document 16

Annex 2

QUESTIONNAIRE FOR MONITORING THE IMPLEMENTATION OF THE GUIDANCE AGREED ON INBOUND PROFIT TRANSFERS

CONSOLIDATED REPLIES FROM MEMBER STATES

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01. AUSTRIA

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
The Austrian Corporate Income Tax Act provides for an exemption for intercompany profit distributions. This participation exemption generally applies to domestic as well as to foreign participations without any further requirements like a minimum participation (holding quota) or a minimum holding period. The scope of the participation exemption does only cover profit distributions, however not realised and unrealised capital gains or losses (see 2).

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	The exemption for profit distributions from domestic participations applies without any further requirements. For profit distributions from EU and 3rd country participations, the exemption generally applies without any further requirements as well, irrespective of the holding quota or holding period. It is however required that the foreign company distributing the dividend is comparable with a domestic company. Profit distributions from third country portfolio participations (< 10%) are, furthermore, only exempted if a comprehensive mutual assistance between Austria and the third country is in place. The exemption for inbound intercompany profit distributions from corporate income tax does therefore neither require a minimum participation quota nor a minimum holding period.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	See above.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	The exemption for profit distributions from domestic participations applies without any further requirements. The exemption for profit distributions from participations in foreign companies does not apply, if the foreign subsidiary does not meet certain requirements. These requirements differ between foreign substantive participations (> 10%) and foreign portfolio participations (< 10%): The participation exemption is not applicable for profit distributions from substantive participations held in foreign companies in case the foreign subsidiary's main activity is to generate passive income *and* the subsidiary is located in a tax jurisdiction, that does not effectively tax comparably to domestic companies. This is the case, if the effective tax rate is lower than 15%. If these criteria are

	fullfilled, the credit method applies instead of the exemption method (“switch-over clause”). The participation exemption is not applicable for profit distributions from portfolio participations held in foreign companies in case company is located in a tax jurisdiction, that does not provide for a tax rate comparable to the domestic tax rate of 25%. This is the case, if the effective tax rate is lower than 15% or the company is subject to a comprehensive exemption. If one of those criteria is fullfilled, the credit method applies instead of the exemption method (“switch-over clause”). Irrespective of whether the foreign company generates passive income and/or is located in a low tax jurisdiction, the exemption method for profit distributions is denied insofar as the payment has been deductible abroad. In those cases however, there is no switch-over to the credit method.
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	The minimum effective taxation requirement does also consider the taxation of indirect subsidiaries; underlying taxes are taken into consideration.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	Underlying taxes are taken into consideration for means of determining the tax credit.

1b. If no, please briefly explain your credit system.
/

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
Whereas the application of the participation exemption does generally not distinguish between domestic, EU and 3rd country participations, there is a different treatment for capital gains from domestic participations on the one hand, and foreign participations on the other hand: Capital gains arising from the sale of domestic participations as well as from the sale of domestic portfolio participations are treated tax effectively as ordinary business profits. The Austrian Corporate Income Tax act does not provide for an exemption for capital gains deriving from the sale of these participations. On the other hand, the Austrian Corporate Income Tax Act provides for an international participation exemption for realised and unrealised capital gains and losses. Capital gains arising from the sale of foreign participations (EU, 3rd country) are treated tax neutral as a general rule if certain requirements are met.

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	The international participation exemption for realised and unrealised capital gains and losses applies to substantive participation only. This requires a minimum participation of 10 % held in the foreign subsidiary as well as a minimum holding period of one year. Further, the foreign subsidiary sold off has to be comparable to a domestic company in order to qualify as substantive international participation. The international participation exemption provides for a tax neutral treatment of realised and unrealised capital gains (and losses) as a general rule. However, the taxpayer may opt – in the year of the acquisition of a foreign participation – for tax effective treatment of realised and unrealised capital gains (or losses) arising from that participation. If the taxpayer exercises the option for tax effective treatment, capital gains are treated tax effectively as ordinary business profits. The option for tax effective treatment is irrevocable.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	See above.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	The switch over clause (see 1a) does not only apply to profit distributions but also to realised and unrealised capital gains. Generally, the switch-over clause applies in case the foreign subsidiary's main activity is to generate passive income *and* the subsidiary is located in a tax jurisdiction, that does not effectively taxed comparably to domestic companies. This is the case, if the effective tax rate is lower than 15%.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	Underlying taxes are taken into consideration for means of determining the tax credit.

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).
/

3. Is a deduction available for <u>realised</u> capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
Realised capital losses (historical acquisition costs - sales price) from domestic participations are treated tax effectively in general. However, there are restrictions to the deduction of these capital losses. Capital losses arising from the sale of a domestic participation have to be spread over seven

years. In other words, they can be deducted only to 1/7 in the year of realisation.

Realised capital losses from foreign substantive participations (> 10%, EU, 3rd countries) are treated tax neutral as a general rule. Only if the tax payer has opted into tax effective treatment in the year of the former acquisition (see 2b), a capital loss is taken into consideration. If that is the case, it is treated like a loss from domestic participations; therefore it has to be spread over 7 years.

Realised capital losses from the sale of a foreign portfolio participation (< 10%, EU, 3rd countries) are treated like losses from domestic participations (tax effectively, however spread over 7 years).

Whenever capital losses have to be spread over seven years, the deduction can only be accelerated if realised or unrealised capital gains derive from another participation held as fixed asset within the seven-years-period. In those cases, 1/7 spreads that have not been offset so far may be fully offset against these realised and unrealised capital gains. The same is true for recapture taxation of the same participations (see below, 5)

4. Is a deduction available for unrealised capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).

Unrealised capital losses from domestic participations allow the taxpayers to write off the participation (depreciation = book value - "fair value") tax effectively. However, the same restrictions as for realised capital losses apply.

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.

A participation written off in value (see 4) is subject to a mandatory, tax effective recapture (write up in value, unrealised capital gain), if the value of the participation increases due to any reasons (Jurisprudence of the Highest Administrative Court).

If the value of the participation recovers within seven years since its write off, 1/7 spreads that have not been offset yet may be fully offset against these realised and unrealised capital gains.

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).

A deduction of good will arising from the acquisition of a participation is only available under the group taxation regime (when acquiring a new group member). Generally, the good will is calculated – in accordance with the holding quota – as follows:

Acquisition cost of the participation

-(proportionate Equity in the balance sheet + hidden reserves in the fixed assets)

However, the depreciable good will is limited to 50 % of the acquisition costs of the participation. A good will calculated in accordance with these rules and restrictions has to be spread over 15 years.

The deduction of good will is however denied, if the acquisition takes place within the same group of companies.

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
No.

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	[reply]
➢ **A "low-or-no-tax" test? Please indicate.**	[reply]
➢ **An activities based test? Please indicate.**	[reply]
➢ **An income based test? Please indicate.**	[reply]
➢ **Any other test? Please indicate.**	[reply]
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	[reply]
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	[reply]
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	[reply]

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
Austria does not apply a CFC legislation, providing for the immediate taxation of profits realised by a foreign subsidiary. Instead, Austria applies a “CFC-type legislation”, however, with the aim to avoid a taxfree repatriation of profits. Under certain circumstances, the application of the exemption method is denied; instead, the credit method applies (“switch-over-rule”) – see before.

02. BELGIUM

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
OUI. Il s'agit en fait d'une déduction de 95 % du montant du dividende encaissé ou recueilli (articles 202, § 1er et 204 du Code belge des impôts sur les revenus (CIR 92)

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Oui. Conformément à l'article 202, § 2, 1° CIR 92, les dividendes reçus ne sont déductibles que pour autant qu'à la date d'attribution ou de mise en paiement de ceux-ci, la société qui en bénéficie, détienne dans le capital de la société qui les distribue une participation de **10 p.c.** au moins ou dont la valeur d'investissement atteint au moins **2.500.000 EUR, sans faire de différence** selon que les dividendes sont domestiques, UE, traité ou pays tiers .
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Oui. Conformément à l'article 202, § 2, 2° CIR 92, les dividendes ne sont déductibles que pour autant que ces revenus se rapportent à des actions ou parts qui sont ou ont été détenues en pleine propriété pendant une période ininterrompue **d'au moins un an, sans faire de différence** selon que les dividendes sont domestiques, UE, traité ou pays tiers.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	Oui. Les dividendes ne sont, conformément à l'article 203, § 1er, CIR 92 pas déductibles lorsqu'ils sont alloués ou attribués par: 1° une société qui n'est pas assujettie à l'impôt des sociétés ou à un impôt étranger analogue à cet impôt ou qui est établie dans un pays dont les **dispositions du droit commun en matière d'impôts sont notablement plus avantageuses qu'en Belgique**; Les dispositions de droit commun, sont présumées être notablement plus avantageuses qu'en Belgique lorsque: - soit le **taux nominal** de droit commun de l'impôt sur les bénéfices de la société est **inférieur à 15 p.c.**; - soit, en **droit commun**, le taux correspondant à la charge fiscale effective est **inférieur à 15 p.c.** Les dispositions du droit commun en matière d'impôts qui sont applicables aux sociétés établies dans un **Etat membre de l'Union européenne** sont censées ne pas être notablement plus avantageuses qu'en Belgique. 2° une **société de financement**, une **société de trésorerie** ou une **société d'investissement** qui, bien qu'assujettie, dans le pays de son domicile fiscal, à un impôt visé au 1°, bénéficie dans celui-ci d'un **régime fiscal exorbitant** du droit commun;

	3° une société dans la mesure où les revenus qu'elle recueille, autres que des dividendes, **trouvent leur source en dehors du pays de son domicile fiscal** et bénéficient dans le pays du domicile fiscal d'un régime d'imposition distinct exorbitant du droit commun; 4° une société dans la mesure où elle réalise des bénéfices par l'**intermédiaire** d'un ou de plusieurs établissements étrangers qui sont assujettis d'une manière globale à un régime de taxation notablement plus avantageux qu'en Belgique. Les conventions préventives de la double imposition conclues par la Belgique avec des pays en développement peuvent assouplir ces exigences, à condition que les dividendes proviennent de bénéfices tirés d'activités d'entreprise.
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	Oui. Conformément à l'article 203, § 1, 5° CIR 92, les dividendes ne sont en outre pas déductibles lorsqu'ils sont alloués ou attribués par une société, autre qu'une société d'investissement, qui redistribue des dividendes qui, en application du 1° à 4°, ne pourraient pas eux-mêmes être déduits à concurrence **d'au moins 90 p.c.**
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	NON

1b. If no, please briefly explain your credit system.
Sans objet

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
OUI, Conformément à l'article 192, § 1er, CIR 92 Lorsque ces participations ont été détenues en pleine propriété pendant une période ininterrompue d'au moins un an. En ce qui concerne le portefeuille commercial de sociétés financières, l'exonération des plus-values ne s'applique pas. Les valeurs contenues dans ce portefeuille commercial sont traitées comme des stocks avec taxation des plus-values et déduction des moins-values ou réductions de valeur, les plus-values non réalisées et les réductions de valeur devant être exprimées dans les comptes annuels

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	NON
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	OUI. La participation doit avoir été détenue en pleine propriété pendant une période ininterrompue d'au moins un an.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	OUI (voir réponse à la question 1a)
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	NON

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).
Si la condition de détention d'au moins un an n'est pas remplie, la plus-value sera taxée à un taux fixé à 25 p.c.

3. Is a deduction available for realised capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
Non. Conformément à l'article 198, 7° CIR 92, les moins-values réalisées sur les actions ou parts ne sont pas considérées comme des frais professionnels, à l'exception des moins-values actées à l'occasion du partage total de l'avoir social d'une société jusqu'à concurrence de la perte du capital libéré représenté par ces actions ou parts. Toutefois, les valeurs contenues dans le portefeuille commercial de sociétés financières sont traitées comme des stocks avec déduction des moins-values réalisées.

4. Is a deduction available for unrealised capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).
Non. Toutefois, les valeurs contenues dans le portefeuille commercial de sociétés financières sont traitées comme des stocks avec déduction des réductions de valeur.

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If

yes please explain the methodology.
Non, sauf en ce qui concerne les réductions de valeur qui ont été déduites sur des actions ou parts contenues dans le portefeuille commercial de sociétés financières; celles-ci sont recapturées par leur prise en compte dans le calcul de la plus-value réalisée ultérieurement qui sera soumise à taxation. De même, les reprises de réductions de valeur sur actions ou parts comptabilisées avant le 24.07.1991 et qui ont été déduites des montants soumis à taxation suivant la fiscalité applicable à l'époque, seront intégrées au bénéfice taxable de la période imposable au cours de laquelle elles sont reprises.

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).
Non

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
Non

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	Sans objet
➢ **A "low-or-no-tax" test? Please indicate.**	Sans objet
➢ **An activities based test? Please indicate.**	Sans objet
➢ **An income based test? Please indicate.**	Sans objet
➢ **Any other test? Please indicate.**	Sans objet
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	Sans objet
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	Sans objet
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	Sans objet

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
Oui, le nouvel article 344, § 1er du Code belge des impôts sur les revenus introduit en droit fiscal belge une mesure générale anti-abus reconnaissant l'abus de droit en matière fiscale. Par exemple, une filiale ou une sous-filiale « boîte aux lettres » ou une filiale ou une sous-filiale « écran » peut constituer une construction purement artificielle. Dans ce cas, le fisc belge peut agir comme si l'abus n'avait eu lieu.

