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***FEE SURVEY ON THE FISCAL
TREATMENT OF THE TRANSFER
OF SMALL AND MEDIUM-SIZED
ENTERPRISES (SMEs)***

2000 UPDATE

FEE Survey on the Fiscal Treatment of the Transfer of Small and Medium-Sized Enterprises (SMEs)

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FEE survey on the fiscal treatment of the Transfer of SMEs

SECTION I

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RECOMMENDATIONS CONCERNING THE FISCAL TREATMENT OF THE TRANSFER OF SMEs

I. INTRODUCTION

FEE has recently updated its 1997 survey on the fiscal treatment of the transfer of SMEs in the European Union. The study deals in particular with questions related to the sale, the donation and the transfer "mortis causa" of a whole business, of an interest in a partnership and of shares held in a limited liability company or other corporations. The following reflections are mostly covering issues related to a transferor who is an individual or a partnership of individuals. It also includes a country report highlighting current developments as well as tax reforms in a number of countries.

II. SALE OF SMEs

- The tax treatment of the capital gains

Capital gains related to the sale of a business, of an interest in a partnership, of shares in a limited liability company or in a corporation by an individual in principle are subject in all countries to personal income tax. On a pro-rata basis the same rules apply in the majority of countries on the sale of a business and the sale of a partnership interest. Some Member States differentiate between current income and capital gains by applying different tax rates to capital gains. In addition, capital gains realised on the sale of shares are often treated differently than capital gains from the sale of a business or a partnership interest. This appears to be a major distortion. In Italy partnerships cannot benefit from a specific procedure (restricted to individuals) in order to reduce the tax rate.

The tax treatment of capital gains varies notably among Member States and in many instances creates a serious obstacle on the transfer of ownership of SMEs.

- Methods for the determination of capital gains

Capital gains related to the sale of a business, the sale of an interest in a partnership and the sale of shares in a limited liability company or in a corporation are quantified using different methods in the various countries. If relative uniformity exists for gains related to the sale of a business, the determination of gains arising from the sale of an interest in a partnership and from the sale of shares in a limited liability company or in a corporation is the result of the application of different procedures in several EU Member States. In particular with regard to capital gains on the sale of shares the taxation depends to a large extent on whether the shares are held as a business asset or whether they are owned by an individual as a private (non-business) asset and whether the shares sold represent a significant participation in the company.

- Thresholds/allowances/reduced rates

Thresholds and/or allowances related to gains arising from the sale differ substantially among the countries investigated. Moreover, while a reduction of tax rates is sometimes applied, only a few countries admit important reliefs and the use of indexation factors to adjust the value determined in order to reduce the impact of inflation. All these factors influence in a fundamental way the determination of the taxable base which diverges significantly in all EU Member States. The implementation of a fixed threshold and a unified system of reduced rates in all Member States would certainly be a major step towards equal treatment for all EU businesses.

- The transfer and the deferral of these capital gains

The roll over of a capital gain arising from the sale of a business into other assets is allowed, under certain conditions, only in a minority of EU Member States. A roll over of capital gains arising from the sale of interest in a partnership into other business assets and a roll over of a capital gain arising from the sale of shares is allowed in Ireland and to a limited extent in the United Kingdom.

A tax deferral or otherwise a beneficial treatment of capital gains on the sale of businesses, interest and shares can be justified at least for the following reasons:

- capital gains usually represent the realisation of hidden reserves/goodwill created over a number of years. By fully taxing such gains at ordinary rates in one year the taxpayer is usually at a disadvantage as compared with taxpayers who earn income over a number of years.
- the full taxation of capital gains will usually prohibit the free flow of investment capital to SMEs. Successful entrepreneurs should have the possibility to build up a business, sell it at a profit and have an incentive to reinvest in a new business venture.

- Losses from sale of a business, a partnership interest or shares

The tax treatment of losses from the sale of a business, of an interest in a partnership or of shares in a limited liability company or in a corporation varies widely in the countries covered by the survey.

Some countries (e.g. Austria, Germany and Luxembourg - only for losses from sale of a business or a partnership interest -) allow such losses to be applied against other taxable income in the same year or to be carried forward for later use; other countries (e.g. Luxembourg - only for losses from sale of shares -) allow losses to be applied only against current capital gains (e.g. sale of other shares or real estate) but not to be carried forward to future years, whereas a third group of countries (e.g. Belgium, United Kingdom) does not allow losses from the sale of a business, of a partnership interest or shares in a corporation to be applied against other income at all.

It is felt that restrictions regarding the use of losses from the sale of a business or a partnership interest, provide a disincentive for individuals to take the entrepreneurial risks involved in founding and developing a business.

- VAT treatment

Generally the sale of a whole business, of an interest in a partnership or shares in a limited liability company or in a corporation is not subject to VAT (outside the scope). However, the sale of a business (but not of a partnership interest or shares) is subject to VAT in at least one member state (Austria).

VAT does not seem to be a major obstacle for the sale of SMEs.

- Other taxes

In the majority of countries the sale of a business is subject to real estate transfer tax to the extent real property is included in the assets. Stamp duties, registration tax and other taxes are also applied in the majority of countries.

In some Member States such taxes are, to a different extent, charged also on the sale of an interest in a partnership and on the transfer of shares held in a limited liability company or in a corporation.

These taxes usually generate only a rather low revenue while, on the other hand, requiring significant administrative efforts to supervise, levy and administer them. In addition, quite often they can be a prohibitive obstacle for the sale of a business.

As a consequence, FEE recommends the elimination of such taxes or at least a major harmonisation of these treatments - type of tax and related rates - especially in the context of a true single market.

III. TRANSFER WITHOUT CONSIDERATION

- The tax treatment of the capital gains

In the majority of countries the transfer without consideration of a business, of an interest in a partnership and of shares in a limited liability company or in a corporation effected by an individual is not a taxable event or a tax exemption is available as far as income tax is concerned. In some EU countries, such gains are subject to income tax but, under certain conditions, can be partially or totally exempted.

In these latter countries if the transfer is made by a partnership, the taxation of each partner transferring his or her interest is subject to the same tax treatment as individuals transferring a whole enterprise or their respective participation.

The period during which shares have been held and the method of accounting for the participation can also influence the effective tax load.

FEE supports the concept that all EU countries should totally exempt capital gains from income tax in case an individual transfers a business, a partnership interest or shares without consideration. The taxable base should be taken over by the transferee.

- Thresholds/allowances/reduced rates

Where Member States treat a transfer without consideration of a business, of an interest in a partnership and of shares in a limited liability company or in a corporation by an individual as a taxable event in a few cases reduced income tax rates are available.

- Gift and inheritance tax

The transfer of a business, of an interest in a partnership and of shares in a limited liability company or in a corporation as a donation is subject to gift tax in all EU countries with the exception of Luxembourg (where only a registration tax is due in certain cases), in the Netherlands (where an exemption from gift tax applies as far as one has to pay income tax) and in the UK (where it only applies if the donor does not survive for seven years). In Denmark gifts are normally assessed as taxable income of the transferee unless the recipient is within the nearest family: in this case they are subject to gift tax.

The transfer "mortis causa" of a business, of an interest in a partnership and of shares in a limited liability company or in a corporation is subject to inheritance tax in most countries, although there are exceptions (e.g. Luxembourg). Considerable relief is available only in Ireland, in Italy, in the Netherlands and in the United Kingdom.

With the exception of Denmark where a fixed proportional rate is in force, the gift and inheritance tax generally apply with progressive rates (minimum 3% and maximum 80%) which vary substantially among the countries covered by the study. The determination of the tax depends also upon different criteria such as basic allowances, the taxable base (either the value of the business or the proportional value corresponding to the interest and of the shares), the number and qualification of the beneficiaries. Specific exceptions or allowances are implemented in several countries.

On the transfer "mortis causa" of shares, differences among Member States are mostly linked to the determination of the taxable base and the tax rates. Elements such as the value of the transferred shares, the fact whether such shares are quoted or not and specific allowances also play a significant role.

A reduction of the top progressive rates which apply in certain countries and which put the existence of the enterprise at risk because of the cash outflow necessary to pay for gift/inheritance tax is strongly urged. Gift/inheritance taxes are a major discrimination against SMEs as compared to publicly quoted companies: publicly quoted companies will usually never be subject to the cash drain caused by such taxes.

- VAT treatment

With the exception of one Member State (Austria which treats the donation of a business as a taxable self-supply), the donation of a business as a whole is not subject to VAT. Some peculiarities could apply. In all countries the donation of an interest in a partnership and of shares in a limited liability company or in a corporation as well as the transfer "mortis causa" of a business, of an interest in a partnership and of shares in a limited liability company or in a corporation are not subject to VAT.

In general VAT does not seem to be a major obstacle for the transfer without consideration of SMEs.

- Other taxes

Other indirect taxes such as stamp duties, registration tax, real estate transfer tax, are imposed on such operations at least in five Member States. As stated before in connection with the sale of SMEs the elimination of these taxes throughout EU countries would be very welcome:

- they are usually not a significant source of revenue but require an over-proportionate administrative effort to collect, assess and control, and
- they can represent a prohibitive burden in some instances to pass an SME to the next generation.

In particular FEE questions how far a real estate tax should apply for donations and "transfer mortis causa". Businesses or part of them are in most of these cases simply transferred from one generation to the following one in the same family, generally maintaining the same framework and context with the aim to continue the respective activities. The significant cash flow impact of real estate taxes can threaten the survival of the enterprise when being transferred from one generation to the next. A general exemption should be envisaged when certain conditions are met (going concern of the business, small number of partners especially if with family relations).

IV. CONCLUSION

Action urgently requested

For the above reasons, action in favour of SMEs both at Community and at national level is urgently requested. The subsidiarity principle should not become an "alibi" for doing nothing and for maintaining the "status quo" or for making worse the environment in which SMEs are operating.

Alternative forms of payment

The transfer of SMEs from one generation to the next often involves special arrangements to allow for the older generation to receive financial support after retirement. Tax reliefs should be considered for alternative forms of payment (e.g. payment by instalments, payment in the form of annuities, participation in future profits, etc.) at the time of the sale of individual businesses, of interest in partnerships or of shares in limited liability companies or in corporations.

Double tax relief for intracommunity transfers

SMEs operating as sole proprietorships or partnerships with branches or shareholdings in several Member States will face in many instances double taxation of a gift/estate when the proprietor/partner passes on the business/partnership interest/shares to the next generation. At present, there are very few double tax treaties covering gift and estate taxes. Member States should be strongly encouraged to comply with their obligation under art. 220 of the Treaty of Rome to eliminate this double taxation by completing the gift/estate tax treaty network.

Option for corporation tax

Because in most countries the majority of SMEs are partnerships or sole proprietorships, the progressive personal income tax on current profits rather than the usually lower flat rate corporation tax is applied. In the wake of the clear indications given by the European Commission (e.g. Recommendation of 25 May 1994, Concerted action for SMEs and the craft sector, Molitor Report), and by some national tax administrations, SMEs - at least in countries where the applicable corporate taxation system allows such options to be exercised - would benefit from the possibility of opting for taxation as a corporation and from the reduction of the tax charge on retained profits.

Change of legal form

As long as the same individuals are carrying on the business before and after the change of the legal form, obstacles or tax burden related to such operation (e.g. incorporation of a sole proprietorship or partnership, the change of a corporation to a sole proprietorship or partnership and the transfer of net operating losses) should be totally removed. SMEs should be afforded the ability to incorporate or disincorporate without any tax burden on changing the legal form in which a business is carried on. National administrations should be invited to avoid measures which go against the trend towards simplification suggested by the European institutions.

Spouses and family members

SMEs often have to rely heavily on spouses and family members working in the business. Member States should eliminate any tax obstacles in this respect and in particular should not impose undue restrictions on claiming a deduction for salaries paid to spouses and family members.

Transfer of Business to Family Members

A common difficulty in the continued development and growth of SMEs occurs where it is wished to transfer the business to family members either on retirement of existing owners or their death. Tax consequences of such transfers can be quite severe, sometimes leading to the dissolution of the business enterprise. It is therefore felt that consideration should be given to the granting of tax relief on the sale of a business or on the transfer of a partnership and shares in a limited liability company where the business is transferred or passes upon death to family members.

Incentives for private/institutional investors

Such enterprises are often not able to attract sufficient financial resources (equity, debt, venture capital). Provisions allowing tax relief or incentives for private investors and institutional investors to provide debt financing and venture capital/equity financing for SMEs would certainly help development and growth in the sector.

Payment of gift/inheritance tax

As regards payment of gift and inheritance tax arising from a transfer without consideration, FEE recommends generous relief from tax to avoid situations where the transferee of small and medium-sized enterprises may be forced to dispose of or to split the enterprise because of liquidity problems caused by an unreasonable tax burden.

Date of reference and coverage

The survey has been carried out taking into account the legal situation in the respective Member States as at 1 January 2000.

FEE survey on the fiscal treatment of the Transfer of SMEs

SECTION II

COUNTRY REPORT ON CURRENT DEVELOPMENTS IN THE FISCAL TREATMENTS OF SMEs

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COUNTRY REPORT ON CURRENT DEVELOPMENTS OF THE FISCAL TREATMENT OF THE TRANSFER OF SMES

I. INTRODUCTION

Since the 1997 survey was completed, a number of countries have made significant changes in their fiscal law as it impacts on the treatment of the transfer of SMEs. Highlights of these developments in key countries are set out below.

II. BELGIUM

Since 1997, a certain number of steps have been taken at various levels in respect of transfer of family business (included legal entities), which had as a main purpose to reduce the duties levied so as to facilitate the transmission.

Due to a regionalization of the inheritance duties, the steps were taken in this field by the Flemish, Walloon and Brussels regional authorities, while for donations, a decision was also taken at national level.

Basically, a 3% reduced rate will be applicable subject to a certain number of conditions. The Flemish Region does not apply inheritance duties (reduced rate of 0%) on family businesses, since October 1999.

Inheritance duties:

For the 3 Regions, the reduced rate will apply on the net assets value.

The conditions however differ slightly from Region to Region:

In the Flemish Region, the regulations will apply to family business or legal entities of which at least 50% of the shares have been detained by the family during these 3 preceding years.

The firm must have been occupying during the 3 preceding years at least 5 full time employed workers.

The activities and the employment have to be maintained for the following 5 years.

For the Walloon Region, the firm must have been occupying at least one person subject to social security at the time of the decease. 75% of the level of activity (included the employment) has to be maintained for the following five years.

For the Brussels Region, the employment must be maintained for at least 75% during the next five years. No minimum level of employment at the time of the decease does exist.

The definition of family business is that which is given by the European Regulations being less than 250 persons occupied, less than € 40.000.000 turnover and less than € 27.000.000 balance sheet total, provided a condition of independence is met.

The regulations fix the possibilities of the Regions to control the respect of the conditions.

Donation:

The Federal Government has also reduced the registration duty on donations to 3%.

If the donation concerns shares of a company, this should concern at least 10% of the voting rights, a statement being to obtain from a notary, chartered auditor or accountant. The reduced rate does not apply to buildings occupied as a dwelling.

Donor and donee must be physical persons and the donation must concern at least a branch of activity or a complete business entity.

The activities have to be performed in the industrial or trading sector, or concern a handicraft activity or a free profession.

The activities will have to be maintained by the donee for at least a 5-year uninterrupted period from the date of the transfer by notarised deed.

III. GERMANY

Tax treatment as at 1 January 2000:

1. Sale of an SME

- Capital gain to subject to income tax
- No special capital gains tax
- Calculation of the capital gain: difference between price of disposal and the book value of the business
- Tax allowance on the capital gain
- Computation of tax burden: Five times the difference between the tax on income without capital gains and the tax on income including one fifth of the capital gain.
- Not subject to VAT

2. Transfer of an SME without consideration

- No taxable capital gain assumed
- Transfer subject to gift/inheritance tax (with progressive rates)
- Tax regime depends upon the degree of relationship existing between the donor/deceased and the receiver/heir and upon the value of the transferred assets
- Business and personal allowances on the assessed value of the transferred business capital
- Not subject to VAT

Elements of an envisaged tax reform with an impact on the transfer of SMEs

- Increase of the personal allowance applicable in the case of a sale of an SME up to 100.000 DM
- Reintroduction of the reduced tax rate applicable to the sale of a SME (only once in the live of an entrepreneur)
- Option for a corporation tax for partnerships and sole proprietorships
- Effective date: January 1st 2001

IV. UNITED KINGDOM

The United Kingdom, unlike the majority of OECD member countries, has incorporated a large number of tax preferences into its tax legislation in order to promote the creation and development of SMEs. For example, these preferences include reduced rates of tax, accelerated investment allowances and provisions to reduce the incidence of inheritance tax and reduce or defer capital gains tax on the transfer of certain assets. Whilst most countries seek to reduce the compliance burdens faced by SMEs, policymakers in these countries have resisted the temptation to introduce tax preferences which complicate the whole tax system. It is considered questionable whether these preferences do in fact stimulate economic activity.

In addition to the above preferences, successive UK governments have sought to help SMEs to raise funds by introducing a variety of tax reliefs, such as the enterprise investment scheme and the recently introduced corporate venturing relief.

The UK capital gains tax system has been changed for individuals. The previous system of providing relief for inflation by way of indexation has been changed in favour of a taper relief, based upon the length of time of ownership of the asset. The rate of taper is more generous for business assets, with an effective reduction to a 10% tax rate where business assets have been held for ten years (although this is to be reduced to four years).

UK Stamp duty

The rates of stamp duty have been increased for transfers of property (excluding shares) in the last few years and are now as follows:

- below £60,000 - nil
- £60,000 up to £250,000 - 1%
- £250,000 up to £500,000 - 2.5%
- £500,000 and over - 3.5%

The higher rates will be increased further in the forthcoming Budget on 21 March 2000. The rate of duty on share transfers remains at 0.5%.

UK Dividend system

With effect from 6 April 1999, UK companies no longer have to pay ACT when they pay a dividend. The tax credit rules have been amended but the net effect on taxpayers has not changed.

FEE survey on the fiscal treatment of the Transfer of SMEs

SECTION III

EXTRACT FROM THE SELECTIVE EXAMPLES (developed in Section V)

TABLE SUMMARIZING THE TAX BURDEN ON THE SALE OF SMEs (PERCENTAGE OF THE CAPITAL GAIN)

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EXTRACT FROM THE SELECTIVE EXAMPLES: TABLE SUMMARIZING THE TAX BURDEN ON THE SALE OF SMEs (PERCENTAGE OF THE CAPITAL GAIN)

I. Facts: * A (60 years old) sells in 2000
a) his enterprise
b) his interest in a partnership
c) shares in a limited liability company/corporation to B.

* Price of disposal : 5 Mill. euro
* Book value of the business/interest/shares : 2 Mill. euro
* Acquisition cost of the business/interest/shares : 3,5 Mill. euro

II. Tax burden (percentage of the capital gain)¹

<i>Sale Country</i>	<i>a) of a business</i>	<i>Y¹</i>	<i>Z¹</i>	<i>b) of interest in a partnership</i>	<i>Y¹</i>	<i>Z¹</i>	<i>c) of shares in a limited liability company/corporation</i>	<i>Y¹</i>	<i>Z¹</i>
<i>Austria</i>	24,9%*	X		24,9%	X		24,9%**		X
<i>Belgium</i>	18%*/ 36%**	X		18%/36%		X	18%***		X
<i>Denmark</i>	53,8%*/59,8%**	X		53,8%*/59,8%**	X		29,3%/39,3%***		X
<i>Finland</i>	28-59%*	X		28%		X	28%		X
<i>France</i>	56,5%/ 38,6% *	X		56,26%/20,9% **	X		20,9% ***		X
<i>Germany</i>	51%*	X		51%*	X		51%*		X
<i>Greece</i>	20%	X		20%	X		-		X
<i>Ireland</i>	40%		X	40%		X	27%, 40%		X
<i>Italy</i>	45,5%/18,5% *	X		27%/12,5% **		X	27%/12,5% **		X
<i>Luxembourg</i>	23,419%	X		23,419%	X		22,796%		X
<i>Netherlands</i>	44,68% *	X		44,68% *	X		25%		X
<i>Portugal</i>	40%		X	10%		X	10%		X
<i>Spain</i>	20%	X		20%	X		20%		
<i>Sweden</i>	56%	X		30% *		X	30-56% **		X
<i>UK</i>	0*		X	0*		X	0*		X

1 Notes: ¹ Capital gains arising from the sale of a business/partnership interest/shares are calculated as the difference between:
Y: price of disposal and book value of the business/partnership interest/shares
Z: price of disposal and acquisition cost of the business/partnership interest/shares

NOTES CONCERNING THE TABLE (BY COUNTRY)

Austria

* In the case that the seller stops his business activities and is over 60 years old (or if he becomes incapacitated to operate the business) and he has owned the business for at least 7 years; otherwise the taxpayer can elect to have the capital gain spread over a 3 year period or alternatively apply a an ATS 100.000 deduction from the capital gain

** In the case that the seller has owned the shares for more than 12 months

Belgium

* In the case that the seller –having reached the age of 60, or deceased or being victim of a sudden event- completely stops his activities and that the goodwill does not exceed the total taxable profit of the 4 years before.

** In the case that the seller –having not reached the age of 60- does not stop completely his activities or the goodwill exceeds the average taxable profit of the years 1992/1995.

*** In the case the transferee is a foreign company or a foreign entity and the transferor and the members of his family own or have owned at any time during the prior five years more than 25% of the shares.

Denmark

* Equipment

** Inventory and goodwill

*** Unquoted shares. The rate depends on the years of ownership. If the shares have been owned for 25 years prior to 1998 the rate is 29,3%. With ownership for fewer years the rate increases up to 39,3%.

Special rules apply for family succession, without immediate tax.

Finland

Sale of a business

The income generated from the sale is taxed in the hands of the entrepreneur divided into earned income (progressive rate max 59 %) and capital income (flat rate 28 %). The amount of capital is based on the net assets of the enterprise and 18 % of the net assets is seen as capital income.

Sale of shares in a limited liability

Plus stamp duty of 1,6%.

