderney)	V	Applies to international loan business. Banks taxed at effective rate of 2%

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F039	Unit Trusts and Collective Investment Funds	Bailiwick of Guernsey (including Alderney)		No assessment required.
F040	International Bodies	Bailiwick of Guernsey (including Alderney)	V	Flexible tax rate 0-30%. No Guernsey shareholders. Excludes banks and most insurers.
F041	Captive Insurance	Bailiwick of Guernsey (including Alderney)		No assessment necessary. No companies now eligible. Measure now obsolete (though harmful when it was active)
F042	Offshore Insurance Companies	Bailiwick of Guernsey (including Alderney)	V	Alternatives to F037 or F038 for offshore insurance companies. No tax on underwriting activities or local bank interest. Sliding scale for other income 20% to 0.1%.

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F043	Insurance Companies	Bailiwick of Guernsey (including Alderney)	V	Profits computed on ordinary principles. Payment deferred until claims finalised.
F044	-	Sark		No measure.
F045	Tax Exempt Companies	Bailiwick of Jersey	V	Exemption for non-Jersey source income and local bank interest (also applies to collective investment vehicles). No Jersey shareholders permitted
F046	International Treasury Operations	Bailiwick of Jersey	V	Applies to international loan business. Activities taxed at effective rate of 2%
F047	International Business Companies	Bailiwick of Jersey	V	Sliding scale for profit of international operations 2% to 0.5%. No Jersey resident may own shares.
F048	Captive Insurance Companies	Bailiwick of Jersey	V	Insurance businesses not taxed. Investment income taxed at 20% subject to management charge, etc. Can operate as an exempt company.
F049	Tax Exemption Guarantee	Bermuda	X	Protects against possible future legislative change.

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F050	-	British Antarctic Territory		No measure
F051	-	British Indian Ocean Territory		No measure
F052	Arising and Remittance Basis	British Virgin Islands	X	Taxes local source income and remitted foreign source income
F053	1% Rate	British Virgin Islands	X	Reduced rate applied to foreign source investment income of resident companies where income exempt overseas.
F054	"Pioneer" Industry Exemption	British Virgin Islands	X	5 year exemption for new industries.
F055	Exemption for new hotels	British Virgin Islands	X	10 year exemption for new hotels.
F056	International Business Companies	British Virgin Islands	V	Exemption from income tax. No local businesses, no insurance/re-insurance business.
F057	Tax Exemption Guarantee	Cayman Islands	X	Protects against possible future legislative charge.

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F058	Tax Holidays	Falkland Islands	X	15 year (maximum) exemption for activities with local benefits.
F059	Free Depreciation and Balancing Charges on Ships	Isle of Man	X	Accelerated depreciation. Deferral of depreciation recapture on scale where there is reinvestment.
F060	Special Depreciation for Tourist Premises	Isle of Man	X	Additional depreciation (150% of cost in total).
F061	International Business Companies	Isle of Man	V	Flexible tax rate 1-35%. No Manx resident shareholders permitted. No local business, except bank interest.
F062	Exemption for Non-resident Companies	Isle of Man	V	Exemption for non Isle of Man source income and bank interest. No Manx resident shareholders permitted.
F063	Exempt Insurance Companies	Isle of Man	V	Exemption from tax on part of all of profits earned outside Isle of Man.
F064	Tax Holidays for Industrial Undertakings	Isle of Man	X	Five year exemption for industrial undertakings.
F065	International Loan Business	Isle of Man	V	Applies to international loan business. Banks taxed at effective rate of 2%

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F066	Offshore Banking Business	Isle of Man	V	Exemption from tax.
F067	Fund Management	Isle of Man	V	Applies to fee income. Provides 75% exemption from tax
F068	Exempt Public Companies	Isle of Man		No separate measure. F061 applies
F069	Film Industry Tax Credits	Isle of Man	X	Discontinued June 1998.
F070	Reduced Tax Rate for Industrial and Offshore Companies	Montserrat	X	Industrial and offshore companies pay tax at reduced rate of 20% (cf 40%).
F071	International Business Companies	Montserrat	X	Exemption from tax. No local trading or holding of real estate permitted. Business activity effectively ceased after volcanic explosion.
F072	Tax Holidays for Approved Enterprises	Montserrat	X	10-15 year tax holiday for local manufacturing. Additional relief on export profits after holiday.