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03. BULGARIA

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
Bulgarian legislation provides for the following tax treatment of dividends: **1. Dividends distributed by a Member State or another country – a Party to the Agreement on the European Economic Area.** Revenues resulting from the distribution of dividends by resident legal entities and foreign legal persons who are residents for tax purposes of a European Union's Member State or another country in the European Economic Area to local entities are not subject to corporate tax. An exception to this rule is the case of hidden profit distribution. There is also an exception when the accrued income is as a result of dividends distributed by licensed companies with special investment purpose under the Act on Companies with Special Investment Purpose. There is a provision in the law which regulates the tax treatment of dividends distributed as a result of investments where the investments are accounted for using the equity method. When the financial result of shareholders for tax purposes is determined, the accounting result is reduced with the dividends distributed by resident legal persons or by non-resident persons who are residents for tax purposes of a Member State or another country - a Party to the Agreement on the European Economic Area when the investment is accounted for using the equity method. **2. Dividends distributed by a country with which Republic of Bulgaria has concluded a double taxation agreement.** If there is a double taxation agreement in force, legal entities may opt to apply its provisions. **3. Dividends distributed by a third country with which Republic of Bulgaria does not have a double taxation agreement.** No tax exemption is provided for revenues received as a result of dividends distributed by a third country. It is not envisaged the accounting financial result to be reduced with dividends distributed by third countries if the investment is accounted for using the equity method.

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No minimum participation in the company's capital is required. Taxation is as defined above.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	There is no requirement for a minimum holding period in the company's capital. Taxation is as defined above.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	No

➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	No
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	If there is no obligation the provisions of international treaties to be applied (if an international treaty ratified by the Republic of Bulgaria, promulgated and entered into force, contains provisions different from the provisions of the *Corporate Income Tax Act*, the provisions of the treaty are applied), the taxpayers are entitled to a tax credit under the terms and conditions of the *Corporate Income Tax Act*. When the corporate tax or alternative tax under the *Corporate Income Tax Act* is assessed, taxpayers are entitled to a tax credit in respect of each tax similar to corporate income tax or imposed in lieu of such tax and paid abroad. The tax credit is assessed for each country and each type of income separately and is limited to the Bulgarian tax on such profits or income.

1b. If no, please briefly explain your credit system.
- N/A

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
No

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	N/A
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	N/A
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	N/A
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	N/A

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).
Capital gains are taxed as ordinary profits. However, the *Corporate Income Tax Act* provides for a tax exemption described hereafter. When the financial result for tax purposes is determined, the accounting result is reduced with the profit realized from the disposition of financial instruments within the meaning of § 1, item 21 of the Supplementary Provisions and determined as a positive difference between the selling price and the documented cost of acquisition of the said financial instruments. This does not apply to any profits from a source outside Bulgaria in respect of which the method of avoidance of double taxation is "exemption with progression", provided for in a double taxation treaty. § 1, item 21 of the Supplementary Provisions of the *Corporate Income Tax Act* stipulates that "Disposition of financial instruments" for the purposes of Articles 44 herein shall be any transaction: (a) in units in collective investment schemes, shares and rights, effected on a regulated market within the meaning given by Article 73 of the Markets in Financial Instruments Act; "rights" for the purposes of sentence one shall be the securities entitling the holder to subscribe for a specified number of shares in connection with a passed resolution on an increase of capital; (b) concluded under the terms and according to the procedure of repurchase or redemption by collective investment schemes which have been admitted to public offering in Bulgaria or in another Member State of the European Union, or in a State, a Party to the Agreement on the European Economic Area; (c) concluded under the terms and according to the procedure of tender offering under Section II of Chapter Eleven of the Law on the Public Offering of Securities, or transactions of analogous type in another Member State of the European Union, or in a State, a Party to the Agreement on the European Economic Area. If there is a double taxation agreement in force, legal entities may opt to apply its provisions. No tax exemption is envisaged in any other cases not mentioned herein.

3. Is a deduction available for realised capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
No In case of the tax relief cited above (item 2b), similar to gains, losses from these transactions are not recognized for tax purposes., namely, when the tax financial result is determined, the accounting financial result is increased with the loss from the disposition of financial instruments (within the meaning of § 1, item 21 of the additional provisions of the law) which is defined as the negative difference between the selling price and the documented cost of acquisition of the said financial instruments.

4. Is a deduction available for unrealised capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).

No

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
No

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).
No Goodwill arisen as a result of business combination is not a depreciable asset for tax purposes. Losses as a result of impairment and write-off of goodwill are not tax deductible.

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
No

7a. If yes, does the definition of a CFC contain:	-
➢ **A minimum shareholding test? Please indicate.**	-
➢ **A "low-or-no-tax" test? Please indicate.**	-
➢ **An activities based test? Please indicate.**	-
➢ **An income based test? Please indicate.**	-
➢ **Any other test? Please indicate.**	-
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	-
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	-
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please**	-

explain via examples.	

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
According to the *Corporate Income Tax Act*, "a dividend is the distribution in favour of a person, arising from the holding that such person has in the capital of another person, resulting in a reduction of the owners' equity of the latter, including: (a) income from shares; (b) income from participations, even in unincorporated associations, and from other corporate rights, where treated as income from shares; (c) hidden profit distribution." Any distribution which, according to accounting legislation, has been recognised as an expense for the distributing entity is not a dividend, with the exception of the cases of hidden profit distribution. In general, income received from the distribution of dividends by resident legal entities and foreign legal persons who are residents for tax purposes of a Member State or another country - a Party to the Agreement on the European Economic Area is not recognized as a taxable income. This provision does not apply in case of hidden profit distribution. Thus, in case of hidden profit distribution which falls within the definition of a dividend, the revenue from this hidden profit distribution (dividend) is recognized for tax purposes, namely, it is a taxable income. The income received from hidden distribution of profits is a taxable income for the taxpayers. Therefore, revenues received as result of a hidden profit distribution are involved in determining the taxable income. There is also a provision according to which in the case of dividends in the form of a hidden profit distribution, the provision which allows the financial result for tax purposes of the shareholders to be reduced with the dividends distributed by resident legal entities or foreign legal persons who are residents for tax purposes of a Member State or another country - a Party to the Agreement on the European Economic Area (where the investment is accounted for using the equity method) does not apply. The *Law on Corporate Income Tax* gives a definition of a hidden profit distribution. Moreover, under the definition of a dividend, any distribution by a foreign legal entity which (according to accounting legislation) has been recognized as an expense for the distributing foreign entity is not a dividend. The Bulgarian *Law on Corporate Income Tax* contains provisions which regulate the prevention of tax evasion. These are the provisions related to the performance of commercial and financial relations under terms which affect the amount of the tax base and which differ from the terms between unrelated parties. There are also provisions which govern transactions between unrelated parties concluded under terms which fulfillment leads to tax evasion. In these cases, the tax base is determined without these transactions, some of their terms or their legal form to be taken into account. The tax base that would result from a customary transaction at market prices which aims to achieve the same economic result but without to lead to tax evasion must be taken into consideration instead. Finally, the law stipulates that if a transaction is used in order to conceal another, the tax liability should be assessed under the terms of the concealed transaction.

Please note that the provisions of the Bulgarian *Corporate Income Tax Act* cited above are not an official translation in English language.

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04. CYPRUS

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
Yes. However, dividends distributed by a foreign subsidiary will be subject to special contribution for the defence, if the subsidiary: (i) Directly or indirectly engages more than 50% in activities which lead to investment income, and (ii) The foreign tax burden on the profits out of which the dividends are paid is substantially lower than the tax burden of the recipient of the dividend in Cyprus.

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	See 1 above.
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	To direct subsidiaries only.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	Only if stipulated in a Double Tax Agreement.

1b. If no, please briefly explain your credit system.
N/A

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
Yes.

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	No, only the stipulated conditions that must be met.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	No.

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).
N/A

3. Is a deduction available for <u>realised</u> capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
No.

4. Is a deduction available for <u>unrealised</u> capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).
No.

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
N/A

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the

deductible amount (write down, amortisation, provision).
No.

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
No.

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	N/A
➢ **A "low-or-no-tax" test? Please indicate.**	N/A
➢ **An activities based test? Please indicate.**	N/A
➢ **An income based test? Please indicate.**	N/A
➢ **Any other test? Please indicate.**	N/A
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	N/A
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	N/A
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	N/A

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
Dividends distributed by a foreign subsidiary will be subject to special contribution for the defence, if the subsidiary: (i) Directly or indirectly engages more than 50% in activities which lead to investment income, and (ii) The foreign tax burden on the profits out of which the dividends are paid is substantially lower than the tax burden of the recipient of the dividend in Cyprus.

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05. CZECH REPUBLIC

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
The Czech Republic provides for an exemption of inbound intercompany dividends if certain conditions are met. Section 19 subsection 1 letter ze) the point 1 Income taxes Act*: The following shall be subject to tax exemption: Income (capital gains) 1. in the form of dividends and other shares in (portions of) profits paid out by a subsidiary, which is a taxpayer referred to in section 17 (3), to its parent company (entity).

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	For domestic companies and the EU: Minimum shareholding is required 10% (section 19 subsection 3 point. b) and c)) For companies of third countries (section 19 subsection 9) - is a tax resident in a third State with which the Czech Republic has concluded an effective double taxation treaty, and - is in the legal form comparable to the features of a limited liability company, joint stock company or cooperative under other statutory provisions, and - is in a similar relationship to the taxpayer, to whom this income is generated from dividends, other shares of profit or transfer of a shareholding, as is that of a subsidiary to its parent company under the conditions laid down in subsections (3) and (4)**, and - is liable to a tax which is comparable to (Czech) corporate income tax and which is not below 12% in at least the taxable period when the taxpayer referred to in section 17(3) posts this income (gained from dividends, other shares of profits or transfer of a shareholding in a company) as a receivable in his books of accounts pursuant to other statutory provisions, and also in the taxable period preceding the taxable period in question; where a company has been wound up without having gone into liquidation, this condition must be met by the company´s legal predecessor. However, a company /business entity) which is tax-exempt or may opt to be tax-exempt or may claim a relief from corporate tax, shall not be deemed to be company (business entity) liable to corporate (or similar) tax. Tax exemptions pursuant to subsection (1) (ze) and (zi) and pursuant to this subsection may be claimed if the recipient of income from dividends, other shares of profits and a shareholding transfer is the beneficial owner of this

	income.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	For domestic companies and the EU: minimum shareholding period of 12 months (section 19 subsection 3 point. b) and c)) For the third country (section 19 subsection 9): see 1a
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	For third countries: subject- to- tax :minimum 12%
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	The minimum taxation applies only to the subsidiary.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	No.

1b. If no, please briefly explain your credit system.

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
The Czech Republic provides for an exemption of capital gains on participations if certain conditions are met. Section 19 subsection 1 letter ze) point 2 The following shall be subject to tax exemption: Income (capital gains) from the transfer of a parent company´s shareholding (ownership interest) in a subsidiary effected by a taxpayer referred to in section 17(3) or effected by a company that is a tax resident in another EU Member State.

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	For domestic companies and the EU: Minimum shareholding is required 10% (section 19 subsection 3 point. b) and c)) For companies of third countries (section 19 subsection 9) - is a tax resident in a third State with which the Czech Republic has concluded an effective double taxation treaty, and - is in the legal form comparable to the features of a

	limited liability company, joint stock company or cooperative under other statutory provisions, and - is in a similar relationship to the taxpayer, to whom this income is generated from dividends, other shares of profit or transfer of a shareholding, as is that of a subsidiary to its parent company under the conditions laid down in subsections (3) and (4)**, and - is liable to a tax which is comparable to (Czech) corporate income tax and which is not below 12% in at least the taxable period when the taxpayer referred to in section 17(3) posts this income (gained from dividends, other shares of profits or transfer of a shareholding in a company) as a receivable in his books of accounts pursuant to other statutory provisions, and also in the taxable period preceding the taxable period in question; where a company has been wound up without having gone into liquidation, this condition must be met by the company´s legal predecessor. However, a company /business entity) which is tax-exempt or may opt to be tax-exempt or may claim a relief from corporate tax, shall not be deemed to be company (business entity) liable to corporate (or similar) tax. Tax exemptions pursuant to subsection (1) (ze) and (zi) and pursuant to this subsection may be claimed if the recipient of income from dividends, other shares of profits and a shareholding transfer is the beneficial owner of this income.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	For domestic companies and the EU: minimum shareholding period of 12 months (section 19 subsection 3 point. b) and c)) For the third country (section 19 subsection 9): see 2a
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	For third countries: subject-to-tax: min:12%
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	No.

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).

3. Is a deduction available for <u>realised</u> capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).

No, the realised capital losses are not deductible.

4. Is a deduction available for <u>unrealised</u> capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).
No, the securities representing participation with substantial influence are not overvalued at the fair market value.

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).
Goodwill is deductible only in cases relating to the purchase of the company. Goodwill is the difference between the purchase price and the value of individual items of property valued by an expert. In the case of a positive valuation difference it is possible to amortize by successive reducing the tax base, in the case of a negative valuation difference by successive increasing the tax base, in both cases evenly spread over a period of 180 months (Section 23 subsection 15)

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
The Czech Republic does not apply CFC type legislation.