France

- * Plus registration duties up to 11.4 %

In the case of sale of a business the fiscal treatment differs depending of the length of time during which the assets have been owned (less or more than two years). If less than two years capital gains are subject to income tax rate schedule (56,9% in the example).

- ** Plus registration duties up to 4.80 %.

The fiscal treatment differs depending of professional practice or not:

- professional practice: if the interest has been owned for less than two years: income tax schedule up to 54% + CSG (2,4%) + RDS (0,5%); if not: 20,9%;
- no professional practice: 20,9%.

- *** Plus registration duties up to:

- 4.80 % (limited liability company);
- 1% with a maximum amount of 20 000 F (corporation).

Germany

- * In certain circumstances it could be less.

The fiscal charge on capital gains is five times the difference between the tax on the income without capital gain and the tax on the income plus one fifth on the capital gain.

Italy

- * *Sale of a business*

The different fiscal treatment is related to the option offered to the tax payer to elect - instead that for the ordinary taxation (45,5%) - for the tax rate applicable to his average net income in the last two fiscal years preceding the disposal.

- ** *Sale of interest in a partnership*

If the participation is a qualified one (more then 25% of share capital or more than 20% of vote right) he tax rate is 27%, otherwise the tax rate is 12,5%.

In a quoted listed company the participation is qualified when exceeds 5% of share capital or 2% of right vote.

- *** *Sale of shares in a limited liability company/corporation*

If the participation is a qualified one (more then 25% of share capital or more than 20% of vote right) he tax rate is 27%, otherwise the tax rate is 12,5%.

In a quoted listed company the participation is qualified when exceeds 5% of share capital or 2% of right vote.

Netherlands

- * The taxation can be deferred as a result of legal methods to avoid such high rates.

Spain

The tax rate of 20 % is only applicable when the transmission takes place after at least two years of the acquisition.

Sweden

- * Certain anti-abuse rules apply preventing high-taxed business income (56%) from being transformed into low-taxed capital income (30%).
- ** A gain from the transfer of such shares may partly be considered as income from business.

United Kingdom

The UK exempts from capital gains tax virtually all business disposals on retirement and exempts from inheritance tax (100% business property relief and 100 % agricultural property relief).

However, the retirement relief is being phased out and replaced by a relief which will depend upon the length of ownership of the relevant asset².

² The table rates of 0% will become 10%. In effect, the 10% rate will be available to gains of whatever size but the downside is that there is no outright exemption.

EXTRACT FROM THE SELECTIVE EXAMPLES: TABLE SUMMARIZING THE TAX BURDEN ON THE TRANSFER OF SMES WITHOUT CONSIDERATION

I. Facts

- The ownership of an enterprise/interest in a partnership/shares in a limited liability company (corporation) is transferred:

- a) by donation
- b) mortis causa

from A (60 years old) to his son C in 2000.

- Tax base (allowances not yet considered): 5 Mill. euro

II. Gift/Inheritance tax burden (percentage of the tax base)

Transfer country	a) by donation	b) mortis causa
Austria	15%	15%
Belgium	28,65%	28,64%
Denmark	15%	15%
Finland	16%	16%
France	23,37%	35,96%
Germany	10,03%	10,03%
Greece	1,35%	1,35%
Ireland	6%	8%
Italy	23,5%	23,5%
Luxembourg	0	0
the Netherlands*	25,95%	25,95%
Portugal	23%	23%
Spain	32,59%	0,8%
Sweden	30%	30%
the United Kingdom**	0	0

* Excl. 3750 euro tax free

** These rates apply only where the assets in question are classified as business assets.

FEE survey on the fiscal treatment of the Transfer of SMEs

SECTION IV

SYNTHESIS OF THE ANSWERS RECEIVED

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1. SALE OF A BUSINESS

Austria

Note: The answers refer to the sale of a business by an individual. Different rules apply where the seller is a corporation (see answer 1.7).

Finland

Note: Sale of a sole proprietorship is considered as the last business act in the proprietorship. It means that all assets are deemed to be sold and the income is income for the proprietorship which is then taxed in the hands of the proprietor as business income. Business income is then taxed in the normal way and the income is divided to capital income (flat rate in 1999: 28%) and earned income (progressive rate). Following answer to point 1 is tied to a situation where the purchase price is business income to the sole proprietor.

1.1 Are capital gains arising from the sale of a business by an individual exempted from taxation on income?

* **Yes, totally exempted**

* **Yes, partially exempted**

Please, give further explanation as for the amount of the allowance

* **No**

Austria

No.

Belgium

No, the capital gains arising from the sale of a business by an individual will be subject to personal income tax.

Denmark

No.

Finland

No.

France

The exemption for service transaction is now if yearly turnover does not exceed 350.000 F (instead of 300.000 F) VAT included.

Germany

Yes, partially exempted. Basic allowance of DM 60 000 is granted in cases where the natural person disposes of the business after the age of 55 or because of inability to operate a business. It is reduced by the amount by which transfer gains exceed DM 300 000.

Greece

No.

Ireland

In general, capital gains arising from the sale of business assets (land, buildings, plant and machinery, and goodwill) by an individual are liable to capital gains tax. Certain elements of the sale of a business are liable to income tax for example, profits on disposal of stocks and debtors.

Where an individual reaches 55 years of age and sells qualifying business assets for less than IR£ 250 000, then the capital gain is exempt. Marginal relief applies for disposal proceeds in excess of IR£ 250 000.

Where an individual reaches 55 years of age and sells qualifying business assets to a child, relief is given on the full capital gains tax.

Italy

No.

Luxembourg

Yes, partially exempted. As a general rule, the taxable capital gain is calculated as a difference between the price of disposal and the book value of the business. However, it is possible to operate an inflation adjustment if a building is included in the business.

A basic allowance of LUF 400.000.- is available. In case that the capital gain on the business sale includes a capital gain on a building, the global allowance is of LUF 1.000.000.-. This additional allowance of LUF 600.000.- cannot exceed the capital gain related to the building.

Netherlands

Yes, partially exempted. An amount of f 20.000 is exempted and for individuals above 55 this exemption is increased with f 25.000 to f 45.000.

The exemption is also applicable in case of a second sale of a business, until the mentioned amounts in total have been reached.

Portugal

No.

Spain

No.

Sweden

No.

United Kingdom

Sale of a business. The proceeds on the sale of a business are taxable but it is possible to defer the charge to tax or, if certain age, health and ownership conditions are met, some of the gain is exempted by retirement relief (See also note on section III). It is also possible to transfer business assets by way of gift and hold over any gain.

1.2 Are those capital gains calculated?

1.2.1 *As difference between the price of disposal and the book value of the business?*

* *Yes*

* *No*

Austria

Yes.

Belgium

The capital gains will be computed as being the difference between the price of disposal and the book value of the business, but corrections may have to be made so as to determine the fiscal book value accepted by the Tax Authorities.

Denmark

Yes.

Finland

Business income is difference with the book value of the business assets and the price of disposal.

France

Yes.

Germany

Yes.

Greece

Yes.

Ireland

No.

Italy

Yes.

Luxembourg

See 1.1.

Netherlands

Yes.

Portugal

No.

Spain

Yes.

Sweden

Yes.

United Kingdom

No.

1.2.2 *As difference between the price of disposal and the acquisition cost of the business?*

* *Yes*

* *No*

Austria

N/A.

Belgium

No. Not applicable, see 1.2.1.

Denmark

No.

Finland

No, this is not possible.

France

No.

Germany

No.

Greece

No.

Ireland

The capital gain is computed as the difference between the price of the disposal and the acquisition cost of the assets (adjusted for inflation).

Italy

No.

Luxembourg

See 1.1.

Netherlands

No.

Portugal

Yes.

Spain

No.

Sweden

No.

United Kingdom

No, but gains are calculated as the difference between the disposal value and acquisition cost (which is the higher of cost or a valuation at 31 March 1982). Until 6 April 1998 an indexation allowance was given on the acquisition cost to take account of inflation between purchase and sale. Since 6 April 1998, a taper relief has been granted. The amount of the taper relief depends on the length of time for which the asset has been owned.

1.3 Are the capital gains calculated according to 1.2.1 subject to a reduced tax rate?

* **Yes**

* **No**

If yes, please indicate the special tax rate.

Austria

Yes, provided that the seller has reached the age of 60 (or is incapacitated to operate the business for health reasons) and the business is being sold more than 7 years after the opening or after the acquisition of the business by the seller: in this case a capital gain is taxed at half the regular rate. If the seller has not yet reached the age of 60 the capital gain is taxed at full rates but is spread over 3 years or alternatively an a deductible allowance of ATS 100.000 is applied. If the business has not been owned for 7 years the capital gain is always taxed at full rates and a deductible allowance of ATS 100.000 is applied.

Belgium

Yes, the taxation of capital gains arising from the sale of an individual business depends on the difference between intangible, tangible and financial assets. The capital gains are subject to a reduced income tax of 16.5% (in fact +/- 18%):

- on intangible assets, in case of a complete and definitive cessation of professional activities at 60 years at least, or if activities are ended due to reasons beyond the control (eg. Expropriation), as far as the capital gains do not exceed the total taxable profit of the 4 years before.
- on the tangible and financial assets, invested since 5 years at least (possibility under conditions of application of the principle of differed taxes in case of reinvestment, see answer 1.6.). The 5 years condition is not applicable by complete and definitive cessation of professional activities.

Capital gains on intangible assets would be taxed at the flat rate of 33% (in fact +/- 36%) as far as aforementioned conditions are met but the capital gain exceeds total taxable profit obtained during the four years preceding the ending of the activities.

Denmark

No.

Finland

No, there are no reduced rates.

France

CSG is now equal to 7,5% instead of 2,4%.

CRDS is still 0,5%.

There is a "prélèvement social" of 2%.

The reduced income tax rate for non depreciable fiscal assets is now 26% instead of 20,9% (including all taxes above).

Germany

Capital gains are subject to a special tax treatment. Tax burden is computed as follows: Five times the difference between the tax on income without capital gains and the tax on income including one fifth of the capital gain.

Greece

Yes. Transfer gains are subject to a reduced tax rate of 20%.

Ireland

Not applicable.

Italy

The gains from the sale of a business may be taxed separately from the other items of income (i.e. they are not included in the ordinary taxable base) on request of the entrepreneur if the business has been held for at least 5 years. In this case the separate taxation generally implies the application of the average tax rate applicable to the tax payer's net income in the last two fiscal years preceding the disposal.

If the business has been hold for three years, it is possible to elect the rate of 27%.

Luxembourg

Yes, capital gains are - after deduction of the allowance (see 1.1) - taxed at a rate of 50% of the global tax rate applicable on the total taxable income.

Netherlands

Yes. A special flat rate of 45% is applicable for gains above the first part of taxable income with the lowest rate on the scale of the various tax rates which ends on 48.175 (rate 6,2%/7,5% tax and 29,55% social security premium, in total 35,75%/37,05%; year 1999). Normal rates above 48.175 income : 50% and 60%.

Portugal

N/A.

Spain

No, they are subject to the general regime applicable to capital gains.

Sweden

No, provided real property is not included.

United Kingdom

No - normal tax rates apply but possibly subject to a reduction depending upon the period of ownership. For an individual this depends on total income:

0 - £ 1500	is 10%
£ 1501 - £ 28000	is 23%
over £ 28000	is 40%

The first £ 7100 of gains in any fiscal year to an individual is exempt.

1.4 Are the capital gains calculated according to 1.2.2 subject to a reduced tax rate?

* **Yes**

* **No**

If yes, please indicate the special tax rate

Austria

N/A.

Belgium

N/A.

Denmark

N/A.

Finland

See 1.2.2.

France

No. See above.

Germany

No. Not applicable.

Greece

N/A.

Ireland

No.

Italy

No.

Luxembourg

See 1.3.

Netherlands

N/A.

Portugal

No.

Spain

N/A

Sweden

N/A.

United Kingdom

See answer 1.3.

1.5 Is the difference between the acquisition cost and the book value subject to normal tax rate?

* **Yes**

* **No**

Austria

N/A.

Belgium

This difference represents the depreciation and amounts written-off previously deducted.

Denmark

Yes.

Finland

See answer 1.2.2.

France

See above.

Germany

No.

Greece

No.

Ireland

Not applicable.

Italy

N/A

Luxembourg

N/A.

Netherlands

No.

Portugal

No.

Spain

N/A

Sweden

N/A.

United Kingdom

See answer to 1.2.2

1.6 A transferral (roll over) of a capital gain arising from the sale of a business on other assets is:

*** allowed**

Please indicate on which type of assets a transferral (roll over) is possible

*** not allowed**

Austria

A transferral of a capital gain arising from the sale of a business on other assets is not allowed.

Belgium

It is allowed, but only in case of reinvestment in depreciable assets, located in Belgium, subject to application (what about the price of disposal and not the capital gains, see answer 1.3.b) of the principle of differed taxes.

Denmark

Not allowed.

Finland

Not allowed, if you are selling your whole business you do not have any possibilities to make roll-over reservations.

France

Not allowed.

Germany

Not allowed.

Greece

Not allowed.

Ireland

An individual may defer the capital gains tax arising on the disposal of a business by reinvesting the entire proceeds in other business assets.

Italy

Not allowed.

Luxembourg

N/A.

Netherlands

Allowed for individual assets in case there will be a reinvestment in similar assets. Not allowed as far as a whole business or a substantive part of a business has been involved.

Portugal

Allowed. On fixed assets.

Spain

Not allowed.

Sweden

Not allowed.

United Kingdom

This is described as roll-over relief when the gain arising on the sale of certain business assets can be deferred.

1.7 Is there a different fiscal treatment (in comparison with 1.1. -1.6) if the business is sold by a partnership or a corporation?

* **Yes**

* **No**

If the answer is yes, please give further explanations

Austria

Yes. The capital gain from the sale of a business by a corporation is always subject to the regular corporation income tax rate (34%).

A capital gain on the sale of a business by a partnership will be taxed in the hands of the partners (see 1.1).

Belgium

A capital gain on the sale of a partnership will be taxed in the hand of each of the partners.

Treatment for sale by partnership is the same as for individuals. A different treatment applies for business sold by a corporation. Capital gains from the sale of business by a corporation will be subject to the normal corporation tax (rate 39% + crisis surcharge). However, subject to certain conditions, the sales price may be reinvested and taxation spread over the amortization period of the new investment.

Denmark

Yes, a partnership is not a separate taxable unit, hence the gain or loss will be taxed at the single partners.

Finland

If a partnership or a corporation sells its own business or part of it, income from that is also considered as normal business income and taxed according to that. There are no significant differences in the tax treatment compared to sole proprietorships.

France

Yes. Taxation of capital gains arising from the sale of a business depends on the different types of assets :

- non depreciable fixed assets,
- depreciable property plant and equipment,
- inventories.

Non depreciable fixed assets

If these fixed assets have been owned for less than two years, gains are subject to normal tax rate of 33 1/3% (plus a temporary contribution equal to 10% of corporate tax).

If these assets have been owned for more than two years, gains are subject to reduced income tax rate of 19% (plus a temporary contribution equal to 10% of corporate tax).

Depreciable property plant and equipment

If these fixed assets have been owned for more than two years, capital gains are divided in two parts:

- first portion of gains corresponding to the amount of depreciation is subject to normal rate of 33 1/3% (plus a temporary contribution equal to 10% of corporate tax),
- portion of gains exceeding the amount of depreciation is subject to reduced tax rate of 19% (plus a temporary contribution equal to 10% of corporate tax).

If these assets have been owned for less than two years, gains are subject to normal tax rate of 33 1/3% (plus a temporary contribution equal to 10% of corporate tax).

Inventories

Gains arising from the sale of inventories are subject to normal tax rate of 33 1/3% (plus a temporary contribution equal to 10% of corporate tax).

Germany

Yes. A company with limited liability is entitled to the allowance (see 1.1), however not to the special tax treatment (see answer 1.3).

Greece

No.

Ireland

The roll-over relief described in 1.6 also applies to partnerships and companies.

Italy

Yes. The capital gains realised by a corporation are always subject to the corporation tax (37% "IRPEG").

On the contrary, the capital gains realized by a partnership are taxed in the hand of the partners on the basis of a progressive taxation (18,5 – 45,5%).

In both situations, the rate of 27% can be applicable if the seller has been holding the business for at least three years.

In the above mentioned circumstances, separate taxation is not allowed.

Luxembourg

Yes. If a partnership sells the business, the tax treatment is similar to the tax treatment of an individual (see 1.1 to 1.3).

If a corporation sells the business none of the above mentioned allowances are applicable. The sale of the business is taxed at the aggregate tax rate of 37,45% (corporate and municipal business tax).

Netherlands

No (for partnerships same rate as income is imputed to partners/same taxable base); yes (for corporations: tax rate is 35%; taxable base is the same).

Portugal

No.

Spain

Yes. The differences come to the different tax rates applicable to companies. An individual is subject to Income Tax (10 to 48%); partnership has to impute its income to the partners, who are taxed in their Income Tax; corporations are subject to Corporate Tax.

Sweden

Where the seller is a *partnership* (which under Swedish tax law is not a taxable entity) the replies given under 1.1-1.6 apply to each partner with respect to his participation in the partnership. The normal tax rates (individual or corporate) are applicable to each partner. The rates are for individuals 31-56% and for corporations 28%. With respect to *corporations* the replies given under 1.1-1.6 are applicable. The corporate tax rate applies.

United Kingdom

For a partnership, the treatment set out in 1.6 will apply; each individual partner has his own annual exemption of £ 7100. This means for a 10 partner firm, £ 71,000 (i.e. 10 x £ 7100) is exempt. Companies have no annual exemption.

1.8 Carry over of capital losses arising from the sale of a business is:

*** possible**

*** not possible**

Austria

Possible.

Belgium

Capital losses arising from the sale of a business would be deductible together with possible other losses from possible other activities, only from other professional income obtained either during the same year or in forthcoming years.

Denmark

Possible.

Finland

Loss arising from the sale of a business is a normal business loss which can be deducted in ten years. But if a sole proprietor has sold a whole business, then there may not incur such business income where the losses could be deducted from.

France

Possible.

Germany

Possible within certain limits.

Greece

Possible.

Ireland

A capital loss arising from the sale of a business can be carried forward indefinitely and used against future capital gains.

Italy

Capital losses arising from the sale of a business may be carried over (for a period not exceeding five years) for the amount which exceeds the yearly net profit realised by the taxpayer.

Luxembourg

Possible. The arising capital losses will be deductible only from other income obtained during the concerned year and during the following years.

Netherlands

Possible. The same rules are applicable as for other losses.

Portugal

Possible.

Spain

Possible. With long-term (2 years) capital gains.

Sweden

Possible.

United Kingdom

Possible. Capital losses can be carried forward indefinitely and set against any future capital gain. Restrictions apply where the sale was to a related person.

1.9 Is the sale of a business (see 1.1. -1.8.) subject to VAT?

* **Yes**

* **No**

Austria

Yes.

Belgium

The sale of a business is as a rule subject to VAT. However, seller may apply for exemption provided the whole business activity is transferred to an acquirer who is himself subject to VAT.

Denmark

No.

Finland

No, if the whole business is sold and if the buyer uses the goods and assets in its own business in a way that it could make VAT deduction out of them. Seller has to get a document from the buyer where the buyer confirms to continue the business and that the assets are in a VAT deductible use. Otherwise VAT applies as in a normal purchase.

France

Yes. The sale of new merchandise inventories arising from the sale of a business is subject to VAT, but VAT has not to be paid.

Germany

No.

Greece

No.

Ireland

The sale of business between VAT registered persons is not liable to VAT.

Italy

The sale of a business as a whole is not subject to VAT (see 1.11).

Luxembourg

No.

Netherlands

No.

Portugal

No. But the disposal of separate assets will be subject to VAT.

Spain

No, provided the whole business is sold and the buyer continues the activity.

Sweden

No, under the condition that the purchaser will continue the business under the same conditions as the seller or use the business in another business subject to Swedish VAT.

United Kingdom

No. The transfer of a going concern rules result in the sale of a business or part or a business being out with the scope of VAT. But if the purchaser does not conduct the business, VAT would be appropriate.

1.10 Does in case of 1.9 VAT imply a real charge for the purchaser of the business?

* **Yes**

* **No**

Austria

No (VAT is fully recoverable by buyer).

Belgium

No, VAT does not imply a real charge for purchaser of the business provided that he is himself a VAT taxpayer.

Denmark

N/A.

Finland

No, because the VAT would usually be deductible.

France

No. See above.

Germany

No.

Greece

N/A.

Ireland

If the purchaser is not VAT registered then VAT may be a real cost.

Italy

N/A.

Luxembourg

N/A.

Netherlands

N/A.

Portugal

No.

Spain

N/A

Sweden

See 1.9.

United Kingdom

Not usually. Exceptions may arise.

1.11 Is any transfer tax levied on the sale of a business (see 1.1-1.8)?

* **Yes**

* **No**

If yes, indicate which transfer tax is levied (e.g. real estate transfer tax) and give further explanations as for allowances and tax rates

Austria

Yes. Real estate transfer tax (3,5% tax plus 1% registration fee in land register) on real property (land and buildings) transferred with the business. Stamp duty 0,8% on accounts receivable transferred with the business. Various other stamp duties in connection with the transfer of the lease contracts, rent contracts, etc.

Belgium

Yes, but only on the transfer of a real estate, with a rate of 12.5% of the price of sale (market value).

Same rules and rates for inheritance tax and gift tax. Rates scaled (from 3% to 80%).

Denmark

Yes, Registration fee to the Land Registry when a real estate property has been sold.

Finland

Yes, transfer tax on transfers of shares and real estate. Transfer tax for transfer of shares is 1.6% and for real estate 4%.

France

Taxation of intangible assets is calculated (Loi de Finances for 2000) according to the following transfer rate schedule (general case).

Portion of price		Tax rate
not exceeding	150.000 FF	0 %
over	150.000FF	4,8 %

Germany

Yes. Real estate transfer tax is levied as far as real estate is transferred (rate 3,5%).

Greece

N/A.

Ireland

A stamp duty charge of 6% applies to the transfer of real property and goodwill where the consideration exceeds IR£ 60 000.

Italy

Yes. The sale of a business is subject to the registration tax.