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F073	Exemption for new hotels	Montserrat	X	5 year exemption from tax.
F074	-	Pitcairn Island		No measure.
F075	Tax Holidays	St Helena and dependencies	X	Tax holiday for new local projects.
F076	150% Deductions	St Helena and dependencies	X	150% deductions for expenditure on approved projects.
F077	-	South Georgia & South Sandwich Islands		No measure.
F078	Tax Exemption Guarantee	Turks and Caicos Islands	X	Protects against possible future legislative change.

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F079	-	UK Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus		No measure.

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ANNEX C

MEASURES WITH HARMFUL FEATURES

(i) Member States

Austria	AAM002b:	Holdings (Schachtelbegünstingung-Intra Group Relief)
Austria	EAM009:	Tax Exemptions
Belgium	A001:	Co-ordination Centres
Belgium	A002:	Distribution Centres
Belgium	A003:	Service Centres
Belgium	E001:	US Foreign Sales Companies Ruling
Belgium	E002:	Informal Capital Ruling
Denmark	AAM021:	Holding Companies
Finland	B008:	Åland Islands Captive Insurance
France	A006:	Headquarters and Logistic Centres
France	A012:	Royalty Income - Patents
France	CAM058	Provisions for Renewal of Mineral Reserves
France	CAM059:	Provision for Renewal of Oil and Gas Reserves
Germany	AAM019:	Control and Coordination Centres of Foreign Companies in Germany
Greece	B011:	Offices of Foreign Companies under the Law 89/67

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Ireland	*	B001:	The International Financial Services Centre (Dublin)
Ireland	*	C024:	10% Manufacturing Rate
Ireland	****	C025:	Petroleum Taxation
Ireland	*	D017	Shannon Airport Zone (SAZ)
Ireland		E007:	Foreign Income
Italy	***	B002:	Trieste Financial Services and Insurance Centre
Luxembourg	**	A007:	Co-ordination Centres
Luxembourg		A0013:	1929 Holding Companies
Luxembourg	**	B003:	Luxembourg Finance Companies
Luxembourg		B007:	Provisions for fluctuations in reinsurance
Luxembourg		Z002:	Finance Branches
Netherlands		A008:	Cost Plus Ruling
Netherlands		A009:	Resale Minus Ruling
Netherlands		A010:	Intra Group Finance Activities
Netherlands		A014:	Holding Companies
Netherlands		A015:	Royalties

* Measures time limited or being phased out, see Annex A.

** Measures abolished, benefits being phased out, see Annex A.

*** Not operational, see Annex A.

**** Measure will, from January 2000, no longer apply a lower rate than the generally applicable rate.

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Netherlands	B004:	International Financing Activities
Netherlands	B005:	Finance Branch
Netherlands	E003:	US Foreign Sales Companies Ruling
Netherlands	E004:	Informal Capital Ruling
Netherlands	Z003:	Non Standard Rulings (including Greenfield-rulings)

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Portugal *	B006:	Madeira and Sta Maria (Azores) Free Zones
Spain	A004:	Basque Country Co-ordination Centres
Spain	A005:	Navarra Co-ordination Centres
Spain	CAM025:	Investigation and Exploitation of Hydrocarbons

(ii) European territories for whose external relations a Member State is responsible under Article 299.4 of the EC Treaty.

UK: Gibraltar	A017:	Gibraltar 1992 Companies
UK: Gibraltar	B012:	Exempt (offshore) Companies and Captive Insurance
UK: Gibraltar	B013:	Qualifying (offshore) Companies and Captive Insurance

(iii) Dependent or associated territories

Aruba	F027:	Offshore Companies
Aruba	F028:	Exempt Companies (AVVs)
Aruba	F030:	Free Zones
Aruba	F032:	Captive Insurance
British Virgin Islands	F056:	International Business Companies
Guernsey (incl Alderney)	F037:	Exempt Companies
Guernsey (incl Alderney)	F038:	International Loan Business
Guernsey (incl Alderney)	F040:	International Bodies
Guernsey (incl Alderney)	F042:	Offshore Insurance Companies
Guernsey (incl Alderney)	F043:	Insurance Companies

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Isle of Man	F061:	International Business Companies
Isle of Man	F062:	Exemption for Non Resident Companies
Isle of Man	F063:	Exempt Insurance Companies
Isle of Man	F065:	International Loan Business
Isle of Man	F066:	Offshore Banking Business
Isle of Man	F067:	Fund Management
Jersey	F045:	Tax Exempt Companies
Jersey	F046:	International Treasury Operations
Jersey	F047:	International Business Companies
Jersey	F048:	Captive Insurance Companies
Netherlands Antilles	F020:	Offshore Companies
Netherlands Antilles	F023:	Captive Insurance
Netherlands Antilles	F024:	Free Zones

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