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	
➢ **A "low-or-no-tax" test? Please indicate.**	
➢ **An activities based test? Please indicate.**	
➢ **An income based test? Please indicate.**	

➢ **Any other test? Please indicate.**	
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
The Czech Republic applies the rules of transfer pricing and substance over form.

* Income Taxes Act (Zákon o daních z příjmů) No. 586/1992 Coll.

** Section 19, subsection 3:

For the purposes of this Act:

a) “company that is a tax resident in another EU Member State” shall mean a company that is not a taxpayer referred to in section 17(3) and

1. takes one of the legal forms that are listed in the European Communities Directives and that are published by the (Czech) Ministry of Finance in the Financial Bulletin and in the remote-access information system, and
2. according to the tax laws of the EU Member States is considered as a tax resident and, under the terms of a double taxation agreement (treaty) concluded with a third State, is not considered as a tax resident outside the European Union, and
3. is subject to one of the taxes that are listed in the relevant European Communities Directives and that are similar in their nature to the (Czech) income tax. S list of the said taxes are published by the (Czech) Ministry of Finance in the Financial Bulletin and in the remote-access information system. A company which is tax-exempt or may opt to be tax-exempt shall not be considered as a company being subject to such tax;

b) “parent company” shall mean a business entity that is a taxpayer referred to in section 17(3) and is in the legal form of a joint stock company or limited liability company or a cooperative, or a company (entity) that is a tax resident in another EU Member State, on condition that such a business company (entity) has a minimum shareholding of 10%in another company´s share capital for an uninterrupted period of at least 12 months;

c) “subsidiary shall mean a business entity that is a taxpayer referred to in section 17(3) and is in the legal form of a joint stock company or limited liability company or cooperative, or a company that is a tax resident in another EU Member State, on condition that the capital of such a business company (entity) includes a minimum shareholding of 10% owned by its parent company for an uninterrupted period of at least 12 months;

d) “a third State shall mean a State that is not a Member State of the European Union.

Section 19, subsection 4:

A tax exemption pursuant to subsection 1 (ze) to (zi) and subsection 9 may be claimed if the condition of a minimum shareholding of 10% in share capital is fulfilled even before the requirement of an uninterrupted period of 12 months pursuant to subsection (3) is met provided that this requirement is subsequently fulfilled. Where the condition of having a minimum shareholding of 10 % in share capital for an uninterrupted period of at least 12 months is not (in future) fulfilled, tax exemption :

a) pursuant to subsection (1) (zf) to zi) claimed by a taxpayer referred to in section 17 (3) shall be considered as non-compliance with tax liability for a taxable period or period for which a tax return is filed and tax exemption has been claimed,

b) pursuant to subsection (1) (ze) to zh) claimed by a taxpayer shall be considered as non-compliance with tax liability and the procedure pursuant to section 38s shall be followed.

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06. DENMARK

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
Yes

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Yes. There is a minimum participation requirement. If the dividend-distributing company is a resident of Denmark or another Member State or another state with which Denmark has a double taxation convention, it is a condition that the Danish dividend-receiving company holds at least 10 per cent of the capital of the dividend-distributing company. If the dividend-distributing company is a resident of another state, it is a condition that the income of this company is subject to Danish CFC-taxation, which demands that the Danish dividend-receiving company controls at least 50 per cent of the voting power of the foreign dividend-distributing company. A special anti-avoidance rule precludes that corporate shareholders which do not hold 10 per cent of the capital of the dividend-distributing company meet this requirement through a chain of interposed holding companies. Corporate shareholders are considered to be direct owners of shares of the dividend-distributing company even though they own shares in an interposed holding company (or a chain of interposed holding companies) which own the shares of the dividend-distributing company. It is a condition that the shares of the interposed holding company are unlisted, that the primary function of this company is to own shares in subsidiaries, that this company has no genuine economic activity and that more than 50 per cent of this company is directly owned by entities which would not individually meet the 10 per cent ownership condition if the interposed company was disregarded.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	For foreign dividends it is a requirement, that the foreign distributing company – or another sub- subsidiary – has not deducted the dividend payment at its company taxation.
➢ **Does the "subject-to-tax" or "minimum effective taxation"**	The no deduction requirement also applies to a subsidiary on a lower level, unless there was a corresponding

requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.	taxation on a higher level than the subsidiary which benefitted from the deduction.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	In case the above requirements are not met, the receiving Danish company is entitled to an ordinary credit for underlying taxes.

1b. If no, please briefly explain your credit system.
N.A.

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
Yes

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Yes. There is a minimum participation requirement. In case of alienation of shares in a company which is a resident of Denmark or another Member State or another state with which Denmark has a double taxation convention, it is a condition that the alienating Danish company held at least 10 per cent of the capital of the dividend-distributing company. In case of alienation of shares in a company which is a resident of another state, it is a condition that the income of this company is subject to Danish CFC-taxation, which demands that the alienating Danish company controlled at least 50 per cent of the voting power of the foreign dividend-distributing company. A special anti-avoidance rule precludes that corporate shareholders which did not hold 10 per cent of the capital of the dividend-distributing company meet the 10 per cent requirement through a chain of interposed holding companies. As mentioned under 1.a.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	No
➢ **Is a tax credit for underlying taxes available in case one of the above**	No

requirements is not met? Please explain.	

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).
N.A.

3. Is a deduction available for realised capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
No

4. Is a deduction available for unrealised capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).
No

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
N.A.

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).
No

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
Yes

7a. If yes, does the definition of a CFC contain:	
➢ A minimum shareholding test? Please indicate.	It is a requirement, that the foreign subsidiary is controlled by the Danish parent company which means that the Danish company holds more than 50 per cent of the voting

	power of the subsidiary.
➢ **A "low-or-no-tax" test? Please indicate.**	No
➢ **An activities based test? Please indicate.**	No
➢ **An income based test? Please indicate.**	Yes. It is a requirement that the business of the foreign subsidiary is mainly of a financial nature. This means the fulfilment of two conditions. More than 50 per cent of the total taxable income of the subsidiary shall consist of net interest income, dividends, commissions, net capital gains on shares, payments and capital gains with respect to intellectual property rights, income from leasing or insurance activities etc. More than 10 per cent of the assets of subsidiary shall be of a financial nature.
➢ **Any other test? Please indicate.**	No
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	No. The CFC-definition also applies to indirect subsidiaries.
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	Yes. Ordinary credit.
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	Yes. Taxpayers may request for a binding advance ruling regarding the tax consequences of a specific transaction. These rulings are obtained from the tax authorities. However, a binding advance ruling is issued from the Taxation Board if the case may have consequences for a large number of taxpayers, involves a large amount of tax, involves interpretation of new legislation, involves EU law to a considerable extent or is of public interest.

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
N.A.

07. ESTONIA

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
Yes, on certain conditions.

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Yes. The minimum participation required is 10% in all cases.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No minimum holding period is required.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	There is a subject-to-tax requirement for 3rd country participations but not for EU/EEA participations.
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	The subject-to-tax rule requires that the dividend or underlying profit has been taxed. It may have been taxed on the level of the subsidiary or any of the indirect subsidiaries.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	When the requirements of the participation exemption are not met, the taxpayer may deduct from income tax payable (upon distribution of profits) the income tax paid on or withheld from the dividend abroad, up to the amount of Estonian tax due. Underlying credit is available under some Estonian tax treaties. In that case where a company that is a resident of Estonia receives a dividend from a company that is a resident of the other Contracting State in which it owns at least 10 per cent of its shares having full voting rights, the tax paid in the other Contracting State shall include not only the tax paid on the dividend, but also the tax paid on the underlying profits of the company out of which the dividend was paid.

1b. If no, please briefly explain your credit system.
–

2. Does your Member State provide for an exemption of capital gains on participations if certain

conditions are met?
No.

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	–
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	–
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	–
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	–

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).
Capital gains are taxed as ordinary profits (upon distribution).

3. Is a deduction available for realised capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
No, as only distributed profits are taxed.

4. Is a deduction available for unrealised capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).
No.

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
No.

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).
No.

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
Not to companies. Estonia only applies CFC legislation to resident individuals (participating in a CFC). Our corporate income tax system is based on taxation of distributions and no unrealised gains are included in the tax base.

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	–
➢ **A "low-or-no-tax" test? Please indicate.**	–
➢ **An activities based test? Please indicate.**	–
➢ **An income based test? Please indicate.**	–
➢ **Any other test? Please indicate.**	–
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	–
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	–
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	–

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
No specific rules.

08. FINLAND

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
Yes.

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	As a rule, a dividend received by a corporation is tax-exempt, .i.e. there is no participation requirement. In cases where a dividend falls outside the scope of the tax exemption for corporations, thus being partially taxable income, a participation exemption applies to EU participations with the minimum holding of 10 %. In tax treaties the minimum participation requirement may vary, but is usually 10 %. No participation exemption in regard to participations in companies residing in 3rd countries with which there is no tax treaty.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	No.
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	N/A.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	No. Ordinary credit is available with carry forward for 5 years.

1b. If no, please briefly explain your credit system.
If the requirements for the participations exemption are not fulfilled and the dividend is wholly or partially tax liable, a tax credit can usually be granted. This takes place either according to the tax treaty, in situations where a tax treaty exists, and according to domestic legislation in non-treaty situations.

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
Yes, a tax exemption is available for capital gains derived from transfer of shares held in the fixed

assets of the company.

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Yes, minimum participation requirement is 10 %. The requirement is same for domestic, EU and treaty participations. Exemption does not apply to 3rd country participation in non-treaty situations.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Yes. Minimum holding period is one year immediately preceding the transfer. The requirement is the same for domestic, EU and treaty participations. Exemption does not apply to 3rd country participation in non-treaty situations.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	No.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	No.

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).
In regard to the credit system, should the capital gains be wholly or partially tax liable, a tax credit can usually be granted. This takes place either according to the tax treaty, in situations where a tax treaty exists, or according to domestic legislation in non-treaty situations.

3. Is a deduction available for realised capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
In regard to capital gains, participation has relevance only in regard to transfer of shares held in the fixed assets of the company. If the conditions for the tax exemption are met, the capital loss is not deductible. If the requirement for minimum holding period is not fulfilled, a deduction for the capital loss is available and determined by deducting the amount of dividends received, group contributions and other corresponding items that have reduced the assets of the entity. However, the capital losses is not deductible if the entity either resides outside Finland, or is not a company referred to in Art 2 of the Parent-Subsidiary Directive or there is no tax treaty between Finland and the country in which the subsidiary resides.

4. Is a deduction available for unrealised capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).

No.

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
No.

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).
No. In connection of the purchase of shares, the additional price relating to the goodwill is regarded to form a part of the acquisition price of the shares, which is deductible from the eventual selling price. Deduction for the depreciation of value of shares is not available.

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
Yes.

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	Yes. A such test is the fact whether the foreign body is under the control of persons resident in Finland; this is the case if one or several such persons directly or indirectly own at least 50 per cent of the capital of or the voting rights in a CFC or they are entitled to at least 50 per cent of the yield of the net wealth of the CFC.
➢ **A "low-or-no-tax" test? Please indicate.**	Yes. In non-treaty situation the test is whether the foreign body has in its country of residence an actual rate of income tax which is less than 3/5 of the tax rate of a corporate body resident in Finland. In treaty situations, the test is whether the foreign body has in its country of residence an actual rate of income tax which is less than ¾ of the tax rate of corporate body resident in Finland.
➢ **An activities based test? Please indicate.**	Yes. Following bodies are not regarded as CFC: a) a corporate body whose income is mainly derived from industrial activities, any other comparable production activities or shipping business exercised in its country of residence; b) a corporate body whose income is mainly derived from sales and marketing activities exercised in and mainly directed to its country of residence. In addition, see below the actual economic activities test.

➢ **An income based test? Please indicate.**	No income type test.
➢ **Any other test? Please indicate.**	Yes. I) The CFC provisions are not applied to foreign corporate bodies resident in an EEA Member State or in a treaty partner State not on the so called grey list (see below), if: a) EU Directive concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums (77/799/EEC) is applicable to that State; or b) An agreement on exchange of information in tax matters between authorities has been concluded with that State and that agreement together with the internal legislation of the contracting States allows a sufficient exchange of information for the application of the Act on the Taxation of Shareholders in Controlled Foreign Companies. c) a further requirement is that the corporate body in question is actually established in the State where it is resident and carries on actual economic activity there. The requirement in c) is fulfilled if, taking into account the character of the activity: 1. the corporate body has at its disposal in its State of residence necessary premises and assets for carrying on its activities; 2. the corporate body has at its disposal in its State of residence sufficient staff with the authority to independently carry on its business; and 3. that staff independently decides upon the day-to-day activities of that corporate body. II) A foreign body is not regarded a CFC on the basis of tax treaty status, if a) a corporate body is resident in a State with which

	Finland has an agreement for the avoidance of double taxation of income in force; b) the agreement is applicable to the profits of the corporate body provided that corporate bodies are in that State liable to pay for their profits a tax that doesn't significantly deviate from the tax that corporate bodies must pay in Finland for their profits; and c) the corporate body has not profited from the specific tax relief legislation of that State. The Ministry of Finance issues a decree containing a list on those tax treaty states where the tax is regarded to significantly deviate from the tax which corporate bodies must pay in Finland (grey list).
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	Applies also to the indirect subsidiaries. A foreign body is regarded to be under control of persons resident in Finland if one or several such persons directly or indirectly own at least 50 per cent of the capital of or the voting rights in a CFC or they are entitled to at least 50 per cent of the yield of the net wealth of the CFC.
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	Yes. The shareholder of a CFC is entitled to credit the tax of the CFC against the tax imposed by virtue of the CFC rules. The tax credit is available for the state tax having been imposed to the CFC in its State of residence or in a third country. In a treaty situation, all such taxes are eligible for tax credit which according to the tax treaty would have been eligible for tax credit, had the shareholder resident in Finland been liable to pay such tax. If the credit cannot be granted in full, the un-credited part of the tax can be deducted from the income tax during the subsequent five tax year if the taxpayer so claims.
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	The normal procedure of issuing advance rulings on tax matters based on the requests of tax payers is applicable. The taxpayer submits an application for an advance ruling to the Central Board of Taxation or to a tax office. In the application the taxpayer presents a question or questions relating to the application of CFC legislation, to which the advance ruling takes a stand that is binding to the tax authorities.