If the business includes a real estate property, the seller, moreover, is subject to a progressive tax (called "INVIM") on the difference between the acquisition cost (added specific expenses) and the sale price. Notwithstanding the INVIM tax has been abolished since the beginning of 1993, a transitory regulation states that in case of transaction a real estate will be taxable until 1.1.2003 on the basis of the difference between the value at the date 31.12.1992 and the cost of acquisition.

Furthermore, in such case the transaction is subject to another tax called "imposta ipotecaria e catastale" equal to the 3% of the real estate value.

Luxembourg

No. The only exception is when real estate is transferred with the other business assets. The real estate transfer tax is calculated at a rate of approximately 10% for Luxembourg City on the sales value of the real estate.

Netherlands

Yes. A real estate transfer tax. Exemptions possible on this general rule, which are rather complicated. Tax rate 6%; taxable base: economic value of property.

Portugal

Yes. Real estate transfer tax (SISA) - 10%.

Spain

Yes, transfer tax is applicable to the part of the price that corresponds to real estate tax rate is 6%, or 7% depending on the region in which the asset is located.

Sweden

Yes. To the extent real property is included in the assets a transfer tax will be levied. The basis is the transfer price, or the assessed value for tax purposes ("taxeringsvärde") if the transfer price is lower than such value. The rate is 1.5% for an individual buyer and 3% for a corporate buyer.

United Kingdom

Stamp duty at 1% may be charged if the business involves land with a value greater than £60,000 or other assets title to which may only be transferred in a document.

2.SALE OF INTEREST IN A PARTNERSHIP

Austria

Note:The answers refer to the sale of a partnership interest by an individual. Different rules apply where the seller is a corporation (see answer 2.7).

Belgium

Note:Same rules as those mentioned under 1 but applicable to each individual separately. (Answers concern an association of individuals without a legal personality of its own).

Greece

Note:Section 2 of the questionnaire is answered with regard to partnerships and limited liability companies since the sale of interest in a partnership and the sale of a share portion in a limited liability company has the same fiscal treatment in Greece.

2.1. Are capital gains arising from sale of interest in a partnership by an individual exempted from taxation on income?

- * **Yes, totally exempted**
- * **Yes, partially exempted**
Please, give further explanation as for the amount of the allowance
- * **No**

Austria

No.

Belgium

For the questions 2.1 to 2.11, see answers 1.1 to 1.11. The answers are indeed exactly the same and there is no difference in the tax treatment of the sale of a business and the sale of interest in a partnership by an individual.

Denmark

No.

Finland

No, they are taxed usually as normal capital income at a flat rate of 28% (in 1999). In change of generation situations capital gains would be totally tax exempt. This requires that an interest of partnership which is owned at least 10 years is sold to a close relative and that the relative does not sell the interest further before 5 years has passed from the acquisition. If the buyer sells the interest forward then the tax exempt gain is deducted from his/hers acquisition cost of the interest.

France

The taxation of capital gains arising from sale of interest in a partnership depends on the professional practice (or not) by an individual within this partnership.

First case: professional practice by an individual

If the individual owns his interest within two years, capital gains are added to other taxable incomes. Consequently, capital gains and other incomes are subject to income tax, calculated according to tax rate schedule (10,5% to 54%). In addition special taxes (CSG equal to 7,5% and CRDS equal to 0,5%) apply.

If the individual has owned his interest for more than two years, capital gains are subject to reduced tax rate of 26% (16% reduced rate + 7,5% CSG + 0,5% CRDS + 2% Prélèvement social).

Second case: no professional practice by an individual

Capital gains are subject to reduced tax rate of 26%.

Germany

Yes, partially exempted. See answer 1.1; the allowance can only be used proportionally.

Greece

No.

Ireland

The normal basis on retirement is that the partner leaving the partnership will withdraw his/her accumulated capital and current account from the partnership. However if a partner is bought out of the partnership then he/she is liable to capital gains tax on the consideration received for his/her share of partnership.

The exemptions on reaching 55 mentioned in 1.1 also apply to a sale of an interest in a partnership.

Italy

No. The capital gains arising from the sale of interest in a partnership are subject to two different kinds of taxation depending upon the activity carried out by the seller.

If the latter realizes the capital gains outside any business activity, the gains determined on the difference between the acquisition cost (added specific expenses) and the sale price are subject to a 25% tax which replaces the income tax and must be reported in the yearly income tax return (so called "ordinary method").

If the capital gains arise from the alienation of a participation not exceeding 10% of the partnership's capital, the taxpayer may elect for the so called "forfeit method". The decision to opt for this kind of taxation must be communicated at the time of the first transaction in the relevant tax period. In line with this method the taxpayer is subject to a tax equal to 1,05% on the sale price. The transaction must be implemented through specific intermediaries as banks, brokers, notaries and other agents authorised by the Italian Treasury. The tax must be withheld by the intermediaries at the time of every single transaction and the taxpayer does not have to declare the capital gains in the yearly tax return.

On the contrary, if the individual acts in his business activity the above mentioned capital gains are

subject to the ordinary progressive taxation as business income (10-51% plus local income tax of 16,2%).

Luxembourg

Yes, partially exempted. Taxation similar to 1.1.

Netherlands

For 2.1 to 2.11 (see answers 1.1 to 1.11). Exactly the same answers are applicable.

There is no difference in the tax treatment of the sale of business by an individual or the selling of the interest in a partnership. Each individual is considered to have his own business even in case it consists of an interest in a partnership.

Portugal

No.

Spain

No.

Sweden

No.

United Kingdom

The sale of an interest in a partnership would be a chargeable occasion but there are reliefs available to the individual partners. An individual has a single annual exemption of £6000. In addition, if the individual is aged 55 or more (or is forced to retire because of ill health) he may benefit from retirement relief which exempts the first £200,000 of gain provided certain other conditions are met. However, following the introduction of taper relief, retirement relief is being phased out. It will be withdrawn completely by 6 April 2003.

(See note at 1.7)

2.2 Are those capital gains calculated?

2.2.1 As difference between the price of disposal and the book value of the interest?

* *Yes*

* *No*

Austria

Yes (i.e. the difference between the price of disposal and the prorated book value of the assets/liabilities of the partnership).

Denmark

Yes.

Finland

No.

France

No.

Germany

Yes.

Greece

Yes.

Ireland

No.

Italy

Yes, but only if the sale of the interest is implemented in the course of the business activity.

Luxembourg

Yes, see 2.1.

Portugal

No.

Spain

Yes.

Sweden

No.

United Kingdom

No.

2.2.2 *As difference between the price of disposal and the acquisition cost of the interest?*

* *Yes*

* *No*

Austria

N/A.

Denmark

No.

Finland

Yes, when the owner of the interest is an individual.

France

Yes.

Germany

N/A.

Greece

No.

Ireland

The capital gain is computed as the difference between the price of disposal and the acquisition cost of the assets (adjusted for inflation).

Italy

Yes, but only if the sale is performed by the individual out of any business activity.

Luxembourg

Not applicable.

Portugal

Yes.

Spain

No.

Sweden

Yes.

United Kingdom

Not really but see answer to 1.2.2

2.3 Are the capital gains calculated according to 2.2.1 subject to a reduced tax rate?

* **Yes**

* **No**

If yes, please indicate the special tax rate.

Austria

Yes (see answers 1.3 and 1.7). An individual over the age of 60 selling a partnership interest will be taxed at half the regular income tax rate provided he has owned the partnership interest for at least 7 years and the business of the partnership was carried on for at least 7 years. If he has not yet reached the age of 60 but fulfils the 7 year holding requirement the income can be spread over 3 years or alternatively a tax deductible allowance of ATS 100.000 is applied. Otherwise the income would be taxed at the full rates and a tax deductible allowance of ATS 100.000 will be applied.

Denmark

No.

Finland

N/A.

France

No. See above.

Germany

See answer to 1.3.

Greece

Yes, capital gains are subject to a tax rate of 20%.

Ireland

Not applicable.

Italy

It may happen (see 2.2.1 last period)

Luxembourg

Yes. Taxation similar to 1.3.

Portugal

Yes. Tax rate 10%.

Spain

No.

Sweden

N/A.

United Kingdom

No, see answer to 1.3.

2.4 Are the capital gains calculated according to 2.2.2 subject to a reduced tax rate?

* Yes

* No

If yes, please indicate the special tax rate

Austria

N/A.

Denmark

N/A.

Finland

No, however individuals may use an acquisition cost presumption which is 50% out of the purchase price when the interest has been owned at least for 10 years. If the interest is acquired after that the presumption is 20% out of the purchase price. Presumption is profitable when the real acquisition cost is lower than 50/20%. Individuals have always the right to use the real acquisition cost.

France

Yes. See above.

Germany

N/A

Greece

N/A.

Ireland

No.

Italy

It may happen because of the 27% tax rate provided for by the ordinary method and the 12,5% provided some cases as explained above in point 2.1.

Luxembourg

N/A.

Portugal

N/A.

Spain

N/A

Sweden

Yes, in the case of an individual seller the rate is 31-56%. To the extent real property is included the rate is 30%. For corporations the normal corporate tax rate, 28%, applies.

United Kingdom

No, see answer to 1.3.

2.5 Is the difference between the acquisition cost and the book value subject to normal tax rate?

* Yes

* No

Austria

N/A.

Denmark

Yes.

Finland

See answer 2.2.2.

France

See above.

Germany

No.

Greece

No.

Ireland

Not applicable.

Italy

N/A

Luxembourg

N/A.

Portugal

No.

Spain

N/A

Sweden

N/A.

United Kingdom

See answer to 1.2.2

2.6 A transferral (roll over) of a capital gain arising from the sale of interest in a partnership is:

* **allowed**

Please indicate on which type of assets a transferral is possible

* **not allowed**

Austria

Not allowed.

Denmark

Not allowed.

Finland

Not allowed, no roll-over reservations.

France

Not allowed.

Germany

Not allowed.

Greece

Not allowed.

Ireland

An individual may defer the capital gains tax on the sale by reinvesting the entire proceeds in other business assets.

Italy

Not allowed.

Luxembourg

Not allowed.

Portugal

Not allowed.

Spain

Not allowed.

Sweden

Not allowed.

United Kingdom

On the transfer of business assets, gains can be deferred. An interest in a partnership is an asset (a right which is different from the underlying assets).

2.7 Is there a different fiscal treatment (in comparison with 2.1.-2.6) if the interest in a partnership is sold by a partnership or a corporation?

* Yes

* No

If the answer is yes, please give further explanations.

Austria

Yes, see answer to 1.7.

Denmark

Yes (see comments to 1.7 above).

Finland

Yes, the capital gain is the difference between the book value and the purchase value. Corporations and partnerships may not use an acquisition presumption of 50/20%.

France

Yes. If the interest is sold by another partnership or a corporation, there is a different fiscal treatment. Two cases of must be considered:

Interest is sold by a partnership

If interest is sold by a partnership, capital gain is divided between the partners of the partnership selling the interest in proportion on interest they own. Two cases must be considered:

If the partnership has owned the interest for less than two years, quota of capital gain is added to other incomes of each partner. Consequently, capital gains and other incomes are subject to income tax, calculated according to income tax rate schedule (10,5% to 54%). In addition special taxes (CSG equal to 7,5% and CRDS equal to 0,5) apply.

If the partnership has owned the interest for more than two years, quota of capital gain is subject to reduced tax rate of 26%.

Interest is sold by a corporation

Capital gain is subject to:

- the common rate of 33 1/3% if the interest has been owned for less than two years,
- the reduced tax rate of 19% if the interest has been owned for more than two years,

Plus in both cases contribution equal to 10% of corporate tax.

Germany

Yes. Transfer gains are subject to normal tax rate. Use can be made by the allowance (see 1.1).

Greece

No.

Ireland

No.

Italy

Yes, should the seller be a partnership. In such a case, capital gains are treated as ordinary business income.

About corporations, it must be stressed that they are not allowed to own interest in partnership.

Luxembourg

Yes. Taxation similar to 1.7.

Portugal

Yes. The capital gains will be taxed as part of the normal taxable profit of the company.

Spain

Yes. The differences come to the different tax rates applicable to companies. An individual is subject to Income Tax (10 to 48%); partnership has to impute its income to the partners, who are taxed in their Income Tax; corporations are subject to Corporate Tax.

Sweden

Yes, where the seller is a *partnership* (which under Swedish law is not a taxable entity) the replies given under 2.1/2.6 apply to each partner with respect to his participation in the partnership. Thus, the rate for an individual partner is 30% and for a corporate partner 28%. For *corporate* sellers the rate is 28%.

United Kingdom

Yes. Individuals have an annual exemption of £7100, companies have no annual exemption.

2.8 Carry over of capital losses arising from the sale of interest in a partnership is:

* possible

* not possible

Austria

Possible.

Denmark

Possible.

Finland

Capital losses may be carried forward for three years, but may be deducted only against capital gains arising for those three years. This is for individuals, business enterprises may deduct capital losses related to their business from the business income and if the business income shows a loss for that year, then the loss is carried forward for ten years.

France

Possible.

Germany

Possible within certain limits.

Greece

Possible.

Ireland

A capital loss arising from the sale of an interest in a partnership can be carried forward indefinitely and used against future capital gains.

Italy

Possible only if the taxpayer acts in the business activity, if the sale is performed out of a business activity, the carry over is possible with the limit provided for in 1.8.

Luxembourg

Possible (see 1.8).

Portugal

Possible.

Spain

Possible. The taxable base is attributed to the partners, and they can carry over these losses in the same conditions as other individuals.

Sweden

Possible for a corporate seller but not for an individual.

United Kingdom

Possible. Capital losses can be carried forward indefinitely and set against any future chargeable gains.

2.9 Is the sale of interest in a partnership (see 2.1.-2.8) subject to VAT?

* **Yes**

* **No**

Austria

No.

Denmark

No.

Finland

No.

France

No.

Germany

No (taxable, but tax free).

Greece

No.

Ireland

The sale of a business between VAT registered persons is not liable to VAT.

Italy

No, it is exempted.

Luxembourg

No.

Portugal

No.

Spain

No.

Sweden

No.

United Kingdom

Not usually see answer 1.9 above.

2.10 Does in case of 1.9 VAT imply a real charge for the purchaser of the interest?

* Yes

* No

Austria

N/A.

Denmark

N/A.

Finland

N/A.

France

No. See above.

Germany

No.

Greece

N/A.

Ireland

If the purchaser is not VAT registered then VAT may be a real cost.

Italy

N/A.

Luxembourg

N/A.

Portugal

No.

Spain

N/A

Sweden

N/A.

United Kingdom

Not normally.

2.11 Is any transfer tax levied on the sale of interest in a partnership?

* Yes

* No

If yes, indicate which transfer tax is levied (e.g. real estate transfer tax) and give further explanations as for allowances and tax rates.

Austria

No.

Denmark

No.

Finland

No, there is no transfer tax or similar taxes included in a sale of interest in a partnership.

France

Yes. Transfer tax is levied on the sale of an interest (tax rate 4,8%).

Germany

Yes. Real estate transfer tax is levied proportionally as far as real estate is transferred provided all interests are transferred.

Greece

N/A.

Ireland

A stamp duty charge of 6% applies to the transfer of real property and goodwill were the consideration exceeds IR£ 60 000. For a transfer of an interest in an unlimited partnership, no stamp duty would arise.

Italy

Yes. Generally the above mentioned transaction is subject to the registration tax (250.000 Italian lire) and to the stock market tax (tassa sui contratti di borsa) equal to 0,14% of the sale price.

Luxembourg

No.

Portugal

No.

Spain

Yes, transfer tax is applicable to the part of the price that corresponds to real estate tax rate is 6%, or 7% depending on the region in which the asset is located.

Sweden

No.

United Kingdom

Yes. See answer 1.11. In stamp duty the partnership is a single legal person with a single £60,000 exempt provision.

3.DISPOSAL OF SHARES IN A LIMITED LIABILITY COMPANY OR A CORPORATION

Austria

Note:The answers refer to the sale of a share in a limited liability company ("GmbH") or a stock corporation ("AG") by an individual. Different rules apply where the seller is a corporation (see 3.1 and 3.7).

Greece

Note:Section 3 of the questionnaire is answered with regard to corporations only.

Italy

Note :In this section the answers are generally the same as the ones provided for sub point 2 because there are no particular differences for an individual in selling interest in a partnership or shares of a corporation.

Because of this similarity we will point out only the specific issues which differ in the two situations.

3.1 Are capital gains arising from the sale of shares in a limited liability company or a corporation by an individual exempted from taxation on income?

- * **Yes, totally exempted**
- * **Yes, partially exempted**
Please, give further explanation as for the amount of allowance
- * **No**

Austria

Short term capital gains (where the shares are being sold within 1 year after acquisition) are always taxed at the regular income tax rate.

Long term capital gains (where the individual has owned the shares sold for more than one year) are subject to income tax at half the regular rate.

Yes, partially exempted:

- capital gains realized by an individual who did not - at any time during previous 5 years - own a more than 10% share in the respective corporation are totally tax exempt, provided the individual has owned the shares for more than 1 year;
- where the seller is a corporation the capital gain is always subject to the regular 34% corporation income tax.

Belgium

Capital gains arising from the sale by an individual of shares in a limited company or corporation will be exempted from income tax.

Exception: the sale of a participation of at least 25% in a Belgian company to a foreign company or foreign juridical entity will be subject to income tax at a special flat rate of 16.5%+crisis surcharge+local surcharge (33% if the sale is qualified as a speculation, even if the transferee is a resident of Belgium).

However, if the participation was formerly invested in the business activity, the capital gain might be taxable at the normal rate.

Denmark

Yes, partially exempted. It depends on the size (amount) of shares and how long they have been owned.

Finland

No, it is usually not exempted. Only in change of generation situations capital gains are tax exempt. For that exemption it is required that an individual is selling at least 10% of the shares of a company to a close relative and the seller has owned the shares at least for 10 years. The capital gain is then totally tax exempt if the buyer does not sell the shares forward in the next 5 years. If the buyer sells the shares in 5 years then the tax exempt capital gain is deducted from the acquisition cost of the shares when calculating capital gain.

France

Yes, partially exempted.

Capital gains arising from sale of shares in a limited company or a corporation by an individual are not taxable if the amount of sale is under 50.000 FF.

The normal tax rate is 26%.

Germany

Yes partially exempted, if privately held; capital gains up to DM 20 000 are tax exempt. No. if held in a business.

Greece

Totally exempted. If the gains transferred to a "reserve special" and not distributed as dividends.

Ireland

In general a disposal of shares in a limited liability company is taxable but disposals by a person aged more than 55 may be exempt (see 1.1).

Italy

No.

Luxembourg

The capital gains arising from the sale of shares in a limited liability company are calculated as a difference between the price of disposal and the acquisition cost of the shares. If a substantial shareholding is sold, it is possible to operate an inflation adjustment on the acquisition cost of the shares.

Yes, totally exempted in case that the seller is not a substantial shareholder (stake of less than or equal to 25% of the total shares) and that the shares were held for more than 6 months from the date of purchase.

No exemption is available if either the seller is a substantial shareholder independently from the holding period, or if the seller is a non substantial shareholder and that the shares were held for less than 6 months from the date of purchase.

Netherlands

Income tax 25% (flat rate) on the sales of shares with an interest in the company of shares with an interest in the company of 5% and more during the last 5 years.

In other cases totally exempted.

Portugal

Yes. In cases where the shares are disposed of within 12 months after their acquisition, the capital gains are subject to taxation.

Spain

No.

Sweden

No.

United Kingdom

No, but if the sale gives rise to a chargeable gain of less than £ 7100 it is exempt to an individual who has not made any other sales. Also retirement relief may be available if an individual's shareholding is more than 5% of the company's share capital and that individual is a full time working employee of the company and aged 55 or more (However, see the earlier note on section III.).

3.2 Are those capital gains calculated?

3.2.1 *As difference between the price of disposal and the book value of the shares?*

***Yes**

***No**

Austria

Only if the shares are owned as a business asset.

Belgium

The capital gain equals the difference between sales price and acquisition price (book value normally only applicable if the shares are invested in the business activity).

Denmark

No.

Finland

No.

France

No.

Germany

No.

Greece

Yes, if gains are transferred to a "special reserve" and are not distributed as dividends.

Ireland

No.

Luxembourg

N/A.

Netherlands

No.

Portugal

No.

Spain

No.

Sweden

No, provided the shares are not held for trading (=inventory).

United Kingdom

No, but if the sale gives rise to a chargeable gain of less than £ 7100 it is exempt to an individual who has not made any other sales. Also retirement relief may be available if an individual's shareholding is more than 5% of the company's share capital and that individual is a full time working employee of the company and is aged 55 or more, although retirement relief will have been withdrawn by 6 April 2003.

(See note to section III)

3.2.2 *As difference between the price of disposal and the acquisition cost of the shares?*

**Yes*

**No*

Austria

Yes (if the shares are owned by an individual privately).

Belgium

Yes. See answer to question 3.2.1

Denmark

Yes.

Finland

Yes, between the acquisition cost and the purchase price.

France

Yes.

Germany

Yes.

Greece

Yes.

Ireland

The capital gain is computed as the difference between the price of disposal and the acquisition cost of the shares (adjusted for inflation).

Luxembourg

Yes, see 3.1.

Netherlands

Yes.

Portugal

Yes.

Spain

Yes.

Sweden

Yes, in cases not covered by 3.2.1.

United Kingdom

Not really but see answer to 1.2.2.

3.3 Are those capital gains calculated according to 3.2.1 subject to a reduced tax rate?

* Yes

* No

If yes, please indicate the special tax rate.

Austria

N/A.

Belgium

See answer to question 3.1.

Denmark

N/A.

Finland

N/A.

France

No.

Germany

No.

Greece

Not applicable. See answer 3.1.1.

Ireland

Not applicable.

Luxembourg

N/A.

Netherlands

N/A.

Portugal

Yes. Tax rate 10%.

Spain

N/A

Sweden

No.

United Kingdom

No. A company pays tax on its profits whatsoever. An individual shareholder pays tax on his total income as outlined at 1.3. Within the UK, a planning device used is to sell off small packages of shares each year to make the most of the individual's annual exemption of £7100. For example, over 10 years you would realise a gain of £ 71 000 (10 x 7100) tax free for each individual shareholder.

3.4 Are the capital gains calculated according to 1.2.2 subject to a reduced tax rate?

* **Yes**

* **No**

If yes, please indicate the special tax rate.

Austria

Yes, when the seller is an individual and has owned the shares for more than 12 months (see 3.1).

Belgium

See answer to question 3.1.

Denmark

Yes, see comments on 3.1 above.

Finland

No, there are no reduced tax rates. Presumption of acquisition cost is same as in point 2.4 concerning the sale of interest in a partnership. As an acquisition cost may be used 50% out of the purchase price when the shares have been owned at least for 10 years. If the shares are acquired later the presumption is 20%.

France

See above 3.1.

Non depreciable fixed assets

If these fixed assets have been owned for less than two years, capital gains are added to other incomes and subject to income tax calculated according to income tax rate schedule (10,5% to 54%). In addition, special taxes (CSG equal to 2,4% and RDS equal to 0,5%) apply.

If these assets have been owned for more than two years, gains are subject to reduced income tax rate of 20.9%.

Depreciable property plant and equipment

If these fixed assets have been owned for more than two years, capital gains are divided in two parts:

- first, portion of gains corresponding to the amount of depreciation is added to other incomes and subject to income tax calculated according to income tax rate schedule (10,5% to 54%). In addition, special taxes (CSG equal to 2,4% and RDS equal to 0,5%) apply.
- portion of gains exceeding the amount of depreciation are subject to reduced tax rate of 19,9%.

If the assets have been owned for less than two years, gains are added to other incomes and subject to income tax calculated according to income tax rate schedule (10,5% to 54%). In addition, special taxes (CSG equal to 2,4% and RDS equal to 0,5%) apply.

Inventories

Gains arising from the sale of inventories are added to other incomes and subject to income tax calculated according to income tax rate schedule (10,5% to 54%). In addition, special taxes (CSG equal to 2,4% and RDS equal to 0,5%) apply.

Germany

See answer to 1.3.

Greece

Not applicable.

Ireland

A reduced rate of 27% applies to the disposal of certain unquoted shares.

Luxembourg

Yes, taxed at half the global tax rate (maximum 23,575%).

Netherlands

Yes, flat rate of 25%.

Portugal

N/A.

Spain

No, those capital gains are subject to the same taxation of all capital gains.

Sweden

The gain is normally taxed at the capital tax rate of 30% but may wholly or partly be taxed at the normal rate of 56%.

United Kingdom

No. A company pays tax on its profits whatsoever. An individual shareholder pays tax on his total income as outlined at 1.3. Within the UK, a planning device used is to sell off small packages of shares each year to make the most of the individual's annual exemption of £7100. For example, over 10 years you would realise a gain of £ 71 000 (10 x 7100) tax free for each individual shareholder.

3.5 Is the difference between the acquisition cost and the book value subject to normal tax rate?

* **Yes**

* **No**

Austria

This is part of the capital gain (see answer 3.1).

Belgium

No. (See here above).

Denmark

No, it is not being taxed since only realised gains are taxable.

Finland

See answer 3.2.2.

France

No.

Germany

No.

Greece

N/A.

Ireland

Not applicable.

Luxembourg

N/A.

Netherlands

No.

Portugal

No.

Spain

N/A

Sweden

N/A.

United Kingdom

No, (see answer 1.2.2).

3.6 A transferral (roll over) of a capital gain arising from the sale of shares on other assets is:

*** allowed**

Please indicate on which type of assets a transferral (roll over) is possible

*** not allowed**

Austria

No.

Belgium

No transferral.

Denmark

A transferral is allowed.

Finland

No roll-over possibility.

France

Not allowed.

Germany

Not allowed.

Greece

Not allowed.

Ireland

Subject to certain conditions, an individual may defer the capital gains tax arising on the disposal of shares in a limited liability company by reinvesting the entire proceeds in shares of another limited liability company.

Luxembourg

N/A.

Netherlands

Not allowed.

Portugal

Not allowed.

Spain

Not allowed.

Sweden

Not allowed.

United Kingdom

The answer here is complex and depends on the nature of the company. The vendor of shares in a company can defer the charge to capital gains by claiming reinvestment relief or inventing into a tax shelter such as Enterprise Investment Scheme (EIS) or Venture Capital Trusts (VCT). The gain could be on the disposal of any asset but strict conditions must be satisfied for re-investment relief.

3.7 Is there a different fiscal treatment (in comparison with 3.1, 3.6) if the shares are disposed by a partnership or a limited liability company/corporation?

* Yes

* No

If the answer is yes, please give further explanations.

Austria

Yes. In case of a partnership the capital gain is taxed in the hands of the partners.

Belgium

No.

Fiscal treatment of shares disposed by a partnership: cf. disposal by an individual. Different rules applicable to the disposal by a limited liability company.

Denmark

No.

Finland

Corporations and partnerships may not use acquisition cost presumption when calculating the gain. They must use the book value of the shares.

France

Yes. There is a different fiscal treatment if shares are disposed by a partnership or a limited company. The taxation depends on the type of investment.

Capital gains arising from the sale of shares are subject to normal tax rate (33 1/3%) if these shares are considered as investment.

If the shares are considered as long term intercorporate investment, capital gain is subject to normal tax rate (33 1/3%) if the shares have been owned for less than two years, to reduced tax rate (19%) on the contrary.

In both cases, a temporary contribution equal to 10% of corporate tax applies.

Germany

Yes. If the shares are disposed by a limited liability company corporation transfer gains are subject to normal tax rates.

Greece

No.

Ireland

The roll-over relief described in 3.6 does not apply to companies, but see 1.7.

Italy

Yes. In such cases, capital gains are treated as ordinary business income in the financial statement of the seller.

Luxembourg

Yes, if a corporation disposes the shares, the capital gain is a taxable income, except the case that the conditions for the participation exemption are fulfilled. No, if a partnership disposes the shares.

For a partnership in which the shares are business assets and for a corporation general, there is a possibility of roll-over of the capital gain.

Netherlands

No. In case the shares are disposed by a partnership. Yes in case the shares are disposed by a limited liability company or corporation: participation exemption.

Anti-abuse rules to avoid use of holding company for take-over.

Portugal

Yes. The capital gains will be taxed as part of the normal taxable profit of the company.

Spain

Yes. If the shares are disposed by a partnership, the capital gain is taxed within the Income Tax of the partners. If a company disposes it, the capital gain is taxed in the Corporate Tax. In this case, a reinvestment deferral is applicable.

Sweden

Yes, where the seller is a *partnership* (which under Swedish law is not a taxable entity) the replies given under 3.1/3.6 apply to each partner with respect to his part of the shares. The rate for individuals is 30% and for corporations 28%. For *corporate* sellers the rate is 28%.

United Kingdom

No, other than individual members of a partnership each having their individual rights.

3.8 Carry over of capital losses arising from the sale of shares in a limited liability company or a corporation is:

* possible

* not possible

Austria

Not possible (unless the shares are being held as assets within a business of the shareholder, e.g. if the shareholder is also a company or corporation).

Belgium

No. No carry over of capital losses arising from the sales of shares by an individual in a limited liability company or corporation, except by taxation as a profit from speculation at the flat rate of 33% (+ surcharges).

Denmark

Possible.

Germany

Possible within certain limits.

Greece

Possible.

Finland

Capital losses may be carried forward for three years, but may be deducted only from capital gains arising for those years. For corporation losses may be deducted from business income if the shares belonged to the business assets.

France

Possible.

Ireland

A capital loss arising from the sale of shares on a limited liability company can be carried forward indefinitely and used against future capital gains.

Luxembourg

Not possible.

Netherlands

Possible.

Portugal

Possible.

Spain

Possible in the same conditions of all capital gains.

Sweden

It is possible for corporations and not possible for individuals.

United Kingdom

Possible.

3.9 Is the sale of shares (see 3.1.-3.8) subject to VAT?

* **Yes**

* **No**

Austria

Exempt from VAT.

Belgium

No VAT applicable to the sale of shares.

Denmark

No.

Finland

No.

France

No.

Germany

Yes.

Greece

No.

Ireland

The sale of shares is not liable to VAT.

Luxembourg

No.

Ireland

The sale of shares is not liable to VAT.

Netherlands

No.

Portugal

No.

Spain

No.

Sweden

No.

United Kingdom

No, it is exempt from VAT.

3.10 Does in case of 3.9 VAT imply a real charge for the purchaser of the shares?

* Yes

* No

Austria

No.

Belgium

N/A.

Denmark

N/A.

Finland

N/A.

France

No. See above.

Germany

No.

Greece

Not applicable.

Ireland

No.

Luxembourg

Not applicable.

Netherlands

N/A.

Portugal

No.

Spain

No.

Sweden

N/A.

United Kingdom

Not applicable other than related inputs are irrecoverable.

3.11 Is any transfer tax levied on the sale of shares in a limited liability company/corporation?

* **Yes**

* **No**

If yes, indicate which transfer tax is levied (e.g. real estate transfer tax) and give further explanations as for allowances and tax rates.

Austria

Yes:

- transfer of shares in a limited liability company: 2,5% transfer tax
- shares in a stock corporation: 0,15% transfer tax.

The transfer tax mentioned above applies only in the following cases:

- the transfer of shares is concluded within Austria, or
- the transfer of shares is concluded outside Austria but at least one of the parties involved is an Austrian resident individual or corporation; if only one party is an Austrian resident the transfer tax is reduced to 1/2 of the above mentioned rates;
- 3,5% real estate transfer tax applies if one shareholder acquires all shares in a corporation owning real estate located in Austria. The tax is levied on the "assessed value" (Einhitswert) of the real property, which is usually only a fraction of fair market value of the property.

Belgium

No transfer tax levied on the sale of shares of a limited liability company.

Denmark

Yes, 0,5% of the sales amount. No allowances.

Finland

Yes, a transfer tax of 1.6% of the purchase price of the shares.

France

Yes. The transfer tax is levied on the sale of shares:

- of limited liability company (tax rate 4.8%)
- of corporation (tax rate 1% with a maximum amount of 20 000 FF).

Germany

No.

Greece

No.

Ireland

A stamp duty charge of 1% applies to the transfer of shares in an Irish limited liability company.

Luxembourg

No.

Netherlands

Real estate transfer tax (see answer 1.11) in case of real estate company (real estate exceeding 70% of balance sheet total).

Portugal

No.

Spain

No, except when more than 50% of the assets are real estate. In this case, a 6-7% transfer tax is applicable.

Sweden

No.

United Kingdom

Yes. Stamp duty is payable on the sale/purchase of shares. It is at 0,5% payable by the purchaser.

1. TRANSFER WITHOUT CONSIDERATION OF A BUSINESS

1.1 Are there any taxable capital gains arising from the transfer without consideration of a business effected by an individual?

** Yes, totally exempted*

** Yes, partially exempted*

Please give further explanations as far as the amount of the allowance is concerned

** No*

Austria

No.

Belgium

a) The entrepreneur ceases his activities without any further agreement in respect of a possible takeover without any transfer of assets. Capital gains which would show up on the assets which are transferred in a lasting way into the private patrimony and are not used professionally, are not subject to taxation.

Not only the capital gains realized are taxable: also the gains stated in any document drawn up by a cessation of activity, such as a partition, a donation, a return signed by the heirs, an option, etc. Only the stated gains on assets which are transferred in a lasting way into the private patrimony and are not subject to a professional use, are exempted (Com IR n°28/23).

b) The entrepreneur ceases his activities which are continued by his spouse or by children or parents: the capital gains will not be taxable (art. 46 CIR 92). The former regime in respect of amortization, etc. will be continued by the continuator, without any set up obtainable.

Taxpayer may however opt for immediate taxation (see c), what will on its turn entail a set up for the continuator.

c) Transfer of the enterprise by inheritance or donation:

- If the heirs are spouse, children or parents (see b).
- Otherwise: capital gains taxable if the assets are not transferred into a private patrimony (see a).

Due to the federal structure of Belgium, the three Regions (Flemish, Walloon, Brussels) apply each different rules in the field of Inheritance Tax. A Region has power to tax the heritage depending on where the deceased was resident at the moment of his decease. Since 1997, Flanders applies a rate of 3% (reduced in October 1999 to 0%) on family enterprises or companies. Similar rules were introduced, in 1998 in Walloon Region, in 1999 in Brussels. Some features and conditions are however different in one Region, in comparison to another one. A federal gift tax of 3% has been introduced end 1998.

Denmark

Yes, all assets are regarded as sold by the transferor who is taxed upon all taxable gains. Most losses are deductible.

However, there is the possibility of using the succession principle and thus avoid taxation of capital gains. In this situation taxation of the gains is deferred.

If the transfer of the enterprise is effected while the transferor is alive, the use of the succession principle is limited to transfers within the nearest family.

Finland

No.

France

Yes, partially exempted.

Capital gains arising from the transfer of assets into private patrimony without consideration of a business are taxable.

However, capital gains arising from the transfer of assets into private patrimony are not taxable if:

- business is carried on by the entrepreneur for five years,
- yearly turnover does not exceed 350 000 F for service transactions or 1 000 000 F for tangible assets.

Taxation of capital gains arising from the transfer of a business by inheritance or donation is differed if:

- all the assets exist in the opening balance sheet drawn up by the heirs,
- methods of depreciation is unchanged.

Germany

No.

Greece

No.

Ireland

A disposal of a business by way of gift by an individual aged more than 55 to a child regardless of the value of the business may be exempt from capital gains tax. A disposal by an individual over 55 years of age of a business with a value up to IR£250,000 may also be exempt.

Italy

Due to the lack of any specific legislative provision, it must be said that there is much uncertainty about the tax regime of the transfer without consideration of a business.

The prevailing doctrine asserts the taxation of the capital gains arising from the above mentioned transfer.

According to the article 54, comma 5, of T.U.I.R., a special regime is provided for *mortis causa* transfer as well as for *inter vivos* transfer to close relatives.

Due to this special regime, there are no capital gains arising from this transfer if the fiscal value of the business remains the same after the transfer.

Luxembourg

No.

The Netherlands

* Income Tax: One has the possibility to choose between tax at a special rate (45% or 20% in the case of death) and a free amount just as for sale of business and total exemption under the condition that the assets and liabilities were accounted for at the same figures as the late entrepreneur did (article 15 of the Income Tax Law).

The possibility only exists for transfers as a result of death and divorce.

* Inheritance Tax: No special exemptions for business-transfers other than normal free amounts for spouse (Dfl 577.751, 1999 figure) and children.

* Gift Tax: No gift tax as far as one has to pay income tax over the obtaining. Note that if the new entrepreneur has chosen for the possibility to operate with the book value, no capital gains are calculated; the answers below are only valid in the case of the first possibility mentioned above (tax of capital gains).

Portugal

No.

Spain

- If the assets are not transferred, and the entrepreneur simply ceases the activity, no taxation is applicable.
- If the assets are transferred by inheritance or donation, Income Tax is not applicable under certain conditions. Inheritance and Gift Tax has a reduction of the taxable base of 95%.

Sweden

No.

United Kingdom

Those assets of a business which are subject to Capital Gains Tax are deemed to have been disposed of for Capital Gains Tax purposes by the individual transferring the business. This is so even although no consideration has been received by the transferor. However, there is a hold-over relief for gifts of business assets subject to certain conditions (see 1.6).

Partial exemptions from this charge are an individual's annual exemption from all gains up to a maximum amount (currently £ 7,100), or possibly retirement relief. This relief applies to an individual who fulfils the appropriate conditions, the most important of which is that he has reached age 55, his business is a qualifying trade, profession, or vocation (investment business do not qualify) and has traded for a sufficient length of time (minimum one year, no additional benefit excess of ten years) and the Gain totally exempt up to £ 200,000 and 50% of gain charged on next £ 800,000.

There are, however, many complicated rules attached to the Retirement Relief Provisions which are not

mentioned above (See note on section III).

Transfers "mortis causa" are exempt with the exception of certain held over gains on transfers to trustees and, a transfer to spouse. (All transfers to spouse involve a transfer at a value which results in neither a gain or a loss).

1.2 How are those capital gains calculated?

Austria

N/A.

Belgium

Difference between net book value of the date at which the activities are ended and the sales value of these assets.

Denmark

The calculation of capital gains depends on the assets in question. Different calculation rules apply to different types of assets. In general, gains are calculated as the difference between sales prices and cost/written-down values.

As a general rule, the full gain is included in taxable income. The following exceptions exist:

*** Goodwill:**

As noted in item 1.3 below, goodwill taxation is being phased in. In 1996 and later years the full gain is taxable.

*** Real estate:**

The full gain is taxable, if the transfer takes place within the first three years of ownership. Thereafter, the taxable gain is reduced by 5% per year up to a limit of 30%. If part of the gain represents the recovery of past depreciation, this part is not subject to the reduction. Recovered depreciations are taxed as indicated below for machinery, etc.

*** Machinery, equipment, ships:**

For 1996 and 1997, 85% of the gain is taxable. For 1998 and later years, 90% of the gain is taxable.

Finland

N/A.

France

The capital gains are calculated by comparison of market value and book value.

Germany

N/A.

Greece

N/A.

Ireland

The capital gains are based on the market value of the assets disposed of compared to their cost of acquisition, as adjusted for inflation.

Italy

The capital gains arising from the above mentioned transfer are calculated on the difference between the market value of the business and its book value at the time of the transaction.

Luxembourg

N/A.

The Netherlands

The capital gains are calculated by comparison market value and book value.

Portugal

N/A.

Spain

N/A

Sweden

N/A.

United Kingdom

The capital gains are calculated under the normal rules but the "consideration received" is deemed to be the open market value of those asset(s) transferred which are subject to Capital Gains Tax.

The chargeable assets of the business which are transferred may include:

Land;

Buildings;

Plant and machinery;

Goodwill;

Certain rights, leases, etc (patents transferred would be chargeable to income tax).

Gains are calculated under the normal UK Capital Gains Tax Rules, normally transfers such as these would be "bargains at arms length" and, therefore, the "disposal value" for Capital Gains Tax purposes would be "open market value". From the "market value" of the chargeable assets transferred the cost of those assets and indexation are deducted, resulting in the chargeable gain or allowable loss. Any allowable loss must exclude indexation. If the asset was held at 31 March 1982 the "market value" of that asset may be the appropriate cost.

1.3 In particular, is the goodwill included in the market value considered in the determination of the capital gains?

Austria

N/A.

Belgium

No. Goodwill must however be included for computing inheritance or gift tax if the activities are continued.

Denmark

Yes, the taxable gain (or deductible loss) is being phased in as follows:

50% in 1994, 75% in 1995, and 100% in 1996 and later years.

Finland

N/A.

France

Yes, see below 1.4.

Germany

N/A.

Greece

N/A.

Ireland

Goodwill is included.

Italy

Yes.

Luxembourg

N/A.

The Netherlands

Goodwill is included.

Portugal

N/A.

Spain

N/A

Sweden

N/A.

United Kingdom

Yes.

1.4 Are the capital gains, calculated according to 1.2, subject to a reduced tax rate? If yes, please indicate the special tax rate.

Austria

N/A.

Belgium

See rules applicable to sale of a business.

Denmark

No special tax rates apply for transfer of a business without consideration.

Finland

N/A.

France

Taxation of those capital gains depends on the different types of assets:

- non depreciable fixed assets,
- depreciable property plant and equipment,
- inventories.

Non depreciable fixed assets

If these fixed assets have been owned for less than two years, capital gains are added to other incomes and subject to income tax calculated according to income tax rate schedule (10,5% to 54%). In addition, special taxes (CSG equal to 7,5% and CRDS equal to 0,5%) apply.

If these assets have been owned for more than two years, gains are subject to reduced income tax rate of 26%.

Depreciable property plant and equipment

If these fixed assets have been owned for more than two years, capital gains are divided in two parts:

- first, portion of gains corresponding to the amount of depreciation is added to other incomes and subject to income tax calculated according to income tax rate schedule (10,5% to 54%). In addition, special taxes (CSG equal to 7,5% and CRDS equal to 0,5%) apply.
- portion of gains exceeding the amount of depreciation are subject to reduced tax rate of 26%.

If these assets have been owned for less than two years, gains are added to other incomes and subject to income tax calculated according to income tax rate schedule (10,5% to 54%). In addition, special taxes (CSG equal to 7,5% and CRDS equal to 0,5%) apply.

Inventories

Gains arising from the sale of inventories are added to other incomes and subject to income tax calculated according to income tax rate schedule (10,5% to 54%). In addition, special taxes (CSG equal to 7,5% and CRDS equal to 0,5%) apply.

Germany

N/A.

Greece

N/A.

Ireland

In general a reduced rate does not apply.

Italy

No.

Luxembourg

N/A.

The Netherlands

Yes, there is a special flat rate of 45% or 20% in the case of death of the late entrepreneur.

Portugal

N/A.

Spain

N/A

Sweden

N/A.

United Kingdom

No, the annual rate of Capital Gains Tax applies (presently for individuals at the marginal rate of income tax). (But see note on section III).

1.5 Which is the tax regime of the capital gains arising from the transfer without consideration of a business effected by an individual?

Austria

N/A.

Belgium

See rules applicable to sale of a business.

Denmark

Capital gains are included in the taxable income of the transferor (unless the succession principle is used). Taxable income is broadly divided between earned income and income from capital (unearned income). Most capital gains are regarded as earned income. Income from shares is taxed separately.

Generally, income taxes are calculated as the sum of the following (1996):

- * 29.5% (average) of taxable income;
- * 12% of taxable income (declining to 8% in 1998);
- * 5% of earned income plus positive net unearned income exceeding 20.700 DKK. An allowance of 243.100 DKK is granted in the calculation basis;
- * 0.4%-2.6% church tax of taxable income varying according to place of residence in Denmark.

Gains on shares are taxed at reduced (flat) tax rates, if the shares are held for more than three years. The rate is 25% for such gains plus received dividends up to a limit of 33.800 DKK per year (1996). Gains plus received dividends in excess of 33.800 DKK per year are subject to a 40% taxation.

Finland

N/A.

France

See above 1.4.

Germany

N/A.

Greece

N/A.

Ireland

The capital gain arises to the individual gift the business and is taxable at 40%.