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
-

09. FRANCE

10. GERMANY

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
[yes]

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	[no]
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	[no]
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	[no]
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	[N/A]
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	[N/A]

1b. If no, please briefly explain your credit system.
[N/A]

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
[yes]

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	[no]
➢ **Is there a minimum holding period?**	[no]

Is this different for domestic, EU, treaty or 3rd country participations? Please explain.	
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	[no]
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	[N/A]

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).
[N/A]

3. Is a deduction available for <u>realised</u> capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
[No]

4. Is a deduction available for <u>unrealised</u> capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).
[No]

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
[No]

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).
[no]

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub) subsidiaries)?

Yes

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	Yes, more than 50% of the shares must be owned directly or indirectly by residents (individuals or other). If a foreign company's income consists largely of investment income (other than dividends), then the threshold is 1 % shareholding or even less.
➢ **A "low-or-no-tax" test? Please indicate.**	Yes, effective tax burden less than 25% based on the CFC's income being calculated under German rules.
➢ **An activities' based test? Please indicate.**	Yes. Any income of the CFC is subject to CFC rules unless derived from activities described in the statute.
➢ **An income based test? Please indicate.**	No.
➢ **Any other test? Please indicate.**	No. However, if the foreign company has either its seat or its place of effective management in a member state of the European Economic Area CFA, CFC rules shall not be applied if the taxpayer can proof that the foreign company carries on a real economic activity. This rule is a consequence of the ECJ decision C-196/06 (*Cadbury-Schweppes)*.
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	No. Tainted income of lower tier subsidiaries is covered as long as more than 50 % of the shares of lower tier subsidiaries are owned directly or indirectly by residents. However, in order to avoid multiple inclusion of income, dividends are not treated as income subject to CFC. Also, gains from the disposition of shares in a CFC are in most cases not treated as tainted income.
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	Yes. Taxes born by the CFC are either deductible from the income attributed to the resident shareholder or may be credited against the shareholder's tax.
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	No

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
N/A

11. GREECE

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?

Unofficial translation:

According to our national legislation (Income Tax Code), we can distinguish the following cases:

Dividends from associated companies of Member States of the European Union

According to the provisions of point ia' of paragraph 1 of Article 103 of Income Tax Code (Law 2238/1994), which were added with paragraph 13 of Article 14 of Law 3943/2011, it is provided that the profits received by domestic corporations (S.A.s) and limited liability companies, from companies established in another Member State of the EU, in which they participate in the meaning of Article 11 of Law 2578/1998 (which incorporated the Parent-Subsidiary Directive 90/435/EEC), are tax exempt provided that they appear in a reserve account.

If this reserve or part of it is distributed or capitalized, a withholding tax of 25% is effected.

Furthermore, according to the provisions of point a' of paragraph 2 of Article 8a of Law 2578/1998, it is specified that the provisions of Articles 8 through 11 of Law 2578/1998 apply to profits received by domestic companies listed in Article 101 and paragraph 4 of Article 2 of the Income Tax Code, because of their participation in subsidiary companies whose head office is in another Member State of the European Union **(question 1a).**

In more detail, according to the provisions of the first paragraph of article 11 of Law 2578/1998, the provisions of articles 8 to 10 of the same law do not apply in case that the parent national company does not retain for two (2) consecutive years the participation percentage required by point c' of article 9 of the same law (at least 10% from 1st January 2009 and onwards). **(question 1a).**

Taking into account all the above mentioned, the exemption to inbound dividends from associated companies of Member States of the EU is applied only when the requirements of the Directive 90/435/EEC are met and there is no "subject-to-tax" or "minimum effective taxation" requirement. **(question 1a).**

In case that the requirements of the Directive 90/435/EC are not met (for example participation below 10%, retaining of the participations less than 2 years), in the inbound dividends from associated companies of Member States of the EU a withholding tax of 25% is effected, according to the provisions of article 54 (par. 6 point d') or article 55 of Income Tax Code, as appropriate, without prejudice to the provisions of the Double Taxation Agreements.

These dividends are subject to income taxation under the general tax provisions, adding up all other relevant income of the companies. The tax withheld under the provisions of article 54 or 55, the tax of the foreign legal entity or the tax withheld in these dividends abroad in all levels is credited. **(question 1a).**

Dividends from associated companies of third countries

In the inbound dividends from associated companies of third countries, a withholding tax of 25% is effected, according to the provisions of article 54 (par. 6 point d') or article 55 of Income Tax Code, as appropriate, without prejudice to the provisions of the Double Taxation Agreements. These dividends are subject to income taxation under the general tax provisions, adding up all other relevant income of the companies. The tax withheld under the provisions of article 54 or 55, the tax of the foreign legal entity or the tax withheld in these dividends abroad up to the level of the subsidiary of the foreign

company abroad in all levels is credited. **(question 1a).** **<u>Dividends from associated domestic companies</u>** Under the provisions of paragraph 1 of Article 54 and point d' of paragraph 1 of Article 55 of the Income Tax Code, profits distributed by domestic corporations (S.A.s) and limited liability companies in other S.A.s or limited liability companies are subject to a withholding tax of 25%. With this witholding tax, the tax liability of the recipient entity ends for these dividends. In case the recipient entity makes a distribution of profits and its income includes income from its participation to another legal entity, from the tax obliged to pay with the tax return, the part of the tax that has already been withheld on its part and relates to the distributed by it profits that origin from the above mentioned participations is credited.

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	[reply]
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	[reply]
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	[reply]
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	[reply]
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	[reply]

1b. If no, please briefly explain your credit system.
[reply]

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
Unofficial translation The provisions of our domestic law (Article 13 of Income Tax Code) do not provide for an exemption for gains on the disposal of participations held by a domestic company to other companies (domestic and foreign).

2a. If yes:	

➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	[reply]
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	[reply]
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	[reply]
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	[reply]

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).

Unofficial translation

The goodwill of gains on the disposal of participations held by a domestic company to other companies (domestic and foreign) is taxed in principle with a specific rate, depending on the type of participation (eg shares or units of limited liability companies) and furthermore, any profit is subject to taxation according to the general income tax provisions.

3. Is a deduction available for <u>realised</u> capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).

Unofficial translation

Assuming that the realized capital loss from participations is a loss from a transfer of participations or from liquidation of the company, of which the participations are held, we note the following:

As regards the participations of domestic companies to other domestic corporations (S.A.s), the loss arising from their transfer is transferred to a special reserve account which is formed from the sale of shares listed on the Athens Stock Exchange and any uncovered amount is not deductible from the gross income (Article 38 of Income Tax Code). The loss from the liquidation of a domestic company is recognized for deduction from the gross income of the company that holds participations in it.

Furthermore, the loss resulting from the transfer of participations of a foreign company as well as its liquidation, is not recognized as a deduction from the gross income, as a negative item of income from sources located abroad is only credited with positive income of the taxpayer that incurs abroad (Article 4 of Income Tax Code).

4. Is a deduction available for <u>unrealised</u> capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation,

provision).
Unofficial translation Assuming that the unrealized loss from participations is a loss from valuation, we note that according to the provisions of Article 38 of Income Tax Code, the loss from the evaluation of participations in domestic companies has the same tax treatment as the loss from the sale of unlisted shares, as discussed above (transfer to the debit of the special reserve account) (see question 3). Respectively, the loss from the evaluation of participations in foreign companies, is not recognized, as mentioned above (see question 3).

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
Unofficial translation We would like to reserve our right to reply, after the clarification of the rule/methodology of “recapture rule”.

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).
Unofficial translation There is no corresponding tax treatment based on our internal legislation.

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
Unofficial translation Our national legislation does not provide for CFC rules.

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	[reply]
➢ **A "low-or-no-tax" test? Please indicate.**	[reply]
➢ **An activities based test? Please indicate.**	[reply]
➢ **An income based test? Please indicate.**	[reply]
➢ **Any other test? Please indicate.**	[reply]

➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	[reply]
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	[reply]
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	[reply]

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
Unofficial translation We believe that the exchange of information can be an alternative anti-avoidance rule to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed, when the recipient of the profits is an intermediate company and not the real beneficiary, taking into account that several member states do not provide for CFC rules.

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12. HUNGARY

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
As for Hungary the dividends are exempt from corporate income tax, except for the dividends received from controlled foreign companies.

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	Yes, as form 1 of January 2012 the definition of dividend was introduced, which reads as follows: Dividend is an amount accounted as such under the accounting regulation provided that the entity paying the amount does not account it as an expense deducted from its pre-tax profit.
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	No difference.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	No.

1b. If no, please briefly explain your credit system.
Withholding tax can only be credited if the definition of dividend is met.

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
Yes, Hungary provides for an exemption of capital gains on participations. In general capital gains of companies are treated as ordinary income and taxed accordingly. From 1 January 2007, a participation exemption regime was introduced which exempts the disposal of 'reported participations' from corporate income tax. A reported participation is one of at least 30% in the capital of the relevant company, except for CFCs. The exemption only applies to participations acquired on or after 1 January 2007 and held for at least one year. (for further details please see our

replies below).

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Yes, Hungary has a minimum participation requirement of 30 per cent (registered share). Hungary's 'registered share' rule applies to a share of *at least 30 per cent* (and above, except for the increase of the value of the registered share) *in the capital of a legal person or business association lacking the legal status of a legal person established according to Hungarian laws, and in any foreign person (other than a CFC)*, provided that the taxpayer notifies the tax authority concerning the acquisition of this share *within sixty days*. The sixty days deadline is mandatory (if the taxpayer fails to submit the notification is time it is not a possible to replace it). Notification of a share above 30 per cent may be submitted only if the taxpayer has previously notified his share of at least 30 per cent to the tax authority. On the basis of this rule the minimum participation requirement does not differ in the case of domestic, EU or third countries.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	The pre-tax profit of the taxpayer might be deducted with the capital gains from the sale of a registered share shown for the tax year, furthermore, in connection with registered shares, the capital gain claimed for the tax year due to the retiring of notified shares from the records shown as non-monetary, in-kind contributions in excess of the amount of expenses claimed, on condition that that the taxpayer (including any predecessor) has shown the share in question under his assets for at least one year previously. On the basis of this rule the minimum holding period does not differ in the case of domestic, EU or third countries.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	No.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	No. If the abovementioned requirements are not met the taxpayer is supposed to pay the tax in relation to its shares according to the general rules.

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).
-

3. Is a deduction available for <u>realised</u> capital losses concerning the participations? If yes please

briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
No, in the case of registered shares the pre-tax profit shall be *increased* by the capital losses claimed for the tax year under expenses, and any expenses claimed due to the retiring of shares from the records for any reason (other than settlement in connection with transformation) in excess of the amount of income claimed.

4. Is a deduction available for <u>unrealised</u> capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).
Unrealised foreign exchange loss is deductible temporarily.

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
Yes, the pre-tax profit shall be increased with any capital loss (and the value adjustments) shown under expenses for the tax year in connection with the shares in a controlled foreign company, and the part of expenses resulting from the retirement of such shares for any reason, that is in excess of the income accounted.

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).
In the case of goodwill of acquired participations the loss in value is deductible for corporate income tax purposes.

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
Yes, Hungary applies CFC-type legislation according to Paragraph 4. Point 11. of Act LXXXI of 1996 on Corporate Tax and Dividend Tax.