Italy

The capital gains arising from the transfer are subject to the individual progressive income taxation (18,5 – 45,5%).

If the beneficiary is an entrepreneur who continues the activity of the business transferred, the latter is subject to the income taxation as business income (contingent asset = value of the business) with progressive rates.

Luxembourg

N/A.

The Netherlands

The income tax-regime is applicable. The Netherlands does not have a special capital gain tax.

Portugal

N/A.

Spain

N/A

Sweden

N/A.

United Kingdom

The question is not applicable in the UK.

1.6 A transferral (roll over) of a capital gain arising from the transfer without consideration of a business on other assets is allowed or not allowed? If yes, please indicate for which type of assets a transferral (roll over) is possible.

Austria

N/A.

Belgium

No.

Denmark

Regarding the possibility for the transferor to transfer a gain on a transferred asset to another asset which is still owned by the transferor:

It is possible to transfer a gain (not the part representing the recovery of past depreciations) on industrial estate to another industrial estate acquired during the same or the following fiscal year by reducing the acquisition price of the new estate.

This is not possible in relation to other types of assets.

Regarding the possibility to transfer a gain from the transferor to the transferee.

This is possible by application of the succession principle (please refer to item 1.1 above). Taxation of the gain is thus deferred, until the transferred assets are sold by the transferee.

Finland

N/A.

France

No.

Germany

N/A.

Greece

N/A.

Ireland

There is no concept of a capital gains tax transferral for Irish tax purposes.

Italy

Not allowed.

Luxembourg

N/A.

The Netherlands

A transfer from one asset to another is not allowed (but see above the general opportunity to choose a special regime without any capital gain).

Portugal

N/A.

Spain

N/A

Sweden

N/A.

United Kingdom

It is assumed that by "transferral" what is meant is a transfer of the gain to the new owner of the business by means of hold over. The answer is "yes", hold over relief, if allowed, both the donor and the donee sign the election. Hold over relief operates by the Capital Gains Tax cost of the asset acquired by the donee being reduced by the gain not being charged on the donor. In essence, the recipient inherits the base cost of the asset from the donor. The relief is only available in relation to assets used for the purposes of a "trade, profession or vocation". It is not, for instance, available in relation to assets of an investment business such as one concerned with letting property. It is most important to differentiate between "trade, profession and vocation" and other types of business for the purposes of many Capital Gains Tax Reliefs.

1.7 A deferral of the taxation of the above mentioned capital gains is allowed or not allowed? If yes, please indicate which are the conditions of the deferral.

Austria

N/A.

Belgium

No.

Denmark

Regarding the possibility for the transferor to transfer a gain on a transferred asset to another asset which is still owned by the transferor:

It is possible to transfer a gain (not the part representing the recovery of past depreciations) on industrial estate to another industrial estate acquired during the same or the following fiscal year by reducing the acquisition price of the new estate.

This is not possible in relation to any other type of assets.

Regarding the possibility to transfer a gain from the transferor to the transferee:

This is possible by application of the succession principle (please refer to item 1.1 above). Taxation of the gain is thus deferred, until the transferred assets are sold by the transferee.

Finland

N/A.

France

See above 1.1.

Germany

N/A.

Greece

N/A.

Ireland

In general a deferral of tax on a gift of a business does not arise because there are no proceeds to reinvest.

Italy

Not allowed.

Luxembourg

N/A.

The Netherlands

A deferral is not allowed (see above).

Portugal

N/A.

Spain

N/A

Sweden

N/A.

United Kingdom

Deferral of taxation of the above mentioned capital gains is allowed and the gain can be deferred with or without re-investment in other business assets.

a) Without re-investment of deemed consideration.

The Capital Gains Tax may be deferred under the Capital Gains Tax "holdover" relief provisions. These rules provide that the recipient of the business takes over the transferor's potential Capital Gains Tax liability so that when the recipient disposes of the business assets in question, the holdover gain crystallises.

The relief is only available where the transfer without consideration is to a UK resident person (individual or company) and is withdrawn if the recipient emigrates from the UK within six years after the end of the tax year in which the transfer took place.

b) With re-investment of deemed consideration by either:

- (i) Roll over relief;
- (ii) Re-investment relief.

The Capital Gains Tax arising from the transfer may also be deferred wholly or partially, under the "roll over relief" provisions if the deemed consideration is re-invested, wholly or partially, in replacement business assets. Deferral under the "re-investment relief" provisions may also be available where the re-investment is in shares in unquoted trading companies.

There is a large body of law concerning "roll over relief" and "re-investment relief". Roll over relief is available both to individual transferrers and corporate transferrers. Re-investment relief is only available to individual transferrers.

Under "roll over" all of the open market value of the transferred assets must be re-invested in replacement business assets for full relief to be obtained. Re-investment of part only if the deemed consideration will restrict the amount of the gain rolled over.

Under "re-investment relief" only the amount of the chargeable gain needs to be re-invested for full deferral to be obtained.

1.8 Is there a different fiscal treatment if the business is transferred by a partnership or a corporation? If yes, please give further explanations.

Austria

Transfer by an individual or a partnership: No. If transferred by a corporation; realization of capital gain (difference book value to fair market value) and subsequent deemed constructive dividend (or distribution of liquidation proceeds) see 3.6".

Belgium

Same rule for transfer by a partnership as for transfer by an individual. A company is in theory not allowed to transfer without consideration.

Denmark

In Denmark partnerships are not regarded as taxable entities. Partners are taxed separately on their share of profits and capital gains.

The taxation of a partner transferring his ideal share of assets and liabilities is subject to the same tax treatment as individuals transferring a whole enterprise. However, for limited partnerships (K/S) the possibility to deduct capital losses is subject to certain restrictions.

Also there is no special tax treatment, if the business is transferred by a corporation. Please notice that a company's transfer of its net assets to other individuals or corporations without consideration may fiscally be regarded and taxed as dividend for the shareholders of the transferring corporation.

Finland

N/A.

France

N/A.

Germany

N/A.

Greece

N/A.

Ireland

The same treatment would apply to a disposal of an interest in a partnership but not a disposal by a company as the relief only applies to a disposal by an individual aged more than 55.

Italy

Yes. The capital gains realized by a corporation are always subject to the corporation tax (37% "IRPEG").

On the contrary, the capital gains realized by a partnership are taxed in the hand of the partners on the basis of the individual taxation mentioned under point 1.5.

Luxembourg

Same rules as for a transfer by an individual in case of a transfer by a partnership.

If a corporation transfers a business, assets and liabilities have to be transferred at the fair market value and the related capital gains are taxable as a normal income.

The Netherlands

The Netherlands does not have a partnership tax. Each entrepreneur will be considered as an individual having his own business. In case of a corporation no special regime is applicable and no special rate either.

Portugal

N/A.

Spain

Transfer by an individual or a partnership: no. If transferred by a corporation: realisation of capital gain (difference book value to fair market value).

Sweden

N/A.

United Kingdom

A company will be liable for Corporation Tax on chargeable gains deemed to arise as a result of the transfer of a business without consideration. There may be the possibility that the tax may be deferred depending on whether the recipient is an individual or another company and whether the recipient company is in the same "group" of companies.

It is almost certain that if the transfer were to an individual, the individual would be a shareholder, or someone connected with a shareholder, or with a director. Apart from the fact that such a transfer might be illegal, it would, in almost all cases, be treated as a distribution from the company and charged to tax accordingly or, alternatively, be treated as a benefit in kind to an employee and taxed as remuneration on him.

1.9 Carry over of capital losses arising from the transfer of the business is possible or not?

Austria

No capital losses will be realized upon the transfer without consideration of a business. Thus, no carry over is possible.

Belgium

Yes, but only on professional income and on miscellaneous income (33% on profits from speculation).

Denmark

Carry over of capital losses from the transferor to the transferee is not allowed.

For the transferor, capital losses are first offset against other taxable income. Further losses may be carried forward and deducted in the following five years. Carry back is not allowed.

Finland

N/A.

France

No.

Germany

N/A.

Greece

N/A.

Ireland

In general, the answer is yes but capital losses arising from transfers of assets between a parent and a child (and other relatives) are restricted for offset against capital gains arising on transfers between the same individuals.

Italy

Capital losses cannot be carried over. On the contrary, the eventual loss evidenced by the financial statement of the period including the capital losses realized on the above mentioned transfer can be carried over for a period not exceeding five years.

Luxembourg

N/A. A capital gain or loss will not occur.

The Netherlands

Losses are deductible without any special restriction (they will be considered as normal business losses).

Portugal

N/A.

Spain

N/A

Sweden

N/A.

United Kingdom

No, with regard to the transferee or recipient. However, the individual transferor may carry forward without limit of time capital losses arising on the transfer of a business. The capital losses arising may be set against the individual's capital gains arising in the same year or, if not so used, may be carried forward indefinitely until they have been used. Use of losses carried forward against subsequent capital gain is mandatory. Subject to the Connected Persons Rules which may restrict the losses to being available against gains made on a disposal to the same transferee.

1.10 Is the above mentioned transfer under the gift tax?

Austria

Yes.

Belgium

Yes. See answer 1 c).

Denmark

Normally gifts are assessed as taxable income of the transferee. However, gifts within the nearest family are subject to gift tax.

Finland

Yes.

France

The transfer of a business is subject to gift tax.

Germany

Yes.

Greece

Yes.

Ireland

Yes.

Italy

The transfer without a consideration of the business is subject to the gift tax.

Luxembourg

Gifts are only subject to a registration tax if registered.

The Netherlands

Donations are tax exempt from gift tax as far one has to pay income tax.

Portugal

Yes.

9

Spain

Yes, but a reduction of 95% of the taxable base is applicable under certain conditions.

Sweden

Yes.

United Kingdom

Transfers of assets used in a business are subject to Inheritance Tax (gift tax) but are also subject to the rules for "business property relief" which may give 100% or 50% relief from inheritance tax.

1.11 Which is the tax regime of the transfer under the gift tax?

Austria

Austrian residents and in certain cases Austrian citizens resident abroad are subject to unlimited gift tax whereas all other persons are only subject to limited gift tax (i.e. limited to property situated in Austria). The tax rates range from 2% to 60% depending on the tax base and the relationship between the donee and the donor (between the heir and the deceased). To the extent real estate is transferred gift tax will be increased by 1% to 2% of the real estate's tax base. The tax base is the market value (Teilwert or Kurswert) of the assets less the liabilities transferred (except in the case of real estate located in Austria where a lower "assessed value" (Einheitswert) will be applied).

There is a ATS 5 mio (363.365 euro) exemption from gift and inheritance tax if an entire business, a partnership share or a more than 25% share in a corporation is transferred mortis causa or as a gift inter vivos. The following conditions have to be met:

- the donor is over 55 years old or he is incapacitated to carry on the business because of physical or mental illness
- the beneficiary is a physical person
- the beneficiary must not dispose of the business/partnership interest/share during a period of 5 years

There are various other conditions to be complied with for the tax exemption to be applicable (e.g. the business, the partnership or the corporation must be located in Austria).

Belgium

The rate of the gift tax is equal to 3% for the agreements stated by authentic deed by which the ownership is transferred, without consideration, of an universality of assets or a division which carries on an industrial, commercial, small-scaled or agricultural activity, or an intellectual profession (except for the real estates affected to residence), or of shares of a company busy in these fields and located in the E.U. The transfer must take place between individuals. The transferee must continue the activities during at least five years. Formal conditions are to be fulfilled.

Denmark

The gift tax is calculated as 15% of the value of transferred net assets to an individual in excess of 40.000 DKK per year. (14.000 DKK for gifts to sons-in-law and daughters-in-law). However, gifts to stepparents and grandparents are subject to 36.25% rate.

Finland

The assets transferred are valued to market price. Goodwill has no value when transferring a business. The tax base is the assets less the liabilities transferred. The tax rates range from 10% to 32% depending on the relationship between the donee and the donor. It is, however, possible to apply for relief if the donee goes into business and the gift tax exceeds FIM 5,000. The assets are then valued to taxable value.

France

An allowance of 300 000 F (400 000 F for the spouse) is deducted from the assessed value of the transferred business capital (current asset valuation). The tax regime applicable to the basis of assessment depends on the one side upon the degree of relationship existing between donor and receiver and the other side upon the value of transferred assets (5% to 60%).

Tax is reduced

- of 50% if donor is under 65.
- of 30% if donor is under 75 but over 65.

Germany

An allowance of DM 500.000, - will be deducted from the assessed value of the transferred business capital (current asset valuation); of the remaining amount 60% will be subject to taxation. The tax regime applicable to the basis of assessment depends on the one side upon the degree of relationship existing between donor and receiver and on the other side upon the value of transferred assets. Four different tax classes ranging from 7% to 50% may be applicable.

Greece

Rates scaled from 5% to 60%.

Ireland

The donee is liable to gift tax on the taxable value of the gift. The tax payable depends on the relationship between the donor and the donee and whether the donee has taken any previous gifts or inheritances. A 75% exemption may apply to business property passing by way of gift or inheritance. The taxable value of the gift is taxed at rates up to a top rate of 30%. The tax free threshold (1996) is IR£182,550 for gifts and inheritance between a parent and a child.

Italy

The gift tax, which must be paid by the beneficiary, is applicable - with progressive rates (3% up to 33%) - to the book value plus goodwill of the business transferred.

The determination of the tax vary depending upon different conditions (the amount of the taxable base, the number and qualification of the beneficiaries, etc.).

A special taxable base reduction is allowed in relation to the gift within the family and/or close relatives, providing they continue the business activity for a period of at least five years from the date of the transfer.

Luxembourg

See 1.13.

The Netherlands

See 1.10 tax exemption.

Portugal

The transfer is calculated according to market price and the tax rate depends on:

- a)total transferred,
- b)relationship between who transfers and the receiver.

Spain

The Gift and Inheritance Tax depends on a) the market value of the goods (7.65% to 34%); b) the family relationship between the donor and the acquirer; and c) the previous net worth of the acquirer. Multiplier rates applicable according to n) and c) can be 1.00 to 2.40. Consequently, the maximum tax rate is 81.6% (34% x 2.40). Obviously, if the above mentioned reduction of 95% is applicable, the effective tax rate is sensibly lower.

Sweden

The rates vary from 10 to 30% but the brackets are different depending on the relationship between the donor and the donee. A tax free amount of SEK 10.000 (1.150 euro) applies.

United Kingdom

Gifts are subject to tax under the Inheritance Tax regime.

1.12 Is the transfer of the business subject to the VAT?

Austria

Transfer "mortis causa" : No.

Transfer without consideration : Yes, the donor is subject to VAT (taxable self-supply). In case, however, the business is continued by the donee, the VAT liability can be transferred to the donee who is entitled to recover the VAT as input VAT.

Belgium

No VAT applicable if entire activity transferred to a VAT taxpayer and for professional use. VAT may be due on same assets transferred from professional assets to private assets ("Revision").

Denmark

No (provided that the transferee is VAT registered and takes over certain obligations).

Finland

No VAT is applicable if the entire activity as a going concern is transferred to a VAT liable and for professional use. VAT may be due on assets transferred from professional assets to private assets.

France

Transfer "mortis causa": No.

Transfer without consideration: VAT must be due on same assets transferred from professional assets to private assets (revision).

Germany

No.

Greece

No.

Ireland

Generally no.

Italy

The transfer of a business as a whole is not subject to VAT.

Luxembourg

No.

The Netherlands

The transfer is exempt of VAT.

Portugal

No.

Spain

No.

Sweden

No, under the condition that the purchaser will continue the business under the same conditions as the seller or use the business in another business subject to Swedish VAT.

United Kingdom

The transfer of a business as a going concern is not subject to VAT, except in certain cases involving the situation where the transferor has opted to tax land being transferred and the transferee refuses to opt to tax on land so transferred, or does not register for VAT.

1.13 Is any other indirect tax levied on the transfer of the business? If yes, please indicate which transfer tax is levied and give further explanations concerning allowances and tax rates.

Austria

No.

Belgium

No business transfer tax.

Denmark

Stamp duty on the value of real estate is imposed at 1.2%. Stamp duty on the value of machinery, inventory, and goodwill is imposed at 1%.

Social security contributions of 7% (8% in 1997 and later years) may be due on capital gains. These contributions are deductible in arriving at taxable income.

Finland

No.

France

No.

Germany

No.

Greece

No.

Ireland

A stamp duty charge of 3% normally applies to the transfer of real property and goodwill between relatives.

Italy

If the transfer of the business is subject to the gift tax the applicable registration tax amounts to 250.000 Italian Lire.

In any case, if the business includes a real estate property, the transferor is subject to a progressive tax (called "INVIM") on the difference between the price of disposal at the time the transaction is performed and the cost of acquisition of the real estate in question.

Furthermore, in such case the transaction is subject to another tax called "imposta ipotecaria e catastale" equal to the 3% of the real estate value.

Notwithstanding the INVIM tax has been abolished since the beginning of 1993, a transitory regulation states that in case of transaction of the real estate it will be taxable until 1.1.2003 the difference between the value at the date 31.12.1992 and the cost of acquisition.

Luxembourg

Yes. A distinction has to be operated between an "inter vivos" transfer without consideration (gifts) and a "mortis causa" transfer without consideration (inheritances).

Gifts and inheritances are subject to one or other of two distinct duties. Inter vivos gifts are subject to registration duties. Mortis causa transfers are subject to inheritance duties.

Inter vivos gifts are subject to registration duties only if the gifts are made in writing. The registration is the only acceptable evidence of the date of the donation, which may be important for inheritance purposes. The written form is compulsory only for donations of real estate, which have to be registered by notarial deed. Gift tax (=registration duties) rates rises in proportion to the degree of kinship between the donee or heir and the previous owner. Registration duties are levied at either proportional or fixed rates. The rates are between 1.8% and 14.4% plus a 2/10 surtax. Gifts of immovable property are moreover subject to an additional proportional duty of 1% to cover the cost of changing the entry in the public registers.

A mortis causa transfer is not subject to transfer taxes except a fixed registration entry if an immovable property is transmitted.

The Netherlands

No indirect tax is levied as long as the whole business or a substantial part of the business is transferred.

Portugal

No.

Spain

No.

Sweden

No.

United Kingdom

No. Stamp duty is only charged on actual consideration and not any "deemed" consideration. If, however, there is partial consideration then Stamp Duty will be charged at 1% on the amount of money which is actually paid on any assets which are transferred by means of a written document.

1.14 Is the transfer "mortis causa" of the business subject to the inheritance tax?

Austria

Yes.

Belgium

Yes. We refer to point 1.1, litt. c). Due to the separate regimes in each Region of Belgium, a detailed analysis would fall outside the scope of this survey.

Denmark

Yes.

Finland

Yes.

France

Yes.

Germany

Yes.

Greece

Yes.

Ireland

Yes.

Italy

The transfer mortis causa of the business is subject to the inheritance tax.

Luxembourg

Mortis causa transfers are subject to inheritance duties which are levied on the property, bequeathed to the heirs of a deceased Luxembourg resident. The duties are assessed on the net value of the property received, after deduction of the relevant liabilities.

The rate at which the succession duties are levied rises in proportion to the degree of kind ship and is progressive and therefore increases with the value of the inheritance that is passed on.

The minimum rates are of 0% to 15% (depending on the degree of kind ship) plus an additional tax (between 1/10 and maximum 22/10) based on the value of the inheritance.

An additional proportional duty of 1% is due for the succession of immovable property to cover the costs of changing the entry in the public registers.

An inheritance devolving on lineal descendants or between spouses with common children are exempt from succession duties.

The Netherlands

Yes, at a normal rate related to the amount of business. On the other hand, one must keep in mind that for income tax the 20% rate is applicable or even a total postponement of income tax.

Portugal

Yes.

Spain

Yes, but a reduction of 95% of the taxable base is applicable under certain conditions.

Sweden

Yes.

United Kingdom

Yes, but there are considerable reliefs available and most businesses will receive 100% relief.

1.15 Which is the tax regime of the transfer "mortis causa"?

Austria

Same as tax regime described under 1.11 (gift tax is levied at the same rate as estate tax).

Belgium

Tax inheritance will depend on the value of the assets transferred and of the parental relationship (rates scaled from 3% to 80%). We refer to point 1.1, litt. c). Due to the separate regimes in each Region of Belgium, a detailed analysis would fall outside the scope of this survey.

Denmark

Inheritance tax is calculated as 15% of the part of the estate's values which are assigned to members of descendants's nearest family. An allowance in the calculation basis of 180.000 DKK is granted. Values assigned to others are subject to a further 25% tax calculated on the same basis, but after deduction of the 15% already calculated.

Finland

The assets transferred are valued to market price. Goodwill has no value when transferring a business. The tax base is the assets less the liabilities transferred. The tax rates range from 10% to 48% depending on the relationship between the donee and the donor. It is, however, possible to apply for relief if the donee goes into business and the inheritance tax exceeds FIM 5,000. The assets are then valued to taxable value.

France

See above 1.11.

Germany

Refer to question 1.11.

Greece

Rates scaled from 5% to 60%.

Ireland

The successor is liable to inheritance tax on the taxable value of the inheritance. The tax payable depends on the relationship between the disponent and the successor and whether the successor has taken any previous gifts or inheritances. The taxable value of the inheritance is taxed at rates up to a top rate of 40%.

Italy

The inheritance tax, similarly to the gift tax, is applicable with progressive rates (3% up to 33%) to the book value plus goodwill of the business.

The determination of the tax varies depending upon the same conditions examined in relation to the gift tax.

A special taxable base reduction is allowed in relation to the inheritance within the family and/or close relatives, providing they continue the business activity for a period of at least five years from the date of the transfer.

Luxembourg

See 1.14.

The Netherlands

Both income tax and inheritance tax.

Portugal

See 1.11.

Spain

- If the assets are not transferred, and the entrepreneur simply ceases the activity, no taxation is applicable.
- If the assets are transferred by inheritance or donation, Income Tax is not applicable under certain conditions. Inheritance and Gift Tax has a reduction of the taxable base of 95%.