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	For the purposes of CFC provision, beneficial owner shall mean a private individual who controls - directly or indirectly - at least **ten per cent** of the voting rights or the capital of the nonresident company, **or has a dominant**

	influence by definition of the Civil Code of Hungary.
➢ **A "low-or-no-tax" test? Please indicate.**	If the quotient of the tax amount paid (payable) by the nonresident company for the tax year - less any tax refund - and the tax base [in the case of group taxation arrangement the amount of tax paid (payable) at group level, less any tax refund, and the tax base] is less than 10 per cent or the nonresident company did not pay any tax equivalent to corporate tax on account of its tax base being zero or negative, even though it has made a profit. If the balance sheet total or the tax base is zero or negative, the amount of the tax equivalent to corporate tax according to the laws of the foreign state shall reach 10 per cent.
➢ **An activities based test? Please indicate.**	Real economic presence means when a nonresident company is engaged in gainful activities in another state - together with its affiliates established in that state, where applicable -, such as in manufacturing, processing, agricultural, service, investment and trading activities, using its own equipment and own workforce, where their revenues from such activities represent at least 50 per cent of all revenues; burden of proof of the said real economic presence shall lie with the taxpayer.
➢ **An income based test? Please indicate.**	Controlled foreign company shall mean nonresident company whose revenues for the tax year originate from Hungary for the most part.
➢ **Any other test? Please indicate.**	Controlled foreign company shall mean foreign persons and nonresident entities whose head office is located abroad (hereinafter referred to as "nonresident company"), in which there is a beneficial owner who is considered a resident according to the Personal Income Tax Act concerning the majority of the nonresident company's tax year.
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	No. But CFC provisions shall apply to any fixed establishment of the nonresident company located in a state other than where the said company is established or in which it is a resident.
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	No.
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	CFC provisions shall not apply if the nonresident company in question is established or is a resident of a Member State of the European Union, a Member State of the OECD, or a State with which the Republic of Hungary has an agreement on double taxation and in which state the said nonresident company maintains real economic presence. Real economic presence means when a nonresident

	company is engaged in gainful activities in another state - together with its affiliates established in that state, where applicable -, such as in manufacturing, processing, agricultural, service, investment and trading activities, using its own equipment and own workforce, where their revenues from such activities represent at least 50 per cent of all revenues; burden of proof of the said real economic presence shall lie with the taxpayer. Any nonresident company in which a person that is listed on a recognized exchange for a period of not less than five years effective on the first day of the tax year, or its affiliated company holds a share of at least 25 per cent on each day of the tax year shall not be recognized as a controlled foreign company.

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
Hungary applies CFC-type legislation according to Paragraph 4. Point 11 of Act LXXXI of 1996 on Corporate Tax and Dividend Tax.

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13. IRELAND

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
No. The sole exemption is in the case of portfolio investor companies (companies with a holding or voting rights of *less* than 5 per cent) where the dividends form part of the trading income of the company. This limited exemption for inbound dividends was provided in 2010 to ensure parity of treatment with Irish-source dividends received by insurance companies.

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Not applicable
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Not applicable
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	Not applicable
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	Not applicable
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	Not applicable
1b. If no, please briefly explain your credit system.	
Credit is given for tax paid by 5 per cent (minimum – by reference to voting rights) subsidiaries and sub-subsidiaries, whether withholding tax on the dividends or a proportion of the direct tax paid on the underlying profits from which the dividends were paid. The set-off of credit in any period cannot exceed the Irish corporation tax on the dividends.	

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
Yes Where the conditions are not met the capital gains are subject to a specific capital gains tax or an equivalent amount of corporation tax.

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	There is a 5 per cent minimum participation requirement in all cases— exemption applies to domestic, EU and Double Taxation Treaty-partner participations only.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	In all cases the participation must have been held for a continuous period of 12 months ending within two years prior to the date of disposal of the participation.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	Exemption applies to domestic, EU and Double Taxation Treaty-partner participations only.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	Where the gain on disposal is charged to Irish tax, credit is given for tax on the gain paid in a Treaty partner country.

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).
Not applicable

3. Is a deduction available for <u>realised</u> capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
No

4. Is a deduction available for <u>unrealised</u> capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).
No

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
Not applicable— please see answer at 4. above.

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the

deductible amount (write down, amortisation, provision).
No

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
No. Ireland does not have a general CFC regime. Immediate taxation is only applicable in the limited circumstances of capital gains arising on non-trading assets disposed of by foreign companies controlled by 5 or fewer Irish residents.

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	Not applicable
➢ **A "low-or-no-tax" test? Please indicate.**	Not applicable
➢ **An activities based test? Please indicate.**	Not applicable
➢ **An income based test? Please indicate.**	Not applicable
➢ **Any other test? Please indicate.**	Not applicable
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	Not applicable
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	Not applicable
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	Not applicable

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
Retaining the credit system of relief for foreign tax ensures appropriate taxation of foreign-source dividends representing profits repatriated to Ireland.

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15. LATVIA

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
Yes

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Law "On Enterprise Income Tax" (hereinafter – EIT) provides that dividends received from a resident of Latvia, other EU Member State or EEA state (with which tax information can be exchanged under agreement for the avoidance of double taxation (DTA)), shall be exempted from taxation without any participation requirement. However, dividends received from a resident of the 3rd country shall be tax exempt only if the dividends are received from such a non-resident in which the recipient EIT taxpayer at the time of payment owns at least 25 per cent of the capital and voting rights, provided the payer of the dividends is not a resident in low tax or no tax country or territory listed in the regulations of the Cabinet of Ministers. As from January 1, 2013 dividends received from a resident of the 3rd country will be exempt from taxation without any participation requirement, but only if the payer of the dividends is not a resident of low tax or no tax country or territory listed in the regulations of the Cabinet of Ministers.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	No. In general it is assumed that dividends received from a non-resident company, other than that residing in a low tax or no tax country or territory listed in the regulations of the Cabinet of Ministers, have been paid out of profits that have been subjected to taxation.
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	No
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	In general credit for underlying foreign tax is not granted under the provisions of EIT law. However, it is available under certain number of concluded DTAs (in case of participations of at least 10%).

1b. If no, please briefly explain your credit system.
In respect of dividends, other than those exempt under the EIT provisions, double taxation is eliminated under the ordinary credit method on a per country basis.

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
EIT law provides that capital gains derived from the alienation of securities which are under public circulation in the EU Member States or EEA States shall be exempt from taxation without any participation requirement. As from January 1, 2013 capital gains derived from the alienation of all kind of securities will be tax exempt without any participation requirement. However, this exemption shall not apply if the company, the securities of which are alienated is a resident in a low tax or no tax country or territory listed in the regulations of the Cabinet of Ministers.

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	No. However, exemption shall not apply in respect of capital gains from securities of companies resident in a low tax or no tax countries or territories listed in the regulations of the Cabinet of Ministers.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	No

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).
Capital gains are taxable as part of ordinary profits of recipient, except exempt gains mentioned in 2.

3. Is a deduction available for <u>realised</u> capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
Until 1 January, 2013 losses from the alienation of securities (other than exempt securities under public circulation in the EU Member States or EEA States) may be covered only from the positive

taxable income from the alienation of such securities in a chronological sequence during the eight subsequent taxation periods following that of the alienation of such securities, but not exceeding the amount of the actual losses. However, the mentioned losses may be covered also from the other taxable income in a chronological sequence during the eight subsequent taxation periods if the taxpayer does not regularly performs such sales of securities (not more frequently than once in a taxation period) and the alienated securities have been owned by such a taxpayer for more than 12 months.

4. Is a deduction available for <u>unrealised</u> capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).
No

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
No

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).
No

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
No

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	-
➢ **A "low-or-no-tax" test? Please indicate.**	-
➢ **An activities based test? Please indicate.**	-
➢ **An income based test? Please indicate.**	-
➢ **Any other test? Please indicate.**	-

➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	-
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	-
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	-

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
Under the EIT law provisions EIT taxpayers are obliged to withheld at source tax at the basic EIT tax rate of 15% from any payment paid to persons in low tax or no tax countries or territories listed by the Cabinet of Ministers, provided that such payments are deductible at the determination of taxable income of the EIT taxpayer. The State Revenue Service may allow not to withheld tax from such payments, provided, the taxpayer proves that the transactions with the person in the low tax or no tax country or territory have not been entered with a purpose to reduce the taxable income of the taxpayer (are based on real business activity).

16. LITHUANIA

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
According to Lithuanian Law on Corporate Income Tax (hereinafter - LCIT) we provide for an exemption of inbound intercompany dividends if certain conditions are met: "Dividends received by a Lithuanian entity from Lithuanian entities, in which the recipient controls for an uninterrupted period of at least 12 months, including the moment of distribution of the dividends, at least 10% of voting shares (interests, member shares), shall not be subject to corporate income tax and shall not be included in the income of the entity receiving the dividends (LCIT 33 (2))" or "Dividends received by a Lithuanian entity or a permanent establishment for the shares, portion of capital or other rights held in or attributed to the permanent establishment foreign entities which are registered or otherwise organised in a state of the European Economic Area (hereinafter - EEA) and whose profit is subject to corporate income tax or an equivalent tax shall not be subject to taxation" (LCIT 35 (2)); or "Dividends received by a Lithuanian entity or permanent establishment from foreign entities, not specified in paragraph 2 of this Article, in which the Lithuanian or foreign entity whose permanent establishment (to which the dividend paying shares, portion of the capital or other rights are attributed) receives such dividends controls for an uninterrupted period of at least 12 months, including the moment of distribution of dividends, at least 10% of voting shares (interests, member shares), shall not be subject to taxation, provided that the dividends are received from a foreign entity whose profit is subject to corporate income tax or an equivalent tax and which is not registered or otherwise organised in target territories" (LCIT 35 (3)).

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	There is a minimum participation requirement: at least 10% of voting shares (interests, member shares). The requirement is applied to domestic entities and to the entities which are not registered or otherwise organised in a state of the EEA (LCIT 33 (2), 35(2) or LCIT 35 (3)).
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	There is a minimum holding period: continuously for at least 12 months. The requirement is applied to domestic entities and to the entities which are not registered or otherwise organised in a state of the EEA. (LCIT 33 (2), 35(2) or LCIT 35 (3)).
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	The exemption of inbound intercompany dividends is applicable (if the above-mentioned conditions are met) when a foreign entity's profit is subject to corporate income tax or an equivalent tax (LCIT 35(2) or LCIT 35 (3)).
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the**	The "subject to tax" requirement applies only to the subsidiaries (LCIT 33 (2), 35(2) or LCIT 35 (3)).

subsidiary only or also to indirect subsidiaries. Please explain.	
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	"Where an entity distributes profits by paying dividends in cash in accordance with the procedure laid down in the Law of the Republic of Lithuania on Companies, the Law of the Republic of Lithuania on Cooperative Companies (Cooperatives) and the Law of the Republic of Lithuania on Agricultural Companies, the amount of the withheld corporate income tax shall be set off and reduce the amount of corporate income tax to be paid by the Lithuanian entity receiving the dividends for the tax period during which the tax on the dividends paid to it was withheld. Where in the tax period during which the tax on the dividends paid out was withheld and paid the amount of the offset tax withheld by the Lithuanian entity receiving the dividends exceeds the amount of corporate income tax to be paid by the entity, the difference between the two amounts shall be refunded (credited) in accordance with the procedure for refunding (crediting) of tax overpayment laid down in the Law on Tax Administration" (LCIT 33(3)). A Lithuanian entity may deduct the amount of corporate income tax or equivalent tax paid in a foreign country on income received in that country during the relevant fiscal year from the amount of corporate income tax calculated in accordance with the procedure laid down in LCIT (LCIT 55(1)).

1b. If no, please briefly explain your credit system.
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2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
Yes, we provide for an exemption of capital gains on participation if certain conditions are met: "income from the increase in the value of assets resulting from transfer of shares of an entity registered or otherwise organised in a state of the EEA or in a state with which a treaty for the avoidance of double taxation has been concluded and brought into effect and which is a payer of corporate income tax or an equivalent tax, if the entity that transfers to another entity or natural person the shares held more than 25% of voting shares in that entity for an uninterrupted period of at least two years or if the transfer of shares was made in case of reorganization or alienation (referred to CIT 41(2) which is consistent with EU directive 90/434/EC) – more than 25% of voting shares must be held an uninterrupted period of at least three years. This relief shall not apply if the entity that transfers the shares transfers them to the entity that has issued the shares" (LCIT 12(15))".

2a. If yes:	

➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	There is a minimum participation requirement: more than 25% of voting shares. The requirement is applied to domestic, EEA and treaty participations (LCIT 12(15)).
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	There is a minimum holding period: an uninterrupted period of at least 2 years or if the transfer of shares was made in case of reorganization or alienation (referred to LCIT 41(2) which is consistent with EU directive 90/434/EC) - uninterrupted period of at least 3 years. The requirement is applied to domestic, EEA and treaty participations (LCIT 12(15)).
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	The exemption of capital gains on participations is provided (if the above-mentioned conditions are met) when a foreign entity is a payer of corporate income tax or an equivalent tax (LCIT 12(15)).
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	No.

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).
In all other cases which are not above-mentioned (2a), capital gains are taxed as an ordinary profits in accordance with LCIT 16(1): "Income from the increase in the value of assets shall be income earned which comprises the difference between the price of the sale or other transfer into ownership of assets and the acquisition price of such assets."

3. Is a deduction available for realised capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
Losses incurred as a result of transferring securities or derivative financial instruments shall be carried forward to the following fiscal year, however, such losses will cover only the income received from the transfer of securities and/or derivative financial instruments. Losses incurred as a result of transferring the shares of an entity registered or otherwise organised in a member state of the EEA or in a state with which a treaty for the avoidance of double taxation has been concluded and brought into effect and which is a payer of corporate income tax or an equivalent tax, if the entity that transfers the shares held more than 25% of voting shares in that entity for an uninterrupted period of at least two years shall be deducted from taxable income received from the transfer of securities during the tax period, but the amount of losses deducted in this manner can not exceed the amount of the increase in the value of assets of taxable securities during that tax period and the non-deducted amount of such losses shall not be carried forward to the following fiscal year (LCIT 30(2)). The methodology for calculating the loss: Income from the increase in the value of assets shall be income earned which comprises the difference between the price of the sale or other transfer into ownership of assets and the acquisition price of such

assets (LCIT 16(1)).