Sweden

The rates vary from 10 to 30% but the brackets are different depending on the relationship between the deceased and the heir. Tax free amounts apply for a surviving spouse (SEK 280.000 = 32.000 euro) and for each child (SEK 70.000 = 8.000 euro). For a minor child an additional tax free amount of SEK 10.000 (1.150 euro) applies for each year of age under 18. For other heirs the tax free amount is SEK 21.000 (2.400 euro).

United Kingdom

The Inheritance Tax 1984.

2. TRANSFER WITHOUT CONSIDERATION OF INTEREST IN A PARTNERSHIP

Belgium

Note: Same rules applicable mutatis mutandis as for transfer by an individual.

Denmark

Note: As mentioned above, partnerships are not regarded as taxable entities in Denmark. Partners are taxed separately on their share of profits and capital gains.

The taxation of a partner transferring his ideal share of assets and liabilities are subject to the same tax and duty treatment as described in items 1.1 to 1.15.

Luxembourg

Note: The same rules are applicable as for a transfer of a business.

The Netherlands

Note: The Netherlands does not know a system in which a partnership itself is taxed. Only the individuals will be taxed for their percentage in the partnership. Therefore, all the answers given under 1 are also applicable for partnerships.

Spain

Note: Same rules applicable mutatis mutandis as for transfer by an individual.

2.1 Are there any taxable capital gains arising from the transfer without consideration of interest in a partnership by an individual?

****Yes, totally exempted***

****Yes, partially exempted***

Please give further explanations as far as the amount of the allowance is concerned

****No***

Austria

No.

Finland

No.

France

The taxation of capital gains arising from the transfer of interest in a partnership depends on the professional practice (or not) by an individual within this partnership.

First case: professional practice by an individual

Taxation of capital gains arising from the transfer of interest in a partnership by inheritance or donation is differed. Capital gains will be taxed if the receiver sells or transfers the interest in the partnership.

Second case: no professional practice by an individual

Capital gains are totally exempted.

Germany

No.

Greece

No.

Ireland

See 1.1. A disposal of an interest in a partnership by way of gift by an individual aged more than 55 to a child regardless of the value of the interest or to another individual where the value of the interest is not more than IR£250,000 may be exempt from capital gains tax.

Italy

The transfer without consideration of interest in a partnership effected by an individual may realize taxable capital gains only if the latter carries out a business activity.

In this situations the gains are taxed against the transferor as business income with the individual progressive income taxation (10 - 51% "IRPEF").

Due to the lack of any specific legislative provision, the transfer performed by an individual out of any business activity does not realise any taxable capital gains.

Portugal

No.

Sweden

No.

United Kingdom

The Capital Gains Tax position arising from the transfer without consideration of an interest in a partnership by an individual is the same as that applying to the transfer without consideration of a business by an individual. For Capital Gains Tax purposes the transfer of an interest in a partnership is deemed to be the transfer by that partner of his share in each of the partnership assets which are subject to Capital Gains Tax.

2.2 How are those capital gains calculated?

Austria

N/A.

Finland

N/A.

France

In case of professional practice by an individual, capital gains are calculated as difference between the market value at the time of the transaction and the acquisition cost.

Germany

N/A.

Greece

N/A.

Ireland

The capital gains are based on the market value of the asset disposed of compared to their cost of acquisition, as adjusted for inflation.

Italy

The capital gains arising from the above mentioned transfer are calculated on the difference between the market value of the participation and its book value at the time of the transaction.

Portugal

N/A.

Sweden

N/A.

United Kingdom

Capital Gains are calculated by reference to chargeable assets owned by the partnership. These are treated for Capital Gains Tax purposes as owned by the individual partners in the proportions to which they share capital profits in the partnership. The calculation thereafter is on the individual and is calculated exactly the same way as in 1.2.

2.3 *Are the capital gains calculated according to 2.2 subject to a reduced tax rate? If yes, please indicate the special tax rate.*

Austria

N/A.

Finland

N/A.

France

In case of professional practice by an individual:

- If the interest has been owned for less than two years, capital gains are added to other incomes and subject to income tax calculated according to income tax rate schedule (10,5% to 54%). In addition, special taxes (CSG equal to 7,5% and CRDS equal to 0,5%) apply.
- If the interest has been owned for more than two years, gains are subject to reduced income tax rate of 26%.

Germany

N/A.

Greece

N/A.

Ireland

In general a reduced rate does not apply.

Italy

No.

Portugal

N/A.

Sweden

N/A.

United Kingdom

No.

2.4 A transferral (roll over) of a capital gain arising from the transfer without consideration in a partnership is allowed or not? If yes, please indicate for which type of assets a transferral (roll over) is possible.

Austria

N/A.

Finland

N/A.

France

No.

Germany

N/A.

Greece

N/A.

Ireland

See 1.6.

Italy

Not allowed.

Portugal

N/A.

Sweden

N/A.

United Kingdom

As per 1.6.

2.5 A deferral of the taxation of the above mentioned capital gains is allowed or not? If yes, please indicate which are the conditions of the deferral.

Austria

N/A.

Finland

N/A.

France

See above point 2.1.

Germany

N/A.

Greece

N/A.

Ireland

In general deferral does not apply.

Italy

Not allowed.

Portugal

N/A.

Sweden

N/A.

United Kingdom

A deferral of taxation is possible under the following, as in 1.7:

- (i) Roll over relief;
- (ii) Re-investment relief.

2.6 *Is there a different fiscal treatment if the interest in a partnership is transferred by a partnership or a corporation? If yes, please give further explanations.*

Austria

See answer to 1.8.

Finland

N/A.

France

N/A.

Germany

N/A.

Greece

N/A.

Ireland

The same treatment in 2.1 may apply to a disposal by a partnership but not to a disposal by a company.

Italy

No. For completeness purposes, it must be clarified that the corporations are not allowed to own interest in the partnerships.

Portugal

No.

Sweden

N/A.

United Kingdom

The treatment would be the same as in 1.8.

2.7 Carry over of capital losses arising from the transfer of interest in a partnership is allowed or not?

Austria

No capital loss will be realized upon the transfer without consideration of interest in a partnership. Thus, no carry-over is possible.

Finland

N/A.

France

No.

Germany

N/A.

Greece

N/A.

Ireland

Capital losses arising from the transfer are restricted if the parties are connected.

Italy

Capital losses cannot be carried over. On the contrary, the eventual loss evidenced by the financial statement of the period, including the capital losses realized on the transfer of the interest, can be carried over for a period not exceeding five years.

Portugal

N/A.

Sweden

N/A.

United Kingdom

No. But the individual who made the transfer is allowed to carry forward capital loss against future gains he may make, subject to the Connected Persons Rules which may restrict the losses to being available against gains made on a disposal to the same transferee.

2.8 Is the transfer of interest in a partnership subject to the gift tax?

Austria

Yes.

Finland

Yes.

France

Yes.

Germany

Yes.

Greece

Yes.

Ireland

Yes.

Italy

The transfer without consideration of the interest is subject to the gift tax.

Portugal

Yes.

Sweden

Yes.

United Kingdom

As mentioned above in section 1.

2.9 Which is the tax regime of the transfer under the gift tax?

Austria

The rules described under 1.11 are applicable. Regarding the tax base, this base will be the proportional value of the business (as determined according to 1.11).

Finland

The interest of a partnership transferred is valued to market price. Goodwill has no value when transferring a business. The tax rates range from 10% to 48% depending on the relationship between the donee and the donor. It is, however, possible to apply for relief if the donee goes into business; he may not be a silent partner and may not receive less than 1/5 of the interests, and the gift tax exceeds FIM 5,000. The interest is then valued to taxable value.

France

Reply to question 1.11 applies by analogy.

Germany

Reply to question 1.11. applies by analogy.

Greece

Reply to question 1.11. applies by analogy.

Ireland

The donee is liable to gift tax on the taxable value of the gift. The tax payable depends on the relationship between the donor and the donee and whether the donee has taken any previous gifts or inheritances. A 75% exemption may apply to an interest in a business passing by way of gift or inheritance. There is an offset between capital gains tax and gift tax in respect of the same transaction.

Italy

The gift tax, which must be paid by the beneficiary, is applicable - with progressive rates - to the equity value of the partnership attributable to the interest rate transferred.

The determination of the tax varies depending upon different conditions (the amount of the taxable base, the number and qualification of the beneficiaries, etc.).

A special taxable base reduction is allowed in relation to the gift within the family and/or close relatives.

Portugal

See 1.11.

Sweden

The basis for the tax is normally 30% of the material value of the interest. As to the tax rates etc., see under 1.11 above.

United Kingdom

As mentioned above in section 1.

2.10 Is the transfer of interest in a partnership subject to the VAT?

Austria

No.

Finland

No.

France

No.

Germany

No.

Greece

No.

Ireland

Generally no.

Italy

No.

Portugal

No.

Sweden

No.

United Kingdom

As mentioned above in section 1.

**2.11 Is any other indirect tax levied on the transfer without consideration of interest in a partnership?
If yes, please indicate which transfer tax is levied and give further explanations concerning allowances and tax rates.**

Austria

No.

Finland

No.

France

No.

Germany

No.

Greece

No.

Ireland

Stamp duty arises.

Italy

If the transfer of the interest is subject to the gift tax, the applicable registration tax amounts to 250.000 Italian Lire.

Portugal

No.

Sweden

No.

United Kingdom

As mentioned above in section 1.

2.12 Is the transfer "mortis causa" of interest in a partnership subject to the inheritance tax?

Austria

Yes.

Finland

Yes.

France

Yes.

Germany

Yes.

Greece

Yes.

Ireland

Yes.

Italy

The transfer mortis causa of interest in a partnership is subject to the inheritance tax.

Portugal

Yes.

Sweden

Yes.

United Kingdom

As mentioned above in section 1.

2.13 Which is the tax regime of the transfer "mortis causa"?**Austria**

No capital gain; assets/liabilities in the partnership remain unchanged (book values).

Finland

The interest of a partnership transferred is valued to market price. Goodwill has no value when transferring a business. The tax rates range from 10% to 48% depending on the relationship between the donee and the donor. It is, however, possible to apply for relief if the donee goes into business; he may not be a silent partner and may not receive less than 1/5 of the interests, and the inheritance tax exceeds FIM 5,000. The interest of a partnership is then valued to taxable value.

France

Reply to question 1.11 applies by analogy.

Germany

Reply to question 1.11 applies by analogy.

Greece

Reply to question 1.11 applies by analogy.

Ireland

The successor is liable to inheritance tax on the taxable value of the inheritance. The tax payable depends on the relationship between the disponent and the successor and whether the successor has taken any previous gifts or inheritances.

Italy

The inheritance tax, similarly to the gift tax, is applicable - with progressive rates - to the equity value of the partnership attributable to the interest transferred. The determination of the tax varies depending upon the same conditions examined in relation to the gift tax.

A special taxable base reduction is allowed in relation to the inheritance within the family and/or close relatives.

Portugal

See 1.11.

Sweden

The basis for the tax is normally 30% of the material value of the interest. As to the rates etc., see under 1.15 above.

United Kingdom

As above in Section 1.

3. TRANSFER WITHOUT CONSIDERATION OF SHARES IN A LIMITED LIABILITY COMPANY OR IN A CORPORATION

Denmark

Note:

As the questionnaire regards only small and medium-sized enterprises, we have limited the following section to the taxation of shares which are not listed at a stock exchange.

Italy

Note:

In this section the answers are generally the same as the ones provided for sub point 2 because there are no particular differences for an individual in transferring interest in a partnership or shares of a corporation.

Because of this similarity we will point out only specific issues which differ in the two situations.

The Netherlands

Note:

All capital gains on shares are normally tax exempted. Only the so-called substantial participation taxable (more than 33 1/3% or more than 7% together with relatives).

3.1 Are there any taxable capital gains arising from the transfer without consideration of shares in a limited liability company or a corporation by an individual?

**Yes, totally exempted*

**Yes, partially exempted*

Please give further explanations as far as the amount of the allowance is concerned

**No*

Austria

No.

Belgium

Transfers of shares without consideration are not subject to income tax.

Denmark

Yes, the shares are regarded as sold by the transferor who is taxed upon the gain.

However, there is in some instances the possibility of using the succession principle and thus avoid taxation of the capital gain. In this situation taxation of the gain is deferred.

If the transfer of the shares is effected while the transferor is alive, the use of the succession principle is

subject to the following conditions:

- * the transferor owns at least 25% of the share capital or controls at least 50% of the votes (major shareholder);
- * the transferred shares constitutes at least 15% of the votes;
- * the transfer is made to the transferor's child, grandchild or a few other defined close relatives.

Finland

No.

France

Yes, totally exempted.

Germany

No.

Greece

No.

Ireland

- (i) A disposal of a shares in a limited liability company by way of gift or by sale by an individual aged more than 55 to a child may be exempt from capital gains tax.
- (ii) It is possible to roll-over the capital gain arising on a disposal of shares if the entire proceeds are reinvested in new ordinary shares.
- (iii) No capital gain arises on death. The beneficiary takes the assets at market value rather than at the cost to the disponent but the beneficiary may be liable to inheritance tax.

Italy

See point 2.1.

Luxembourg

No.

The Netherlands

No, not tax exempted.

Portugal

No.

Spain

No, under certain conditions.

Sweden

No.

United Kingdom

A gift made by an individual, including a transfer of shares without consideration, constitutes a disposal for Capital Gains Tax by the individual transferring the shares.

Subject to the comments in 3.5, there are no exemptions or partial exemptions from this charge apart from an individual's annual exemption from all capital gains up to a maximum amount (currently £7,100 pa).

3.2 How are those capital gains calculated?

Austria

N/A.

Belgium

N/A.

Denmark

The gain is calculated as the difference between sales price and cost.

Finland

N/A.

France

N/A.

Germany

N/A.

Greece

N/A.

Ireland

The capital gains are based on the market value of the shares disposed of compared to their cost of acquisition, as adjusted for inflation.

Italy

See point 2.2.

Luxembourg

N/A.

The Netherlands

The difference between the market value of the shares and the price for which the shares have been obtained (with a minimum of par value).

Portugal

N/A.

Spain

N/A.

Sweden

N/A.

United Kingdom

The gains are calculated by reference to the market value of shares transferred. Consideration must be given both to the underlying assets, the earnings and the distributions to shareholders of the company. Once the market value has been established the gains are calculated as in 1.2.

3.3 Are the capital gains calculated according to 3.2 subject to a reduced tax rate? If yes, please indicate the special tax rate.

Austria

N/A.

Belgium

N/A.

Denmark

No special tax rates apply for transfer of a share without consideration.

Finland

N/A.

France

N/A.

Germany

N/A.

Greece

N/A.

Ireland

A reduced rate of 27% may apply.

Italy

See point 2.3.

Luxembourg

N/A.

The Netherlands

Yes, a flat rate of 25, but in the case of decease normally there is a deferral of tax, under the condition that the previous "obtaining price" will be the obtaining price for the new owners.

Portugal

N/A.

Spain

N/A.

Sweden

N/A.

United Kingdom

No.

3.4 A transferral (roll over) of a capital gain arising from the transfer without consideration of shares in a limited liability company or a in corporation is allowed or not? If yes, please indicate on which type of assets a transferral (roll over) is possible.

Austria

N/A.

Belgium

N/A.

Denmark

Regarding the possibility of the transferor to transfer a gain on the transferred shares to another asset which is still owned by the transferor: this is not possible in relation to any other type of assets.

Regarding the possibility to transfer a gain from the transferor to the transferee: this is possible by application of the succession principle (please refer to item 1.3 above). Taxation of the gain is thus deferred, until the transferred shares are sold by the transferee.

Finland

N/A.

France

N/A.

Germany

N/A.

Greece

N/A.

Ireland

See 1.6.

Italy

See point 2.4.

Luxembourg

N/A.

The Netherlands

Not allowed.

Portugal

N/A.

Spain

N/A.

Sweden

N/A.

United Kingdom

Yes, in certain circumstances. The most common of these is if the company is a trading company, but there are complicated rules relating to the deferral and the effect is to reduce the cost for Capital Gains Tax of the shares transferred in the hands of the transferee in the same fashion as with assets transferred in 1.6.

3.5 A deferral of the taxation of the above mentioned capital gains is allowed or not? If yes, please indicate which are the conditions of the deferral.

Austria

N/A.

Belgium

N/A.

Denmark

See 3.4.

Finland

N/A.

France

N/A.

Germany

N/A.

Greece

N/A.

Ireland

The relief described in 3.1(ii) is a deferral in that when the new shares are sold the capital gain on the disposal of the old shares crystallises.

Italy

See point 2.5.

Luxembourg

N/A.

The Netherlands

Not allowed.

Portugal

N/A.

Spain

N/A.

Sweden

N/A.

United Kingdom

Deferral of taxation of the above mentioned capital gains is allowed and the gain can be deferred with or without re-investment in other business assets.

a) Without re-investment of deemed consideration.

The Capital Gains Tax may be deferred under the Capital Gains Tax "holdover" relief provisions. These rules provide that the recipient of the shares takes over the transferor's potential Capital Gains Tax liability so that when the recipient disposes of the shares in question, the holdover gain crystallises.

An asset qualifies for this relief if it consists of shares of a "trading company", or of the holding company of a trading group, where either the shares, etc. are not quoted on a recognised stock exchange or the trading company or holding company is the transferor's personal company.

"Personal Company" is a company where not less than 5% of the voting rights are exercisable (controlled) by the individual.

The way in which the relief is given is to deduct the chargeable gain from the deemed open market value of the shares. This gives the base cost which will be used in the share of a future disposal. In essence, the recipient inherits the base cost of the shares from the transferor.

The relief is only available where the transferor without consideration is to a UK resident person (individual or company) and is withdrawn if the recipient emigrates from the UK within six years after the end of the tax year in which the transfer took place.

b) With re-investment of deemed consideration

The Capital Gains Tax arising from the transfer may also be deferred wholly or partially, under the "re-investment relief" provisions where the re-investment is in shares in unquoted trading companies.

There is a large body of law concerning "re-investment relief" but it is only available to individual or trust transferors.

Under "re-investment relief" only the amount of the chargeable gain needs to be re-invested for full deferral to be obtained.

***3.6 Is there a different fiscal treatment if the shares are transferred by a partnership or a corporation?
If yes, please give further explanations.***

Austria

The transfer without consideration of shares should give rise to a capital gain if the shares are held by a partnership as business assets. The capital gain would be taxed at the partner level.

If the shares are transferred by a corporation there would also be a deemed capital gain (taxable at the regular corporate tax rate of 34%) followed by a deemed constructive dividend to the shareholder (subject to 25% dividend withholding tax)".

Belgium

No.

Denmark

Transferral by a partnership involves taxation of the partners. Each partner is taxable of his ideal part of the gain. The taxation of the partner does not differ from the taxation of other individuals transferring shares.

If the shares are transferred by a corporation a different tax treatment applies. For shares held more than three years gains are tax free. For shares held less than three years gains are taxed at the normal corporate tax rate of 34%.

Finland

N/A.

France

N/A.

Germany

N/A.

Greece

N/A.

Ireland

The deferral outlined in 3.4 and 3.5 do not apply to a company.

Italy

The tax regime of the disposal of the shares is completely different if the transaction is implemented by a partnership or by a corporation even if, both of them, realize a business income which may be subject to two different kinds of taxation depending upon the method followed for the participation accounting. In this respect it must be stressed that if the participation are accounted as inventory the amount of the gains corresponds to the market value while if they are accounted as financial assets the gains are determined on the difference between the market value and the book value of the participation at the time of the transaction.

The capital gains realized by a corporation are always subject to the corporation tax (37% "IRPEG").

On the contrary, the capital gains realised by a partnership are taxed in the hand of the partners on the basis of the individual taxation mentioned under point 2.1.

Luxembourg

No, in case of a transferral by a partnership.

The sale of shares by a corporation must be made at fair market value. The corporation realizes a capital gain subject to normal tax (37,45%)if the participation exemption is not applicable.

For a partnership in which the shares are business assets and for a corporation in general there is a possibility of roll-over of the capital gain.

The Netherlands

The Netherlands do not make the difference between a partnership and an individual from a fiscal point of view. If shares were to be transferred by a corporation then the capital gain is normally exempt as a result of the so called participation exemption.

Portugal

No.

Spain

Transfer by an individual or a partnership: No. If transferred by a corporation: realisation of capital gain (difference book value to fair market value).

Sweden

N/A.

United Kingdom

- a) Yes. The transfer to an individual by a corporation (company), of shares which it owns in another company without consideration will have the same fiscal treatment as the transfer of assets by that company described in 1.8. There is no difference in the fiscal treatment of an interest in a partnership from that of the individual other than that the partners are each treated as being chargeable to tax on the equivalent share of the gain that relates to their share in the partnership.
- b) Transfers without consideration between companies not in the same "group" are treated like any other disposal and any capital will be liable to corporation tax by the transferring company. However, and in contrast to the position with transfers by individuals, there is no possibility of deferring the gain because the holdover relief is not available to companies.

3.7 Carry over of capital losses arising from the transfer of the shares is allowed or not?

Austria

No capital losses will be realized upon the transfer without consideration of shares. Thus, no carry over is possible.

Belgium

No.

Denmark

Carry over of losses from the transferor to the transferee is not allowed.

For the transferor capital losses may be carried forward for five years. However, during this period losses on shares held for less than three years are only deductible in gains on other shares held for less than three years.

Corporations' losses on shares held for more than three years are not deductible. Losses on shares held for less than three years are only deductible to the extent that the losses exceed tax free dividends from the transferred subsidiary.

Finland

N/A.

France

N/A.

Germany

N/A.

Greece

N/A.

Ireland

Capital losses arising from transfers of shares between a parent and a child (and other relatives) are restricted for offset against capital gains arising on transfers between the same individuals.

Italy

See point 2.7.

Luxembourg

Not applicable, as no loss will arise.

The Netherlands

Not allowed.

Portugal

N/A.

Spain

It is allowed the same conditions of other capital losses.

Sweden

N/A.

United Kingdom

- a) Capital losses arising from the transfer of shares may be set against a company's capital gains arising in the same accounting period or if not so used they may be carried forward indefinitely until they have been used. Use of losses carried forward against subsequent capital gains is mandatory.
- b) The individual who made the transfer is allowed to carry the capital loss forward against future capital gains he may make, subject to the Connected Persons Rules which may restrict the losses to being available against gains made on a disposal to the same transferee.