4. Is a deduction available for <u>unrealised</u> capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).
No.

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
No.

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).
Where all or one or more branches of activity of another entity in the form of its rights and obligations which from an organisational point of view constitute an independent economic entity engaged in activities and capable of functioning by its own means, are acquired, the accumulated value of goodwill shall be included in the deductions of limited amounts in a manner similar to fixed assets. Where the shares of another entity are acquired for the purpose of controlling its net assets and activity, the accumulated value of goodwill shall be included in the deductions of limited amounts in a manner similar to fixed assets only after subsequent merger of these entities or merger by acquisition of one entity by another, if any. There is 15 years period for amortisation of goodwill using the linear method. (LCIT 18(10),18(5) and the Appendix 1)

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
Yes. The requirements for the application of CFC rules are presented down below.

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	The shareholding test is related to the definition of controlled taxable entity (LCIT 2(4)). Controlled taxable entity (hereinafter referred to as the “controlled entity”) shall mean any entity deemed to be under the control of another entity or a resident of Lithuania (hereinafter referred to as the “controlling person”), provided

	that: 1) it is controlled by the controlling person on the last day of the tax period, and 2) the controlling person holds directly or indirectly over 50% of the shares (interests, member shares) in the controlled entity or other rights to a portion of distributable profits or pre-emptive rights to the acquisition thereof, 3) the controlling person, together with related persons, holds over 50% of the shares (interests, member shares) in the controlled entity or other rights to a portion of distributable profits or pre-emptive rights to the acquisition thereof, and the portion controlled by the controlling person accounts for at least 10% of the shares (interests, member shares) or other rights to a portion of distributable profits or pre-emptive rights to the acquisition thereof.
➢ **A "low-or-no-tax" test? Please indicate.**	In reference with LCIT 39(4 (1)), Minister of Finance order No. 24, 24 January, 2002 (hereinafter – MFO 24) and Minister of Finance order No. 344, 22 December, 2001 (hereinafter – MFO 344) CFC rules shall be applied: 1) The controlled taxable entity is registered or otherwise organized in the state listed in the MFO 344 (known as “Black list”) as a tax haven **or**; 2) The controlled taxable entity is registered or otherwise organized in the state listed in the MFO 24 (known as “White list”) but the form of business organization complies one of the foreign business organization forms which acquiring special corporate income tax or the equivalent tax exemptions under the law of the rezident State regulations **or;** 3) The controlled taxable entity is registered or otherwise organized in the state which is neither listed in “Black list” nor “White list” but where the corporate income tax rate is less than 75% of Lithuanian corporate income tax rate.
➢ **An activity based test? Please indicate.**	(LCIT 2(29) and Government ruling No. 517, 12 April, 2002). All income (known as positive income) received by a controlled entity, registered or otherwise organised in the countries or zones referred to in paragraph 4 of Article 39 of LCIT, or part of such income shall be included in the income of a controlling entity of Lithuania in proportion to the number of the shares (interests, member shares), votes or rights to the profits of the controlled entity held by the Lithuanian entity **except controlled entity’s income received from active activity** if: 1) in the foreign-controlled entity there are as many workers as foreign- controlled entity’s business normally requires, **and** 2) not more than 10% of foreign-controlled entity’s income per tax year is received from other than the state

	(or territory) where this entity is registered or otherwise organized, **and** 3) foreign-controlled entity's income received from the transactions with unrelated persons is more than 50% of all foreign-controlled entity's income per tax year.
➢ **An income based test? Please indicate.**	According to LCIT 39 (5) CFC rules shall not be applied if: 1) the income of a controlled foreign entity comprises only the payments made by the controlling entity which are treated as non-allowable deductions **or** 2) the income of a controlled foreign entity comprises less than 5% of the income of the controlling entity.
➢ **Any other test? Please indicate.**	No.
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	In reference with the definition of controlled foreign entity, there is no difference between direct or indirect holding: "the controlling person holds directly or indirectly over 50% of the shares (interests, member shares) in the controlled entity or other rights to a portion of distributable profits or pre-emptive rights to the acquisition thereof" LCIT 2(4).
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	**According to LCIT 55 (6), (7):** "6. A Lithuanian entity may deduct the amount of corporate income tax or equivalent tax paid in a foreign country on positive income received by a controlled entity in that country during the relevant fiscal year, as specified in paragraphs 6 and 7 of Article 39 of LCIT, from the amount of corporate income tax calculated in accordance with the procedure laid down in LCIT on the positive income included in the income of the Lithuanian entity. Deductions from the calculated amount of corporate income tax shall be allowed in accordance with the procedure laid down in this Article (LCIT 55) only where documents certified by the tax administrator of a foreign country have been issued concerning the income received in that country during the relevant fiscal year and the amount of corporate income tax or equivalent tax calculated and paid on that income and where the Lithuanian entity supplies the local tax administrator with the following information: 1) the name of the controlled entity and the address of its registered office; 2) a list of its managers; 3) the balance sheet and the profit and loss account; 4) the amount of positive income attributed to income 5) evidence of payment of taxes on positive income attributed to income. 7. The Lithuanian entity shall submit the documents specified in paragraph 6 of this Article (55) in accordance with the

	procedure established by the central tax administrator." **and LCIT 39 (6),(7):** "6. A Lithuanian entity shall have the right to reduce corporate income tax on the positive income included in its income, which is payable to the budget and calculated according to LCIT, by the amount of corporate income tax on the positive income of a controlled foreign entity included in the income of the Lithuanian entity, which was paid in a country or zone wherein the controlled foreign entity is registered or otherwise organised, in proportion to the number of the shares (interests, member shares), votes or rights to the profit of the controlled entity held by the Lithuanian entity. Where the tax paid in the said country or zone exceeds the amount provided for in the laws of that country or zone, the Lithuanian entity shall have the right to reduce corporate income tax on the positive income included in its income, which is payable to the budget and calculated according to LCIT, by the amount of tax on the positive income of a controlled foreign entity included in the income of the Lithuanian entity, which had to be paid in the country or zone wherein the controlled foreign entity is registered or otherwise organised. 7. A Lithuanian entity shall have the right to reduce corporate income tax on the positive income included in its income of the Lithuanian entity, which is payable to the budget and calculated according to this Law, by the amount of corporate income tax on the positive income of a controlled foreign entity included in the income of the Lithuanian entity, which was paid in a foreign country with which the Republic of Lithuania has concluded a treaty for the avoidance of double taxation and the prevention of fiscal evasion and under the relevant law whereof the positive income of the controlled foreign entity is included in the income of the entity of that country and taxed subject to the rules analogous to those laid down in LCIT."
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	No.

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
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17. LUXEMBURG

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
Yes

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	The recipient owns at least 10% of the share capital of the distributing company / entity or the acquisition cost of the shareholding is at least € 1.2 million. The recipient: a company / entity listed in annex I, part A of directive 2011/96 UE resident in Luxembourg or a capital company not listed in the annex, but resident fully liable to tax in Luxembourg or a permanent establishment in Luxembourg of such a company / entity or a permanent establishment in Luxembourg of a capital company resident of a State where Luxembourg has a DTC or a permanent establishment of an EEE capital company or cooperative society. The payer: a company / entity listed in annex I, part A of directive 2011/96 UE or a resident fully liable to tax capital company not listed in the annex or a non resident capital company subject to a tax corresponding to Luxembourg corporation tax
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	The recipient holds the minimum participation in the distributing company for at least 12 months. No differences in treatment.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	See answer in 1a.
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	A corresponding income tax to Luxembourg corporation tax must be satisfied by the direct subsidiary. 3 criterions have to be fulfilled: 1) a State tax 2) a comparable assessment basis

	3) a comparable tax rate (at least half of the rate of Luxembourg corporation tax).
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	No

1b. If no, please briefly explain your credit system.
Luxembourg gives credit only for taxes paid by the taxpayer.

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
Yes

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	The holding represents at least 10% of the share capital of the subsidiary or the acquisition cost of the shareholding is at least € 6 million. Same companies / entities as under 1 a..
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	The recipient holds the minimum participation in the distributing company for at least 12 months. Same companies / entities as under 1 a..
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	See 1 a.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	No

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).
With companies / entities – generally as a business profit, in some cases as a capital gain, but Luxembourg does not apply a specific capital gains tax.

3. Is a deduction available for realised capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).

If a loss occurs when a shareholding is sold or otherwise alienated, this loss is tax deductible. The loss is computed by comparing the book value to the selling price.

4. Is a deduction available for <u>unrealised</u> capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).
Unrealised capital losses are tax deductible, when there is a need to depreciate a shareholding (write down), however, if such a write down is linked to an exempt dividend, such a loss is not deductible.

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
If in a subsequent year the value of the shareholding will increase the formerly incurred loss is recaptured for tax purposes, the same will apply if a shareholding is sold and where the capital gain is tax exempt

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).
No

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
No

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	n/a
➢ **A "low-or-no-tax" test? Please indicate.**	n/a
➢ **An activities based test? Please indicate.**	n/a
➢ **An income based test? Please indicate.**	n/a
➢ **Any other test? Please indicate.**	n/a
➢ **Is there a layer limitation in the CFC-definition (application to**	n/a

indirect subsidiaries).	
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	n/a
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	n/a

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
Luxembourg applies a general anti-abuse rule which enables the tax authorities to requalify wholly artificial arrangements. The application of the concept of simulation allows the disregarding of pretended legal transactions for tax purposes. According to the concepts of substance over form and economic ownership, transactions in which the economic reality is not identical with the taxpayer's choice would for tax purposes be classified based on the economic qualification.

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18. MALTA

19. NETHERLANDS

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
Yes, participation exemption.

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Yes, 5%. No difference between domestic, EU, treaty or 3rd country participations.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	Yes, but only if the participation is held as a portfolio investment and if more than 50% of the assets of the direct and indirect subsidiaries consists of passive investments.
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	Both direct and indirect subsidiaries.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	Yes.

1b. If no, please briefly explain your credit system.
N/A.

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
Yes.

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country**	Yes, cf. 1a.

participations? Please explain.	
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	Yes, cf. 1a.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	Yes.

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).
N/A.

3. Is a deduction available for <u>realised</u> capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
Only upon liquidation (acquisition price minus liquidation proceeds).

4. Is a deduction available for <u>unrealised</u> capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).
No.

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
N/A.

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).
No.

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
No.

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	[reply]
➢ **A "low-or-no-tax" test? Please indicate.**	[reply]
➢ **An activities based test? Please indicate.**	[reply]
➢ **An income based test? Please indicate.**	[reply]
➢ **Any other test? Please indicate.**	[reply]
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	[reply]
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	[reply]
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	[reply]

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
Mandatory annual revaluation of a shareholding in a passive investment subsidiary, profits arising, if any, will be taxed accordingly. Transfer pricing rules and general anti-avoidance rule (abuse of law).

20. POLAND

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
yes

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	**Dividends being paid in domestic transactions**: dividends paid in transaction between Polish residents are tax exempted if the recipient directly holds no less than 10 per cent shares in the capital of paying company **Dividends being paid by EU resident**: revenues earned by the Polish residents, from dividends paid by legal persons whose registered office is located beyond the territory of the Republic of Poland, shall be free from tax if the recipient directly holds no less than 10 per cent shares in the capital of the paying company (the same applies to European Economic Area) **Treaty:** generally dividends are taxed at the rate of 19%. However, this rate is applied taking into consideration DTAs in which Poland is a party. Application of the tax rate or refraining from tax collection under the relevant DTA shall be possible provided that the taxpayer documents his place of residence for tax purposes by "certificate of residence". Minimum participation requirement varies depending on specific DTA. (generally if such requirement exists it is 10%)
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	**Dividends being paid in domestic transactions:** the exemption shall apply where the company receiving payments holds shares of the paying company for a period of two years without interruption. **Dividends paid by EU resident:** the same rules apply to EU and EEA country participations. The abovementioned exemption shall also apply where the two-year period of uninterrupted shareholding in the amount of 10 percent lapses after the date of earning this income (revenue). Where the prerequisite to hold the shares in the amount specified above without interruption for a period of two years is not met, the company that applied the exemption shall submit a correction of the tax return for the tax years when it applied the exemption. **Treaty**: Minimum holding period varies depending on specific DTA regulations (2 year or there is no such requirement)
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	Yes, there is. The payer of the dividend is a company which is subject to taxation on the entirety of its income in a European Union member state other than the Republic of Poland or in another state of the European Economic Area

	regardless of where it is earned. The recipient is a company being a payer of income tax, having its registered office or management within the territory of the Republic of Poland and that company does not enjoy exemption from income taxation on the entirety of its income, regardless of where it is earned.
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	Direct only.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	No

1b. If no, please briefly explain your credit system.
Where Polish residents also earn income (revenues) beyond the territory of the Republic of Poland and this income is subject to taxation in a foreign state and in the tax settlement for a given tax year, this income (revenues) shall be combined with the income (revenues) earned within the territory of the Republic of Poland. In such a case, the calculated tax on the total amount of income shall be decreased by an amount equal to the tax paid in the foreign state. Nevertheless, the amount of deduction shall not exceed the part of tax calculated prior to making the deduction, that is proportionally attributable to the income earned in the foreign state. In the event where: 1) a company having a legal personality, with its registered office or management within the territory of Poland, earns income (revenues) from dividends, as well as other revenues from participation in the profits of a legal person, and 2) the income (revenues) referred to in point 1 are earned due to participation in the profits of a company subject to taxation on the entirety of its income, regardless of where it is earned, within the territory of a state bound with the Republic of Poland with an agreement in force for the avoidance of double taxation, where such state is not a European Union member state nor one belonging to the European Economic Area, nor is it the Swiss Confederation, and 3) the company referred to in point1 directly holds no less than 75 per cent shares in the capital of the company referred to in point 2 - a right to a deduction also applies to the amount of tax on the income in respect of which the profit has been paid, such amount of tax having been paid by the company referred to in point 2 in the state where its registered office is located - in the part corresponding with the share of the company referred to in point 1 in the profits paid out by the company referred to in point 2.