3.8 Is the transfer of shares in a limited liability company or in a corporation subject to the gift tax?

Austria

Yes.

Belgium

Yes, except manual gift ("don manuel") or bearer shares of a corporation provided donor does not pass away within the following three years.

Denmark

Gifts normally are assessed as taxable income of the transferee. However, gifts within the nearest family are subject to gift tax.

Finland

Yes.

France

Yes.

Germany

Yes.

Greece

Yes.

Ireland

Yes.

Italy

See point 2.8.

Luxembourg

See point 1.13.

The Netherlands

Yes, but as far as the individual has to pay income tax over the capital gain, an exemption is applicable.

Portugal

Yes.

Spain

Yes.

Sweden

Yes.

United Kingdom

Yes. Such transfers are subject to the Inheritance Tax provisions.

3.9 Which is the tax regime of the transfer under the gift tax?**Austria**

The rules as described under 1.11 are applicable, except that the tax base will be the market value of the shares. In case no market value exists, the tax law provides for a specific calculation of the tax base.

Belgium

Cf. Inheritance tax.

Denmark

Please refer to item 1.11.

Finland

The shares in a limited liability company transferred are valued to market price. Goodwill has no value when transferring an interest. The tax rates range from 10% to 48% depending on the relationship between the donee and the donor. It is, however, possible to apply for relief if the donee goes into business; he may not receive less than 1/5 of the shares, and the gift tax exceeds FIM 5,000. The shares in a limited liability company are then valued to taxable value.

France

The rules described under 1.11 are applicable.

Germany

An allowance of DM 500.000.- will be deducted from the share value determined on the basis of the officially quoted price or under the so-called "Stuttgart procedure" (net asset and current asset valuation). Only 60% of the remaining amount will be subject to taxation provided the donor held more than 25% of the company's nominal capital. As regards the applicable tax rate, refer to question 1.11. above. In cases of limited tax liability the shares in question are only subject to gift tax if they represent a material participation (minimum of 10%).

Greece

See 1.11.

Ireland

The donee is liable to gift tax on the taxable value of the gift. The tax payable depends on the relationship between the donor and the donee and whether the donee has taken any previous gifts or inheritances. A 75% exemption may apply to shares in a limited liability company which carries on a business passing by way of gift or inheritance. There is an offset between capital gains tax and gift tax in respect of the same transaction.

Italy

See point 2.9.

Luxembourg

See point 1.13.

The Netherlands

Normal tax regime for gifts. No special treatment.

Portugal

5% of withholding tax on dividends, and no taxation in the moment of transfer.

Spain

A reduction of 95% of the taxable base is applicable when certain conditions are not. Synthetically the conditions are:

- a) the donor has to be 65 or more,
- b) the main source of income of the donor has to come from the company,
- c) the donor has to have more than 15% of participation,
- d) the company has to have a business activity.

Sweden

In the case of shares registered with a Swedish stock exchange or quoted on a foreign stock exchange or similar securities the basis for the tax is 75% of the quoted value. Other shares traded on the market and subjected to regular quoted bargains are valued at 30% of the quoted value. Shares not covered by the previous rules are valued at fair market value. As to the rates, see under 1.11 above.

United Kingdom

The Inheritance Tax Act 1984.

3.10 Is the transfer of shares in a limited liability company or in a corporation subject to the VAT?

Austria

No.

Belgium

No VAT applicable.

Denmark

No.

Finland

No.

France

No.

Germany

No.

Greece

No.

Ireland

Generally no.

Italy

See point 2.10.

Luxembourg

No.

The Netherlands

No VAT on transfer of shares.

Portugal

No.

Spain

No.

Sweden

No.

United Kingdom

The transfer without consideration of shares in a limited company is not subject to VAT.

3.11 Is any other indirect tax levied on the transfer without consideration of shares in a limited liability company or in a corporation? If yes, please indicate which transfer tax is levied and give further explanations as for allowances and tax rates.

Austria

No.

Belgium

No other indirect taxes.

Denmark

Share transfer tax of 0.5% is imposed on the value of transferred shares.

Finland

No.

France

No.

Germany

No.

Greece

No.

Ireland

A stamp duty charge of 1% applies to the transfer of shares.

Italy

See point 2.11.

Luxembourg

No.

The Netherlands

No other indirect tax is applicable. Only if the shares were considered as real estate shares is a real estate tax applicable.

Portugal

No.

Spain

No.

Sweden

No.

United Kingdom

No. Stamp Duty is only levied on the transfer of shares at 0.5% on any actual consideration received and not any deemed consideration as would be the case in this instance.

3.12 Is the transfer "mortis causa" of shares in a limited liability company or in a corporation subject to the inheritance tax?

Austria

Yes.

Belgium

Yes: inheritance tax will be due.

Denmark

Yes.

Finland

Yes.

France

The rules described under 1.11 are applicable.

Germany

Yes.

Greece

Yes.

Ireland

Yes.

Italy

See point 2.12.

Luxembourg

Yes, see point 1.14.

The Netherlands

Yes, but a postponement of payment for five years of inheritance tax for substantial interest shares is applicable.

Portugal

Yes.

Spain

Yes.

Sweden

Yes.

United Kingdom

Yes. But there could be considerable reliefs available and in many instances 100% Business Property Relief would mean, effectively, no tax payable.

3.13 Which is the tax regime of the above mentioned transfer of shares?

Austria

Same as described under 3.9.

Belgium

Rates of inheritance of gift tax depend on value of the shares transferred and parental relationship.

Denmark

Please refer to item 1.15.

Finland

The shares in a limited liability company transferred are valued to market price. Goodwill has no value when transferring a share. The tax rates range from 10% to 48% depending on the relationship between the donee and the donor. It is, however, possible to apply for relief if the donee goes into business; he may not receive less than 1/5 of the shares, and the inheritance tax exceeds FIM 5,000. The shares in a limited liability company are then valued to taxable value.

France

Reply to question 3.9 applies by analogy.

Germany

Reply to question 3.9 applies by analogy.

Greece

See 1.11.

Ireland

The successor is liable to inheritance tax on the taxable value of the inheritance. The tax payable depends on the relationship between the disponent and the successor and whether the successor has taken any previous gifts or inheritances. A 75% exemption may apply to shares in a limited liability company which carries on a business passing by way of inheritance.

Italy

The tax regime of the transfer mortis causa of shares is equal to the one examined in relation to the transfer of the interest in the partnerships.

The only difference may concern the determination of the taxable base depending upon the quotation of the shares on the Stock Exchange.

As a matter of fact, in this case the taxable base is determined on the average of the selling price of the shares of the last three months preceding the date of the inheritance.

Luxembourg

See 1.14.

The Netherlands

See under 3.3: normally no income tax for transfer of shares. Only inheritance tax.

Portugal

See 3.9.

Spain

Same as described in 3.9.

Sweden

The basis is the same as in the case of gift tax. See under 3.9 above. As to the rates, see under 1.15 above.

United Kingdom

The Inheritance Tax Act 1984.

FEE survey on the fiscal treatment of the Transfer of SMEs

SECTION V

SELECTIVE EXAMPLES OF TAX BURDEN

1. *SALE*..... P. 143
2. *TRANSFER BY DONATION*..... P. 161
3. *TRANSFER MORTIS CAUSA* P. 175

a)

Allowance	-	
Special income tax rate	+/- 18 %	
Income tax	540.000 euro	18 % of the capital gain

b)

Allowance	-	
Special income tax rate	+/-36 %	
Income tax	1.080.000 euro	36 % of the capital gain

Denmark

Allowance	15 %	
Special income tax rate	64 % (highest marginal rate)	
Income tax	1.600.000 euro	54 % of the capital gain

We assume that all assets are plants, equipment, etc.

Finland

The purchase is seen as the last business act of an enterprise. The income generated from the sale is the disposal price less the book value of the business.

Income to the enterprise	5,0 Million euro
<u>- Book value of the assets</u>	<u>2,0 Million euro</u>
Income	3,0 Million euro

The income of the enterprise 3 Million is taxed in the hands of the entrepreneur divided into earned income (progressive rate max 59 %) and capital income (flat rate 28 %). The amount of capital is based on the net assets of the enterprise and 18 % of the net assets is seen as capital income.

Allowance	-	
Special income tax rate	-	
Income tax	840.000 - 1.770.000 euro	28-59 % of the capital gain

France

Currency rate: 1 euro = 6,56 FF

It is assumed that book value of the business is the value of the assets.

a) If assets have been owned for less than two years, capital gains are subject to income tax rate schedule

Price of disposal	5,0 Million euro
<u>Book value of the business</u>	<u>2,0 Million euro</u>
Capital gain	3,0 Million euro

Allowance	-	
Special income tax rate	-	
Income tax	1.860.000 euro	62 % of the capital gain (maximum)

b) Assets have been owned for more than two years

Price of disposal	5,0 Million euro
<u>Book value of the business</u>	<u>2,0 Million euro</u>
Capital gain	3,0 Million euro

Portion of gains corresponding to the amount of depreciation are subject to income tax rate schedule:
1 500 000 euro

Income tax approx.: 930 000 euro (maximum)

Portion of gains subject to reduced tax rate of 26 %: 1 500 000 euro

Income tax approx.: 390 000 euro

Total income tax: 930 000 + 390 000 = 1 320 000 euro

Rate approx.: 44 %

Allowance	-	
Ordinary income tax rate (maximum)	62 % on 1.500.000 euro	
Special income tax rate	26 % on 1.500.000 euro	
Income tax	1.320.000 euro	44 % maximum

Germany

Allowance	-	
Special income tax rate	51 %	
Income tax	795.000 euro	51 % of the capital gain

(Exchange rate as at 1.1.1999 1 euro = 1,95883 DEM)

Greece

Allowance	-	
Special income tax rate	20 %	
Income tax	600.000 euro	20 % of the capital gain

Ireland

- a) inflation relief could eliminate all the capital gain. It has been ignored as there is no mention when the business was acquired. To give an idea, the inflation factor is over 6 for assets held at 5 April 1974.
- b) The annual exemption (IR£ 1000 (1 260 euro) / 2000 IR£ (2 520 euro) for single / married persons) has been ignored.

Allowance	IR£ 250 000 = 315 000 euro	
Special income tax rate		
Capital gains tax		39,5 % of the capital gain

note: Exchange rate assumed 1 euro=IR£ 0,7934

Italy

Price of disposal	5,0 Million euro
<u>Book value of Business</u>	<u>2,0 Million euro</u>
Taxable gain	3,0 Million euro

a) Generally, ordinary progressive tax rates (from 18,5 % up to 45,5 %) are applicable on the capital gain.

b) If, at the date of the disposal, the activity is conducted since more than five years, the taxpayer may elect for the tax rate applicable to his average net income in the last two fiscal years preceding the disposal (e.g.: total net income in 1995 = 157 000 euro; total net income in 1994 = 78 500 euro. Average

net income in the last two years - 117 750 euro. Tax rate = approx. 40,1 %).

c) If, at the date of the disposal, the activity is conducted since more than three years, the taxpayer may choose a tax rate of 27% applicable to his taxable gain (payable in five annual rates)

Income tax:

A) 1 365 000 euro = 45,5 % (in this example) of capital gain

Allowance	-	
Special income tax rate	-	
Income tax	1.365.000 euro	45,5 % of the capital gain

B) assuming the facts indicated in note b):

1 203 000 euro = 40,1 % (in this example)

Allowance	-	
Special income tax rate	-	
Income tax	1.203.000 euro	40,1 % of the capital gain

C) assuming the facts indicated in note c):

Allowance	-	
Special income tax rate	-	
Income tax	810.000 euro	27 % of the capital gain

Luxembourg

Allowance	9.916 euro=400.000 LUF	
Special income tax rate	half of regular rate = approx. 23,419 %	
Income tax	384 304 euro	23,419 % of the capital gain

Netherlands

Profit: 3 million euro

1995 calculations.

1 euro = f 2.0532 (rate November 20 1995)

euro 5 million = f 10.270.000.

Allowance	21.917 euro (f 45.000)	
Special income tax rate	45 %	
Income tax	1.340.473 euro	44,68 % of the capital gain

In case a father older than 55 sells his business to his son there is a possibility not to pay tax under the condition that the fiscal book value in the books of the son remains the same (euro 2 million).

In general in all cases income tax is levied at a special rate (20 % or 45 %). The first f 45.000 corresponding to 21.917 euro will be taxed at a normal rate. Over this amount social security and tax will be levied in one combined sum (for 1999 6,2/7,5% % tax and 29,55 % social security = 35,75/37,05% in total). This aspect as well as the threshold - income tax free - related to the family situation have not been taken into account in the above calculations.

Portugal

Gains are calculated as the difference between the disposal value and book value, with an indexation to take account of inflation between purchase and sale.

For an individual the tax rate depends on total income:

PTE 0 - 970 000	5 %
970 000 - 2 260 000	25 %
2 260 000 - 5 790 000	35 %
>5 790 000	40 %

Spain

Note 1: the calculations are made assuming that the transfer is made in 1999.

Note 2: the tax burden decisively depends on the year of acquisition. We assume that the business was acquired in 1995.

Allowance	Non applicable.	
Special income tax rate	Non applicable.	
Income Tax	300.000	20%

Sweden

It is assumed that real property is not included in the assets.

Currency rate: 1 euro = SEK 8,40

Price of disposal	5,0 Million euro
<u>Book value of Business</u>	<u>2,0 Million euro</u>
Gain	3,0 Million euro
Gross Gain	3.000.000 euro
Personal allowance	approx. <u>1.000 euro</u>
Taxable gain	2.999.000 euro
Rates:	
	0-25.000 euro = 31 %
	25.001 -41.100 euro = 51 %
	> 41.101 euro = 56 %

Income tax: approx. 1,66 Million euro

Rate: approx. 56 %

Allowance	960 euro	
Special income tax rate	31-56 %	
Income tax	1.660.000 euro	56 % of the capital gain

United Kingdom

In 1999, the key issue to the 60 year old will be when was the business acquired. For example, if the cost of the business was 3.5 million euro in 1982 or earlier, indexation allowance will remove the effect of inflation and ensure that no capital gains tax is payable on the sale of the business for 5 million euro. Otherwise, the first £ 200,000 of any gain will be exempt provided the proprietor has been involved in the business for 10 years. Thus in all likelihood, the sale of a business by a 60 year old (or indeed a 50 year old who has owned the business for 10 years) for 5 million euro with an acquisition cost of 3.5 million euro will not give rise to a chargeable gain. The same answer would apply to example 1.2. The same answer would apply to example 1.3 provided the 60 year old had an interest in the business of 5 % or more (defined as a material interest for tax purposes).

In summary, provided that the proprietor has been involved in the business for 10 years:

Allowance	£ 200.000	
Special income tax rate	-	
Income tax	no chargeable gain	-

Provided that the proprietor has been involved in the business for less than 10 years:

Allowance	Proportionate	
Special income tax rate	NO	
Income tax	Max. 40%	-

1.2 Sale of interest in a partnership

Facts: A (60 years old) sells in 2000 his interest in a partnership to B.
Further facts of 1.1 apply by analogy.

Allowance: euro

Special income tax rate: %

Income tax: euro = % of the capital gain.

Austria

Basis for evaluation: book value of the underlying assets of the partnership (including any non amortized portion of the goodwill from prior acquisition).

Allowance		
Special income tax rate	half of regular rate = approx. 25 %	
Income tax	748.000 euro	24.9 %

Belgium

Sale as for 1.1.

Denmark

Allowance	15 %	
Special income tax rate	64 % (highest marginal rate)	
Income tax	1.600.000 euro	54 % of the capital gain

We assume that all assets are plants, equipment, etc.

Finland

Purchase price	5,0 Million euro
<u>Acquisition cost of interest</u>	<u>3,5 Million euro</u>
Capital gain	1,5 Million euro

Capital gains tax is flat rate 28 %.

Allowance	-	
Special income tax rate	28 %	
Income tax	420.000 euro	28 %

France

a) Professional practice by an individual

Price of the disposal	5,0 Million euro
<u>Acquisition cost of the business</u>	<u>3,5 Million euro</u>
Capital gain	1,5 Million euro

If the interest has been owned for less than two years

Allowance	-	
Special income tax rate	-	
Income tax	930.000 euro	62 % of the capital gain (maximum)

If the interest has been owned for more than two years

Allowance	-	
Special income tax rate	26 %	
Income tax	390.000 euro	26 % of the capital gain

b) No professional practice by an individual

$$1\,500\,000 \times 26\% = \text{approx. } 390.000$$

Allowance	-	
Special income tax rate	26 %	
Income tax	390.000 euro	26 % of the capital gain

Germany

Allowance	-	
Special income tax rate	51 %	
Income tax	795.000 euro	51 %

Greece

Allowance	-	
Special income tax rate	20 %	
Income tax	600.000 euro	20 % of the capital gain

Ireland

- a) inflation relief could eliminate all the capital gain. It has been ignored as there is no mention when the business was acquired. To give an idea, the inflation factor is over 6 for assets held at 5 April 1974.
- b) The annual exemption (IR£ 1000 (1 260 euro) / 2000 IR£ (2 520 euro) for single / married persons) has been ignored.

Allowance	IR£ 250 000 = 315 000 euro	
Special income tax rate		
Capital gains tax		39,5 % of the capital gain

note: Exchange rate assumed 1 euro=IR£ 0,7934

Italy

Price of the disposal	5,0 Million euro
<u>Acquisition cost of partnership interest</u>	<u>3,5 Million euro</u>
Taxable gain	1,5 Million euro

a) If the participants exceeds 25 % of the share capital or 20% of vote right, capital gain tax of 27 % is applicable.

Allowance	-	
Special income tax rate	-	
Income tax	405.000 euro	27 % of the capital gain

b) If the participation does not exceed 25 % of the share capital or 20% of vote right, capital gain tax of 12,5 % is applicable.

Allowance	-	
Special income tax rate	-	
Income tax	187.500 euro	12,5 % of the capital gain

Luxembourg

Allowance	9.916 euro=400.000 LUF	
Special income tax rate	23,419 % (half glob.eff. rate)	
Income tax	384 304 euro	23,419 % of the capital gain

Netherlands

Allowance	21.917 euro (f 45.000)	
Special income tax rate	45 %	
Income tax	1.340.473	44,68 % of the capital gain

Portugal

Allowance	-	
Special income tax rate	10 %	
Income tax	150.000 euro	10 % of the capital gain

But there is no taxation if an individual owns his interest before 01/01/1989 (tax reform).

Spain

Note 1: the calculations are made assuming that the transfer is made in 1999.

Note 2: the tax burden decisively depends on the year of acquisition. We assume that the business was acquired in 1995.

Allowance	Non applicable.	
Special income tax rate	Non applicable.	
Income Tax	300.000	20%

Sweden

Currency rate: 1 euro = SEK 8,40

Price of disposal	5,0 Million euro
<u>Acquisition cost of interest¹</u>	<u>3,5 Million euro</u>
Gain	1,5 Million euro
Gross Gain	1.500.000 euro
Personal allowance	<u>- euro</u>
Taxable gain	1.500.000 euro

Income tax: approx. 450.000 euro

Rate: approx. 30 %

¹ After addition of capital contributions and taxed surplus and deduction of withdrawals and deductible losses.

Allowance	-	
Special income tax rate	30 %	
Income tax	450.000 euro	30 % of the capital gain

United Kingdom

See answer 1.1.

1.3 Sale of shares in a limited liability company or a corporation

Facts: A (60 years old) sells in 2000 shares in a limited liability company/cooperation to B.
 Further facts of 1.1 apply by analogy.

Allowance:..... euro

Special income tax rate: %

Income tax:..... euro = % of the capital gain.

Austria

Basis for evaluation: acquisition cost of the shares.

Allowance		
Special income tax rate	half of regular rate = approx. 25 %	
Income tax	748.000 euro = 24.9 %	

Belgium

General rule: No taxation except if A has been owning shares during the preceding 5 years, either alone or together with the near family, which represents 25 % or more of the capital of the company concerned, a special tax of 16.5% + 3% + local tax = +/- 18% would apply to the capital gain if these shares are sold to a foreign company or another foreign juridical entity.

Denmark

Allowance	-	
Special income tax rate	47 %	
Income tax	705.000 euro	47 % of the capital gain

We assume the book value = acquisition cost of the shares = 3,5 Mill. euro since you cannot depreciate or write-down the book value for taxation purposes.

Finland

Purchase price	5,0 Million euro
<u>Acquisition cost of shares</u>	<u>3,5 Million euro</u>
Capital gain	1,5 Million euro

Capital gains tax is flat rate 28 %.

Allowance	-	
Special income tax rate	28 %	
Income tax	420.000 euro	28 %

France

Allowance	-	
Special income tax rate	26 %	
Income tax	390.000 euro	26 % of the capital gain

Germany

Allowance	-	
Special income tax rate	51 %	
Income tax	795.000 euro	51 %

Greece

Allowance	3.000.000 euro	
Special income tax rate	-	
Income tax	-	-

Ireland

- a) inflation relief could eliminate all the capital gain. It has been ignored as there is no mention when the business was acquired. To give an idea, the inflation factor is over 6 for assets held at 5 April 1974.
- b) The annual exemption (IR£ 1000 (1 260 euro) / 2000 IR£ (2 520 euro) for single / married persons) has been ignored.

Allowance	IR£ 250 000 = 315 000 euro	
Special income tax rate		
Capital gains tax		39,5 % of the capital gain

note: Exchange rate assumed 1 euro=IR£ 0,7934

Italy

Price of disposal	5,0 Million euro
<u>Acquisition cost of shares</u>	<u>3,5 Million euro</u>
Taxable gain	1,5 Million euro

a) If the participation exceeds 20 % of right vote or 25 % of the share capital, capital gain tax of 27 % is applicable.

Allowance	-	
Special income tax rate	27 %	
Income tax	405.000 euro	27 % of the capital gain

b) If the participation does not exceed 20 % of right vote or 25 % of the share capital, capital gain tax of 12,5 % is applicable.