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
yes

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Similarly as in 1a.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Similarly as in 1a question 2.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	Similarly as in 1a question 3.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	Similarly as in 1a question 5.

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).

3. Is a deduction available for realised capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
No, except of sales of shares.

4. Is a deduction available for unrealised capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).
no

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
In case of sales of shares, the loss may be carried forward for five tax years subsequent to the year in which it was suffered, however, in no single year of this period may the income be lowered in respect of such losses by an amount exceeding 50 per cent of the total amount carried forward.

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the

deductible amount (write down, amortisation, provision).
Amortisation of goodwill is possible if such goodwill arose as a result of acquisition of an enterprise or an organised part thereof by means of: purchase; adopting for paid use, whereas the depreciation write-downs are made by the user; contribution to the company under the regulations on commercialisation and privatisation. The initial value of goodwill shall be the positive difference between the price of acquisition of an enterprise or an organised part thereof or the nominal value of shares issued in exchange for a contribution in kind, and the market value of assets being part of the enterprise or of the organised part thereof that was purchased, adopted for use for consideration or contributed to the company - respectively from the date of purchase, of adoption for use for consideration or contribution to the company.

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
No

7a. If yes, does the definition of a CFC contain:	n/a
➢ **A minimum shareholding test? Please indicate.**	n/a
➢ **A "low-or-no-tax" test? Please indicate.**	n/a
➢ **An activities based test? Please indicate.**	n/a
➢ **An income based test? Please indicate.**	n/a
➢ **Any other test? Please indicate.**	n/a
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	n/a
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	n/a
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	n/a

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
Transfer pricing rules.

21. PORTUGAL

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
Yes

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	The minimum participation is: - 10%, for domestic and EU participations; and - in general, 25%, for treaty and third country participations
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	The minimum holding period is: - one year for domestic and EU participations; and - in general, two years for treaty or third country participations
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	Yes. **1**. Concerning domestic and EU participations, the dividends qualify for the participation exemption regime only when they are paid out of profits that have been subject to "effective taxation". The domestic law does not provide any explicit indication of what is meant by "effective taxation". However, the tax authorities issued a "Circular" in order to clarify the concept of "effective taxation" for the purpose of the application of the participation exemption regime. Under this "Circular", profits are considered to be subject to "effective taxation" when they: - have been subject to and not exempt from Portuguese corporate income tax, or to a comparable foreign tax, and such taxation has actually been borne; however, a minimum level of taxation has not been defined; - have been actually taxed at the level of the subsidiary distributing the profits or at any other lower tier subsidiary of the corporate structure; or - refer to profits distributed by an EU subsidiary, which is subject to and not exempt from corporate income tax, as provided for in the Parent-Subsidiary Directive (90/435) of 23 July 1990. In addition, profits should be considered as having been subject to corporate income tax even if the entity distributing the profits has not paid any amount of tax, as a result from (i) offsetting of tax losses brought forward; (ii) tax deductions of a temporary nature (e.g. depreciation charge); or (iii) the use of tax credits.

	Finally, the "Circular" also considers that the general anti-avoidance rule may be applicable on a case-by-case basis . In this sense, the participation exemption regime may be denied to artificially created corporate structures or interposed companies whose income that is subject to, and not exempt from tax, is: - not significant when compared with the global amount of profits of the respective taxable period; or - not derived from an effective economic activity of the company. **2.** Concerning treaty or 3rd country participations, the law establishes a minimum effective taxation requirement, i.e, the dividends must be related to profits of the subsidiary that have been taxed at a rate of at least 10% and that are not derived from passive activities, namely (a) royalties, (b) capital gains, (c) other income related to securities, (d) income from immovable property situated outside the subsidiary's state of residence or (e) banking and insurance income from operations not directed to that particular market
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	The requirement of "effective taxation" can be met at any level of the profits distribution chain, i.e., at the level of a subsidiary or at the level of any sub-affiliated companies that contributed to the generation of those profits.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	NO

1b. If no, please briefly explain your credit system.
N/A

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
- Holding companies qualify for a full exemption in respect of capital gains realized on the disposal of shares or other corporate rights held for at least 1 year. This does not, however, apply to capital gains on corporate rights that have been held for less than 3 years and were acquired from a related party or a resident of a listed tax haven. - An exemption regime of capital gains is also applicable, with some exceptions, whenever the alienator is a non-resident entity .

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	The minimum holding period (one year) is only applicable to the participations alienated by resident holding companies.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	No
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	No

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).
Whenever capital gains don't benefit from an exemption, they are taxed as ordinary profits

3. Is a deduction available for <u>realised</u> capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
The capital losses for tax purposes correspond to the difference between the proceeds from the disposal and the cost of acquisition adjusted in accordance with the indexation coefficient for the year of acquisition. Capital losses are not deductible if the corporate rights (i) have been held for less than 3 years and were acquired from a related party or a resident entity subject to special tax regime; or (ii) are sold to a related party or a resident entity subject to a special regime of taxation; or the (iii) the alienation is made by a resident holding, under certain conditions. In the other cases, only 50% of the net capital loss incurred in the tax year on the sale of shares or other corporate rights is deductible.

4. Is a deduction available for <u>unrealised</u> capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).
No

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
N/A

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).
N/A

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
Yes

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	A resident entity is deemed to have a substantial participation in a non-resident entity for CFC purposes if it owns (directly or indirectly, including through an agent, a fiduciary or an interposed person): - 25% or more of its capital or voting rights or rights over income or property of that entity ; or - 10% or more of its capital, or voting rights or rights over income or property of that entity where more than 50% of its capital or voting rights or rights over income or property of that entity is owned (directly or indirectly , including through an agent, a fiduciary or an interposed person) by resident entities.
➢ **A "low-or-no-tax" test? Please indicate.**	The controlled foreign entity should be subjected to a privileged tax regime. This requirement is deemed to be verified in the following situations : - The entity is resident in a low-tax jurisdiction included in the list approved by the Ministerial Order (Portaria) nº 292/2011 of 8 November 2011, or. - The entity is resident in any country in which it is not taxed or it is taxed but the tax burden is equal to or less than 60% of the IRC paid if it were resident in Portugal.
➢ **An activities based test? Please indicate.**	No attribution of profits will take place if the foreign entity meets the following conditions : - at least 75% of its profits arise from local farming or

	manufacturing activities, or from commercial transactions mainly with the local market or not involving Portuguese residents; and - its main activity is other than one of the listed activities (e.g. banking, certain types of insurance, holding or transfer of corporate rights or other securities).
➢ **An income based test? Please indicate.**	The resident controlling entity must include in its taxable income the after-tax profits of the non-resident controlled entity in proportion to its total direct or indirect participation.
➢ **Any other test? Please indicate.**	No
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	No
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	No. There is only a tax credit in respect of the foreign withholding tax on dividends paid by the controlled entity.
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	In theory, yes, under the general mechanism applicable to a binding information. There are no practical examples.

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
N/A

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22. ROMANIA

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
Yes.

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Domestic – 0%. EU – 10%. Treaty – as it is provided in the treaty. Third country – we don't apply any exemption.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Domestic – none. EU – 2 years. Treaty - as it is provided in the treaty.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	No.
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	No.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	No.

1b. If no, please briefly explain your credit system.
Not necessary.

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
No.

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country**	-

participations? Please explain.	
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	-
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	-
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	-

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).
The capital gains are taxed as ordinary profits.

3. Is a deduction available for <u>realised</u> capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
Yes, we have a deduction available for realised capital losses concerning the participations and the loss is calculated as a difference between the sale price and the acquisition price.

4. Is a deduction available for <u>unrealised</u> capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).
Yes, we have a deduction available for unrealised capital losses of participation through the depreciation rules.

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
No, it is not subject to a recapture rule.

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).
No.

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
No.

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	-
➢ **A "low-or-no-tax" test? Please indicate.**	-
➢ **An activities based test? Please indicate.**	-
➢ **An income based test? Please indicate.**	-
➢ **Any other test? Please indicate.**	-
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	-
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	-
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	-

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
No.

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23. SLOVAK REPUBLIC

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
Yes. According to the Act No. 595/2003 Coll. on Income Tax as later amended (hereinafter only "Income Tax Act") dividends paid out of profit of a company (whether Slovak company, or similar foreign company) to persons who participate in the company´s share capital (whether individuals, or legal entities), are not subject to tax in the Slovak Republic. This provision applies to dividends paid out of company profits generated since 2004. Dividends paid out of company profits generated before 2004 are taxable income. Dividends are tax exempt in the Slovak Republic only if the distribution of dividends is made in compliance with the Business Code, i.e. the distribution is approved by the general meeting of shareholders, dividends are paid out of profit after tax etc.

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No. As mentioned in answer to question 1, dividends are paid out by a company to persons who participate in the company´s share capital (no minimum participation requirement).
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No. There are no special requirements other than those listed in answer to question 1.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	Dividends are not subject to tax in the Slovak Republic, whether they are paid to an individual, or to a legal entity. As mentioned in answer to question 1, dividends must be paid out of profit **after** tax to be classified as dividends that are exempt from taxation in the Slovak Republic, i.e. there has to be effective taxation of profits at the level of company that pays out the dividends.
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	N/A Exemption of dividends from taxation is applied to persons (individuals, or legal entities generally) that have participation in the company´s share capital.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	If profit distribution does not meet above mentioned requirements (especially that dividends have to be paid out of profits after tax), the tax exemption shall not be applied as such payment is not considered to be dividend payment. Tax authority has the right to prequalify and tax such income based on the actual substance of the transaction in relation to which the income is paid. When applying method for elimination of double taxation (in case of particular payment), pertinent double tax treaty would be

	taken into account.

1b. If no, please briefly explain your credit system.
N/A

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
No. According to the Income Tax Act capital gain is ordinary taxable income.

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	N/A
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	N/A
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	N/A
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	N/A

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).
Capital gain is ordinary taxable income of legal entity and is included in the tax base (taxed at 19 % tax rate).

3. Is a deduction available for <u>realised</u> capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
No. According to the Income Tax Act loss from sale of company shares is not tax deductible (the loss arises when the acquisition costs exceed the sale price).

4. Is a deduction available for unrealised capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).
No. Unrealised capital losses (from revaluation of long-held shares in company) are recorded on balance sheet accounts, i.e. they do not affect profit/loss or tax base.

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
N/A (Please refer to answers to questions 3 and 4)

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).
Goodwill may be amortized (included in tax base) only if the transferred assets are valued at real value for tax purposes. Goodwill is calculated as the difference between the purchase price/investment value and the real value of assets and liabilities. Such goodwill is amortized for tax purposes during maximum of consecutive seven years, in the amount at least of one seventh of the total goodwill. Goodwill shall not be amortized if transferred assets are valued at its original (tax) value, then it is not tax deductible expense. This legislative treatment is in accordance with the Council Directive 2009/133/EC on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States.

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
No. Slovak legislation does not provide for CFC legislation.

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	N/A
➢ **A "low-or-no-tax" test? Please indicate.**	N/A
➢ **An activities based test? Please indicate.**	N/A

➢ **An income based test? Please indicate.**	N/A
➢ **Any other test? Please indicate.**	N/A
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	N/A
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	N/A
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	N/A

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
General anti-abuse rule ("substance over form") enables tax administrator to prequalify and tax the income based on the actual substance of the transaction in relation to which the income is paid (as mentioned in answer to question 1a. in the last row).

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24. SLOVENIA

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
Yes. An exemption of inbound intercompany dividends if certain conditions are met is stipulated by Corporate Income Tax Act (CIT-2).

1a. If yes:	
➢ **Do you have a minimum participation requirement? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	Yes, there are “subject-to-tax” and "minimum effective taxation" requirement. A payer must: - be a taxpayer under CIT-2; or - (according to the tax law of a Member State) considered to be resident in Member State for tax purposes and, under the terms of a double taxation agreement concluded with a third State, is not considered to be resident for tax purposes outside Community and, in addition, must be subject to one of the taxes to which the common system of taxation, applicable in the case of parent companies and subsidiaries of different Members States applies, and without the possibility of an option or of being exempt; or - be a taxpayer - subject to income tax and/or profit tax, comparable to the tax under CIT-2. There is no exemption in a case a payer is a resident of the state, and in the case of a business unit this is located in a state where the general and/or average nominal rate of taxation applicable to profits generated by companies is lower than 12.5% and the state is listed on a published list in accordance with CIT-2. This does not apply to a payer who is a resident of another EU Member State.
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	It applies to the subsidiary only.
➢ **Is a tax credit for underlying taxes available in case one of the above**	A tax credit for underlying taxes is not available.

requirements is not met? Please explain.	

1b. If no, please briefly explain your credit system.
We have ordinary tax credit on country by country basis – for elimination of juridical double taxation. It is available only for taxation of income of foreign permanent establishment and for withholding tax on different income which is included in taxpayer's tax base.

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
Yes. 50% of profit from disposal of equity holdings is exempt from the tax base of the taxpayer.

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Yes, there is a minimum participation requirement. According to CIT-2 50% of profit is exempt from the tax base of the taxpayer, if the taxpayer who earns profit has participated in capital and/or managing of another person in such a manner that he/she is the holder of a holding, shares or voting rights amounting to at least 8%. It is not different for domestic, EU, treaty or 3rd country participations.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Yes, there is a minimum holding period. According to CIT-2 exemption of profits from disposal of equity holdings is available if the time of participation (see above) in capital and/or managing companies, cooperative societies and other types of organisations last at least 6 months. It is not different for domestic, EU, treaty or 3rd country participations.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	Yes. The abovementioned exemption is not applicable in a case of profits from investments in ownership shares of companies, cooperative societies or other types of organisations that have a seat or place of actual operation of their management established in states where the general and/or average nominal rate of taxation applicable to the profits generated by companies is lower than 12.5% and the state is listed on a published list in accordance with CIT-2 and the these states are not EU Member States.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	No. In general, there is no tax credit for underlying taxes.

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a

specific capital gains tax).
Capital gains are taxed as ordinary profits.

3. Is a deduction available for <u>realised</u> capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
Yes, deduction is available for realised capital losses concerning the participation. 50% of losses arising from disposal of equity holdings under certain condition (see answer 2a.) are exempt from the tax base of the taxpayer. Loss arising from disposal of equity holdings is calculated as a surplus of purchase price or carrying amount after revaluation above the sum of the consideration received less cumulative loss plus cumulative gain that had been recognised directly in equity.

4. Is a deduction available for <u>unrealised</u> capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).
No. Deduction is available only for unrealised capital losses arising from revaluation of financial investments and/or financial instruments at fair value through profit or loss.

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
No.

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).
In accordance with the accounting standards amortisation of goodwill is not allowed. For tax purposes - deduction is available for the expenses arising from a revaluation for impairment in goodwill in the accounted amount, however not exceeding an amount equalling 20% of the initial goodwill value. The surplus amount, which is not recognised as expense, shall be recognised in subsequent periods in such a way that this transferred amount plus the expense arising from revaluation for impairment in goodwill in the current tax period shall not exceed an amount equalling 20% of the initial goodwill value.

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub) subsidiaries)?
No, we do not apply CFC-type legislation.

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	[reply]
➢ **A "low-or-no-tax" test? Please indicate.**	[reply]
➢ **An activities based test? Please indicate.**	[reply]
➢ **An income based test? Please indicate.**	[reply]
➢ **Any other test? Please indicate.**	[reply]
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	[reply]
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	[reply]
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	[reply]

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
We have described the anti avoidance rules for inbound dividends and realised capital gains in 1a and 2a. We have general tax measures as transfer pricing rules, non deductibility of interest, WHT on interests and some services paid to jurisdiction with tax rate lower than 12.5%.

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25. SPAIN

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
Yes, article 21 of Spanish Corporation Tax Law provides for an exemption to avoid double taxation of dividends and foreign-sourced income derived from the transfer of securities of companies non resident in Spain.

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Under Article 21.1.a, the minimum direct or indirect participation in the capital or equity of the non resident company is determined in a 5%. There is no exemption for domestic participations.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Under Art 21.1.a, the minimum holding period is 1 year.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	Under Art 21.1.b: the participated company must have been taxed under a foreign tax identical or substantially similar to the Spanish Corporation Tax in the tax year in which the profits distributed or participated are derived. This requirement shall be considered met if the participated company is a resident of a country with which Spain has signed a Convention to Avoid Double Taxation applicable to it, which includes an exchange of information clause.
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	It is also applicable to indirect subsidiaries. They have also to fulfil the minimum participation and the minimum holding period requirements.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	Under Art 32.1, when the tax base includes dividends or participation in profits paid by a company non resident in Spain, the tax effectively paid with respect to the profits out of which the dividends are paid (underlying tax) shall be credited. The amount to be credited is that attributable to such profits, as long as it is included in the taxpayer's tax base. To make this credit enforceable it is required: i) a direct or indirect participation in the capital of the non resident company of at least 5%; and ii) an uninterrupted holding during the year prior to the day in which the profit to be distributed becomes due; otherwise, the participation must be held for the time necessary to complete a year.

1b. If no, please briefly explain your credit system.
[reply]

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
Under Art 21.2 income derived from the transfer of participations in a company non resident in Spain is exempt when requirements in Art. 21.1 are met.

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	The minimum participation is 5% (EU or 3rd countries). There is no exemption for domestic capital gains.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	The minimum holding period is 1 year.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	The participated company has to be taxed under an identical or substantially similar tax to the Spanish Corporate Income Tax.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	No.

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).
[reply]

3. Is a deduction available for <u>realised</u> capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
Art 21.2.c) In the case of the transfer of a participation in a company non resident in Spain, when the participation in the non resident company has been previously transferred by another entity of the same group of companies than the taxpayer and such transfer has derived a negative income integrated in the tax base of this tax. Any positive income derived from the subsequent transfer of the participation is taxed up to the amount of the negative income formerly derived by the other company of the group. Art 21.4 2° paragraph: Likewise, if a negative income is derived from the transfer of the participation in a non resident company formerly transferred by another company meeting requirements to be a part of the same group of companies as the taxpayer, such negative income is lessened in the amount of the

positive income formerly derived in the transfer to which the exemption was applied.

4. Is a deduction available for unrealised capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).
Art 21.4, 1st paragraph: If the exemption was applied to foreign-sourced dividends the amortization of the participation cannot be included in the tax base, irrespective of its nature and of the tax year in which it arises, up to the amount of such dividends.

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
[reply]

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).
No

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
Yes, it is foreseen in Article 107 of Corporate Income Tax Law

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	Art 107.1.a. Taxpayers on their own or together with related persons or entities must have a participation equal to or exceeding 50% in the capital, equity, results or voting rights of the company non resident in Spain at the closing date of the business year of the non resident company.
➢ **A "low-or-no-tax" test? Please indicate.**	Art 107.1.b. The amount paid by the company non resident in Spain, attributable to any type of income qualified for inclusion in the taxable base due to the equal or similar nature of the tax paid, has to be less than 75% of the amount which would have been calculated in accordance with the Spanish Corporation Tax rules.
➢ **An activities based test? Please indicate.**	Art 107.2 Only positive income derived from the following sources shall be included in the taxable base: a. Ownership of urban or rural properties or rights

	attributable to them, except when these properties are attached to a business activity or assigned for their use by non resident companies belonging to the same group of companies as the owner. b. Participation in equity of any entity and assignment to third parties of equity, subject to some exceptions. c. Credit, financial, insurance or services activities, except services directly related to export activities directly or indirectly performed with related persons or entities resident in Spain as long as these activities generate tax allowable expenses in these resident companies. Positive income shall not be included if more than 50% of the above mentioned revenues come from transactions performed with non related persons or entities. d. Transfer of goods and rights referred to in paragraphs a and b generating income.
➢ **An income based test? Please indicate.**	Art 107.2.d: Income provided for in paragraphs a, b and d of paragraph 107.2 derived by the non resident company shall neither be included when stemming from companies in which it directly or indirectly participates in more than 5%, if the revenue of the companies deriving the income comes at least in an 85% from business activities. Art 107.3 Income referred to in paragraphs a, b and d of paragraph 107.2 shall not be included when their total amount is less than 15% of total income or 4% of total revenues of the non resident company.
➢ **Any other test? Please indicate.**	No
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	The CFC regime is also applicable to indirect subsidiaries.
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	Art. 107.9 The following amounts are allowable from net payable tax: a. Taxes or levies effectively paid of the same or similar nature as the Corporation Tax, in the amount corresponding to any positive income included in the tax base. b. The tax or levy effectively paid abroad on the distribution of dividends or the participation in profits, in the amount corresponding to any positive income previously included in the tax base. In the case of indirect participation in the non resident company through one or more non resident companies, the tax or levy effectively paid of the same or similar nature to the Corporation Tax shall be deducted by this or these companies, in the amount corresponding to the positive income previously included in the taxable base.

	The total amount of deductions referred to in paragraphs a and b cannot exceed the amount payable in Spain on the positive income included in the tax base.
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	Art 107.15 The provisions of this Article shall not apply if the company non resident in Spain is a resident of another EU Member country, provided that the taxpayer proves that its incorporation and operation has sound economic reasons and that it performs business activities.

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
[reply]

Annex 2

27. UNITED KINGDOM

1. Does your Member State provide for an exemption of inbound intercompany dividends if certain conditions are met?
Yes.

1a. If yes:	
➢ **Do you have a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No.
➢ **Is there a minimum holding period? Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	No.
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	No.
➢ **Does the "subject-to-tax" or "minimum effective taxation" requirement apply to the subsidiary only or also to indirect subsidiaries. Please explain.**	Not applicable.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	Not applicable.

1b. If no, please briefly explain your credit system.
Not applicable. The UK does provide for an exemption.

2. Does your Member State provide for an exemption of capital gains on participations if certain conditions are met?
Yes – but only for disposals by a member of a trading group of substantial shareholdings in trading companies or in the holding company of a trading sub-group.

2a. If yes:	
➢ **Is there a minimum participation requirement. Is this different for domestic, EU, treaty or 3rd country participations? Please explain.**	Yes – 10% holding of ordinary share capital in all cases.
➢ **Is there a minimum holding period? Is this different for**	Yes – 12 months, in all cases.

domestic, EU, treaty or 3rd country participations? Please explain.	
➢ **Is there a "subject-to-tax" or "minimum effective taxation" requirement? If yes, please explain.**	No.
➢ **Is a tax credit for underlying taxes available in case one of the above requirements is not met? Please explain.**	Not for underlying tax. If a chargeable gain on the same shares is taxed in another territory then relief may be due, subject to the provisions of any Double Taxation Agreement.

2b. If no, please briefly explain how capital gains are taxed (as ordinary profits or under a specific capital gains tax).
Where the substantial shareholding exemption does not apply then gains are subject to corporation tax on chargeable gains.

3. Is a deduction available for <u>realised</u> capital losses concerning the participations? If yes please briefly explain the conditions and methodology for calculating the loss (acquisition minus sales price or different).
Where the conditions for exemption under the substantial shareholding exemption are met then realised losses are not deductible.

4. Is a deduction available for <u>unrealised</u> capital losses of participations? If yes please briefly explain the conditions and methodology for calculating the loss (write down, amortisation, provision).
No – unless the holding has become of negligible value, in which case the holder may claim to treat the asset as if it had been disposed of. But not if subject to substantial shareholding exemption (SSE).

5. Is the deduction for (un)realised capital losses of participations subject to a recapture rule? If yes please explain the methodology.
Yes - if there is a subsequent disposal of the asset.

6. Is a deduction available for amortisation of any underlying goodwill of acquired participations? If yes please briefly explain the conditions and methodology for calculating the deductible amount (write down, amortisation, provision).
No.

7. Do you apply CFC-type legislation (immediate taxation of profits realised by foreign (sub)subsidiaries)?
Yes. Please note the questionnaire has been answered by reference to new draft CFC rules contained in Finance Bill 2012. These rules will have effect for CFCs with accounting periods beginning on or after 1 January 2013.

7a. If yes, does the definition of a CFC contain:	
➢ **A minimum shareholding test? Please indicate.**	The definition of whether an overseas company is a CFC is dependent on a range of factors, one of which includes shareholding. Once it is established that an overseas company is a CFC, a 25% shareholding is required before CFC profits are apportioned to any of the UK shareholders.
➢ **A "low-or-no-tax" test? Please indicate.**	Yes – rules only apply if tax suffered by CFC is less than 75% of tax that would be suffered in UK.
➢ **An activities based test? Please indicate.**	Yes. Profits may be brought into the CFC regime because the activity that generates the profit is in the UK.
➢ **An income based test? Please indicate.**	Yes. The CFC charge is limited to certain defined categories of profit arising in the CFC.
➢ **Any other test? Please indicate.**	There are a number of entity based exemptions: excluded territories test; low profits test; low profit margin test; temporary period of exemption following acquisition or reorganisation.
➢ **Is there a layer limitation in the CFC-definition (application to indirect subsidiaries).**	Rules apply to direct and indirect subsidiaries.
➢ **Is a tax credit for underlying taxes available in case your CFC rules trigger immediate taxation of non-distributed income? Please explain.**	In exceptional circumstances (for example a CFC charge in respect of dividend income that would not be exempt if received by a UK company), underlying tax credit would be given. Generally, credit will be given for foreign taxes paid in the CFC territory of residence, in effect leaving the UK with a secondary tax charge on the CFC profits.
➢ **Do you provide advance clearance on the non-applicability of your CFC provisions? If yes, please explain via examples.**	Yes – clearance is available on all aspects of the regime. For example, whether entity level exemptions apply, whether the UK activity conditions are met, or whether a full or partial charge arises in respect of finance income.

7b. If you don't apply CFC-type legislation, do you apply alternative anti-avoidance rules to ensure that profits artificially diverted which may give rise to foreign source dividends are appropriately taxed? Please explain.
Not applicable. The UK does apply CFC legislation.