Allowance	-	
Special income tax rate	12,5 % of the selling price	
Income tax	187.500 euro	12,5 % of the capital gain

c) If the shares of Spa are listed on a domestic stock market, a capital gain tax of 12,5 % is due on participation not exceeding 2 % of the right vote or 5 % of the share capital (see b)). If the participation exceeds 2 % of the right vote or 5 % of the share capital, capital gain tax of 27 % is applicable (see a)).

Luxembourg

Taxable only an important shareholding, i.e. > 25 %.

Allowance	49.579 euro=2 million LUF	
Special income tax rate	23,419 % (half glob. eff. rate)	
Income tax	370 888 euro	22,796 % of the capital gain

Netherlands

Allowance	0 euro (f 0)	
Special income tax rate	25 %	
Income tax	375.000 euro	25 % of the capital gain which is the difference between acquisition cost of the shares, here 3.5 million, and the sales price, here 5 million euro, = 1.5 million euro.

Portugal

Allowance	-	
Special income tax rate	10 %	
Income tax	0,15 Mill. euro	10 % of the capital gain.

But there is no taxation if an individual has owned his interest for more than twelve months or if he is not resident.

Spain

Note 1: the calculations are made assuming that the transfer is made in 1999.

Note 2: the tax burden decisively depends on the year of acquisition. We assume that the business was acquired in 1995.

Allowance	Non applicable.	
Special income tax rate	Non applicable.	
Income Tax	300.000	20%

Sweden

Currency rate: 1 euro = SEK 8,75

Price of disposal	5,0 Million euro
<u>Acquisition cost of shares</u>	<u>3,5 Million euro</u>
Gain	1,5 Million euro
Gross Gain	1.500.000 euro
<u>Personal allowance</u>	<u>- euro</u>
Taxable gain	1.500.000 euro

Income tax: approx. 450.000-840.000 euro

Rate: approx. 31-56 %

Allowance	-	
Special income tax rate	31-56 %	
Income tax	450.000-840.000 euro	31-56 % of the capital gain

United Kingdom

See answer 1.1

2. TRANSFER BY DONATION

Portugal:

Note: The transfer is calculated according to market price or book value and the rate depends on:

- i) total transferred
- ii) Relationship between who transfers and the receiver.

2.1 Transfer of a business

Facts: A (60 years old) transfers in 2000 his enterprise to his son C by donation.

Tax base (allowances not yet considered): 5 Mill. euro.

Allowance:..... euro

Gift tax rate %

Gift tax:..... euro = % of the tax base.

Austria

Basis for evaluation: assessed value of the business (Einheitswert; the Einheitswert is basically book values with certain adjustments, e.g., a lower value for real property, disallowance of certain accruals, etc).

Allowance	68 800 euro	
Gift tax rate	for gifts of 5 Mill euro to a first degree descendant 15 %	
Gift tax	739 680 euro	14.8 %

Belgium

Allowance: Nihil. Gift tax rate: starts with 3 % up to 30 % on 5.000.000 euro, the tax liability would amount to 1.435.580 euro, this being an average of 28,65 %.

Allowance	-	
Gift tax rate	from 3 % up to 30 %	
Gift tax	1.435.580 euro	28.65 % of the capital gain

Denmark

The son can succeed in the tax base of the father and hence defer taxation, cf. the Act on Tax at source ("Kildeskatteloven"), section 33c.

Allowance	-	
Gift tax rate	0 %	
Gift tax	0 euro	0 % of the capital gain

Finland

The taxable base of the gift tax is the lower between the market value of the assets transferred and the net wealth taxation value of the assets. This applies only to situations where there is a change of generation. Usually the net wealth taxation value is lower and this means that the gift taxation is not levied on the basis of market value of the assets.

If the tax base would be 5 million euro calculated on the net wealth the gift tax is calculated as follows (if 5 million euro is the market value, then the effective tax rate would be lower than explained below because the net wealth value is used as tax base).

Allowance	-	
Gift tax rate	16 %	
Gift tax	800.000 euro	16 % of the tax base

France

1 Euro	=	6,55957 FF
5.000.000 Euro	=	32.798.000 FF
Allowance		<u>300.000 FF</u>
		32.498.000 FF

	OVER	UNDER	BASIS	RATE	TAX
0		50.000 FF	50.000 FF	5 %	2.500 FF
	50.000 FF	75.000 FF	25.000 FF	10 %	2.500 FF
	75.000 FF	100.000 FF	25.000 FF	15 %	3.750 FF
	100.000 FF	3.400.000 FF	3.300.000 FF	20 %	660.000 FF
	3.400.000 FF	5.600.000 FF	2.200.000 FF	30 %	660.000 FF
	5.600.000 FF	11.200.000 FF	5.600.000 FF	35 %	1.960.000 FF
	11.200.000 FF		21.298.000 FF	40 %	8.519.200 FF
			<u>32.498.000 FF</u>		<u>11.807.950 FF</u>
			Reduction 50 % (Donor is under 65)		5.903.975 FF
			Gift tax		5.903.975 FF
				about %	900.000 Euro 18 %

Germany

Allowance	2.357.356 euro	
Gift tax rate	19 %	
Gift tax	502.102 euro	10,04 % of the tax base

(Exchange rate as at 1.1.1999 1 euro= 1,95883 DM)

Greece

Allowance	10.000 euro	
Gift tax rate	Category A scaled	
Gift tax	40.600 euro	1,35 % of the capital gain

Ireland

- a) Maximum business relief has been claimed i.e. 75 %
- b) It is also assumed that the maximum threshold between father and child i.e. IR£ 182 250 (229708 euro) is available.
- c) The inheritance tax rate for 1996 are:
 - First IR£ 10 000 (12 603 euro) c.20%
 - Next IR£ 30 000 (37 812 euro) c.30%
 - Balance c.40%

The gift tax rates are 75 % of the inheritance tax rates.

Assume exempt 75 %

Allowance	IR£ 182 250 + IR£ 500 annual gift allowance = 230 338 euro	
Gift tax rate	30 %	over first IR£ 40 000 (50 416 euro)
Gift tax	IR£ 301 173 = 379 598 euro	6 % of the tax base

Italy

Allowance	180.760 euro (350 ITL Mill.)	
Gift tax rate	7-27 %	
Gift tax	1.177.245 euro	23,5 % of the tax base

Should the business be located in small mountain villages, a special 40% reduction is applied to the ordinary gift tax, providing the donee carries on the same business activity for at least 5 years.

Luxembourg

Allowance	Not applicable	
Gift tax rate	Not applicable	
Gift tax	0	0 % of the tax base

Netherlands

Allowance	3.809 euro (f 7.823)	
Once in lifetime before the son is 35 years	18.759 euro (f 41.270)	
Gift tax rate	5 to 27 % (from f 1.650.724 and higher donations rate 27%)	
Gift tax	1.301.425 euro	25,95 % of the tax base

The tax payer has to pay income tax first and gift tax as well. At least there is deferred income tax burden.

In case a father older than 55 sells his business to his son there is a possibility not to pay tax under the condition that the fiscal book value in the books of the son remains the same (euro 2 million).

Seller has to pay income tax and the son gift tax as well.

In general in all cases income tax is levied at a special rate (20 % or 45 %). The first f 45.000 corresponding to 21.917 euro will be taxed at a normal rate. Over this amount social security and tax will be levied in one combined sum (for 1999 6,2/7,5% % tax and 29,55 % social security = 35,75/37,05% in total). This aspect as well as the threshold - income tax free - related to the family situation have not been taken into account in the above calculations.

Spain

Note 1: the calculations are made assuming that the transfer is made in 1999.

Note 2: We have made the calculations in Euros.

Note 3: The calculation would change substantially if the donor was 65 or more.

Note 4: We assume that the son has not previous net worth.

Taxable base: 5.000.000 Euros

Allowance	Non applicable.	
Special income tax rate	Non applicable.	
Income Tax	1.629.737	32.59%

Sweden

Currency rate: 1 euro = SEK 8,75

Tax base ²	5.000.000 euro
<u>Allowance</u>	<u>1.200 euro</u>
Taxable gift	4.998.800 euro

Rates: 0-34.300 euro	= 10 %
34.301-68.600 euro	= 20 %
> 68.600 euro	= 30 %
Gift tax: approx.	1.500.000 euro

² It is assumed that domestic rules on reliefs have been observed.

Allowance	1.150 euro	
Gift tax rate	10-30 %	
Gift tax	approx. 1.500.000 euro	appr. 30 % of the capital gain

United Kingdom

On the transfer by donation, it is possible to hold over any gain arising on the transfer of business assets. Consequently, no capital gains tax would be applicable for items 2.1, 2.2 and 2.3 provided the assets owned by the enterprise were business assets (as distinct from investment assets). In addition, a transfer by way of donation might create a liability to inheritance tax. The donor would qualify for 100 % business property relief (or 100 % agricultural property relief if a farm was involved) at the point of the transfer, but there is a risk if the donor dies within 7 years that a liability to inheritance tax might arise. It will not arise if the successor (the son) continues to carry the business on throughout the period.

In synthesis, no capital gains tax would be applicable provided the assets owned by the enterprise were business assets (as distinct from investment assets).

Allowance	full	
Gift tax rate	-	-
Gift tax	-	-

2.2 Transfer of interest in a partnership

Facts: A (60 years old) transfers in 2000 interest in a partnership to his son C by donation.
Tax base (allowances not yet considered): 5 Mill. euro.

Allowance: euro

Gift tax rate: %

Gift tax:..... euro = % of the tax base.

Austria

Basis for evaluation: assessed value of the business (Einheitswert; the Einheitswert is basically book values with certain adjustments, e.g. a lower value for real property, disallowance of certain accruals, etc).

Allowance	68 800 euro	
Gift tax rate	for gifts of 5 Mill euro to a first degree descendant 15 %	
Gift tax	739 680 euro = 15 % of the tax base	

Belgium

Same as 2.1.

Allowance	-	
Gift tax rate	from 3 % up to 30 %	
Gift tax	1.435.580 euro	28.65 % of the capital gain

Denmark

The son can succeed in the tax base of the father and hence defer taxation, cf. the Act on Tax at source ("Kildeskatteloven"), section 33c.

Allowance	-	
Gift tax rate	0 %	
Gift tax	0 euro	0 % of the capital gain

Finland

The treatment is similar as to the transfer of a business.

The taxable base is lower than the market value of the assets transferred and correspond to the net wealth taxation value of the assets. Usually the net wealth taxation value is lower and this means that the gift taxation is not levied on the basis of market value of the assets. If the tax base would be 5 million euro then the gift tax is calculated as follows.

Allowance	-	
Gift tax rate	16 %	
Gift tax	800.000 euro	16 % of the tax base

France

See 2.1.

Germany

Allowance	2.357.356 euro	
Gift tax rate	19 %	
Gift tax	502.102 euro	10.04 % of the tax base

Greece

Allowance	10.000 euro	
Gift tax rate	Category A scaled	
Gift tax	40.600 euro	1.35 % of the capital gain

Ireland

- a) Maximum business relief has been claimed i.e. 75 %
- b) It is also assumed that the maximum threshold between father and child i.e. IR£ 182 250 (229708 euro) is available.

- c) The inheritance tax rate for 1996 are:
- First IR£ 10 000 (12 603 euro) c.20%
 - Next IR£ 30 000 (37 812 euro) c.30%
 - Balance c.40%

The gift tax rates are 75 % of the inheritance tax rates.

Assume exempt 75 %

Allowance	IR£ 182 250	IR£ 500 annual gift allowance
Gift tax rate	30 %	over first IR£ 40 000
Gift tax	IR£ 301 173	6 % of the tax base

Italy

There are no specific allowances or provisions for donation of interest in partnership.

The tax base for unquoted participation is the net equity of the partnership.

Same as 2.1.

Luxembourg

Allowance	Not applicable	
Gift tax rate	Not applicable	
Gift tax	0	0 % of the tax base

Netherlands

Allowance	3.809 euro	
Gift tax rate	5 to 27 %	
Gift tax	1.301.424 euro	25.95 % of the tax base.

When a sales price is not considered at arm's length (e.g. in case of donations), income tax is levied as if a normal sale took place. So both income tax (see under 1.3) and gift tax are to be paid.

Spain

Note 1: the calculations are made assuming that the transfer is made in 1999.

Note 2: We have made the calculations in Euros.

Note 3: The calculation would change substantially if the donor was 65 or more.

Note 4: We assume that the son has not previous net worth.

Taxable base: 5.000.000 Euros

Allowance	Non applicable.	
Special income tax rate	Non applicable.	
Income Tax	1.629.737	32.59%

Sweden

Same as 2.1.

For calculation of tax base, see answer 2.9 on questionnaire concerning transfers without consideration.

United Kingdom

See answer to 2.1.

2.3 Transfer of shares in a limited liability company or a corporation

Facts: A (60 years old) transfers in 2000 shares in a limited liability company/corporation to his son C by donation.

Tax base (allowances not yet considered): 5 Mill. euro.

Allowance:..... euro

Gift tax rate..... %

Gift tax..... euro = % of the tax base.

Austria

Basis for evaluation: assessed value of the shares (Gemeiner Wert - fair market value as determined from market transactions or calculated based on the average of substance and earnings value).

Allowance	68 800 euro	
Gift tax rate	for gifts of 5 Mill euro to a first degree descendant 15 %	
Gift tax	736 680 euro	14.8 %

Belgium

General rule: The taxation will apply without any allowance with rates starting with 3 % up to 30 % on 5.000 euro: tax liability 1.432.580 euro.

Allowance	-	
Gift tax rate	from 3 % up to 30 %	
Gift tax	1.435.580 euro	28.65 % of the capital gain

However, if the shares transferred are bearer shares and the donation is not registered before a notary public but merely takes place by handing over the shares, no taxation will apply provided A does not pass away within the following three years. (This is the so-called "don manuel").

Denmark

The son can succeed in the tax base of the father and hence defer taxation, cf. the Act on Tax at source ("Kildeskatteloven"), section 33c.

Allowance	-	
Gift tax rate	0 %	
Gift tax	0 euro	

Finland

The treatment is similar as to the transfer of a business.

The taxable base is lower than the market value of the assets transferred and correspond to the net wealth taxation value of the assets. Usually the net wealth taxation value is lower and this means that the gift taxation is not levied on the basis of market value of the assets. If the tax base would be 5 million euro the gift tax is calculated as follows.

Allowance	-	
Gift tax rate	16 %	
Gift tax	800.000 euro	16 % of the tax base

France

See 2.1.

Germany

Allowance	2.357.356 euro	
Gift tax rate	19 %	
Gift tax	502.102 euro	10.04 % of the tax base

Greece

N/A.

Ireland

- a) Maximum business relief has been claimed i.e. 75 %
- b) It is also assumed that the maximum threshold between father and child i.e. IR£ 182 250 (229708 euro) is available.
- c) The inheritance tax rate for 1996 are:
- First IR£ 10 000 (12 603 euro) c.20%
 - Next IR£ 30 000 (37 812 euro) c.30%
 - Balance c.40%

The gift tax rates are 75 % of the inheritance tax rates.

Assume exempt 75 %

Allowance	IR£ 182 250	IR£ 500 annual gift allowance
Gift tax rate	30 %	over first IR£ 40 000
Gift tax	IR£ 301 173	6 % of the tax base

Italy

Same as 2.1 except that the 40% tax reduction does not apply.

For listed shares, the tax base is represented by the averaged market price in the last three months.

Luxembourg

Allowance	Not applicable	
Gift tax rate	Not applicable	
Gift tax	0	0 % of the tax base

Netherlands

Allowance	3.809 euro	
Gift tax rate	5 to 27 %	
Gift tax	1.301.424 euro	25.95 % of the tax base.

Spain

Note 1: the calculations are made assuming that the transfer is made in 1999.

Note 2: We have made the calculations in Euros.

Note 3: The calculation would change substantially if the donor was 65 or more.

Note 4: We assume that the son has not previous net worth.

Taxable base: 5.000.000 Euros

Allowance	Non applicable.	
Special income tax rate	Non applicable.	
Income Tax	1.629.737	32.59%

Sweden

Same as 2.1.

For calculation of tax base, see answer 3.9 on questionnaire concerning transfers without consideration.

United Kingdom

See answer to 2.1.

3. TRANSFER MORTIS CAUSA

Austria

Note: Same as transfer by gift inter vivos - see 2.1, 2.2 and 2.3 above

Finland

Note: There is no difference between the treatment by transfer of donation or transfer by mortis causa. The same rules apply as in transfers by donation (see above 2.1-2.3).

Italy

Note: There is no difference between inheritance tax and gift tax

Portugal

Note: The transfer is calculated according to market price or book value and the rate depends on:

- i) total transferred
- ii) Relationship between who transfers and the receiver.

3.1 Transfer of a business

Facts: *The ownership of an enterprise is transferred "mortis causa" in 2000 from A (60 years old) to his son C.*

Tax base (allowances not yet considered): 5 Mill. euro.

Allowance:..... euro

Inheritance tax rate:..... %

Inheritance tax:..... euro = % of the tax base.

Belgium

In case of transfer mortis causa, an allowance of euro 13.298 (BEF 500.000) will be granted. The final inheritance tax would amount to ECUS 1.432.181 this being 28,64 % of the tax basis.

Allowance	500.000 BEF	
Special income tax rate	from 3 % up to 30 %	
Income tax	1.432.181 euro	28.64 % of the capital gain

Denmark

Allowance	30.000 euro	
Gift tax rate	15 %	
Gift tax	745 500 euro = 15 % of the tax base (5 000 000 - 30000)	15 % of the tax base

Finland

See above 2.1.

France

Same as 2.1 but without 50 % reduction donation 3

Gift tax : 1.800.000

% : 36 %

Germany

Allowance	2.357.356 euro	
Gift tax rate	19 %	
Gift tax	502.102 euro	10.04 % of the tax base

Greece

Allowance	10.000 euro	
Special income tax rate	Category A scaled	
Income tax	40.600 euro	1.35 % of the capital gain

3 Since January 2000, for tax purposes the value of the business can benefit from a 50% reduction in certain circumstances.

The heirs must take the commitment to keep the business for a period of at least 8 years after the death of the owner.

One of the heirs has to carry on the business for a period of at least 5 years.

Ireland

- a) Maximum business relief has been claimed i.e. 75 %
- b) It is also assumed that the maximum threshold between father and child i.e. IR£ 182 250 (229708 euro) is available.
- c) The inheritance tax rate for 1996 are:
- First IR£ 10 000 (12 603 euro) c.20%
 - Next IR£ 30 000 (37 812 euro) c.30%
 - Balance c.40%

The gift tax rates are 75 % of the inheritance tax rates.

Assume exempt 75 %

Allowance	IR£ 182 250 = 229 708 euro	
Inheritance tax rate	40 %	
Inheritance tax	IR£ 401 816 = 506 448 euro	8 % of the tax base

Italy

See 2.1.

Luxembourg

Allowance	Not applicable	
Gift tax rate	Not applicable	
Gift tax	0	0 % of the tax base

Netherlands

Allowance	0 euro	
Inheritance tax rate	5 to 27 %	
Inheritance tax	1.301.424 euro	25.95 % of the tax base.

When a sales price is not considered at arm's length (e.g. in case of inheritance), income tax is levied as if a normal sale took place. So both income tax (see under 1.3) and inheritance tax are to be paid.

Profits with transfers of business and transfers in a partnership mortis causa will be taxed for income tax at a flat rate of 20 %.

Income tax and inheritance tax are to be paid. Also here the possibility to defer income tax under the same conditions mentioned under 2.1. But due to the fact that the income tax is only 20 % in most cases one prefers not to defer. This practice differs from the transfer of shares. With share transfer mortis causa nearly always a deferral is suggested.

Spain

Note 1: the calculations are made assuming that the transfer is made in 1999.

Note 2: We have made the calculations in Euros.

Note 3: We assume that the son has not previous net worth.

Note 4: We assume that the son is 21 or older.

Allowance	Non applicable.	
Special income tax rate	Non applicable.	
Income Tax	39.156	0.8%

Sweden

It is assumed that the son's age is not below 18.

Currency rate: 1 euro = SEK 8,75

Tax base ³	5.000.000 euro
<u>Allowance</u>	<u>8.300 euro</u>
Taxable inheritance	4.991.700 euro

Rates: 0-34.300 euro	= 10 %
34.301-68.600 euro	= 20 %
> 68.600 euro	= 30 %
Inheritance tax: approx.	1.500.000 euro

³ It is assumed that domestic rules on reliefs have been observed.

Allowance	8.000 euro	
Inheritance tax rate	10-30 %	
Inheritance tax	approx. 1.500.000 euro	appr. 30 % of the capital gain

United Kingdom

On the transfer on death there is a tax free uplift for capital gains tax purposes on all the assets. This means that at the point of death all assets held by any individual are revalued to their then current market value and there is no capital gains tax payable. The successor receives the asset at the current market value on date of death. In the case of a business, 100 % business property relief or 100 % agricultural property relief would be available so that a business, or a partnership, or a limited company should qualify for 100 % allowance. This means no inheritance tax will be payable.

Allowance	Full	
Inheritance tax rate	-	
Inheritance tax	-	-

3.2 Transfer of interest in a partnership

Facts: *The ownership of an interest in a partnership is transferred "mortis causa" in 2000 from A (60 years old) to his son C.*

Tax base (allowances not yet considered): 5 Mill. euro.

Allowance..... euro

Inheritance tax rate..... %

Inheritance tax:..... euro = % of the tax base.

Belgium

Same as for 3.1.

Denmark

Allowance	30.000 euro	
Gift tax rate	15 %	
Gift tax	745 500 euro = 15 % of the tax base (5 000 000 - 30000)	15 % of the tax base

Finland

See above 2.2.

France

See 3.1. 4

Germany

Allowance	2.357.356 euro	
Inheritance tax rate	19 %	
Inheritance tax	502.102 euro	10.04 % of the tax base

4 Since January 2000, a 50% reduction of the value of the shares may apply if the owner of the shares and his heirs take certain commitments in certain circumstances.

Greece

Allowance	10.000 euro	
Inheritance tax rate	Category A scaled	
Inheritance tax	40.600 euro	1.35 % of the capital gain

Ireland

- a) Maximum business relief has been claimed i.e. 75 %
- b) It is also assumed that the maximum threshold between father and child i.e. IR£ 182 250 (229708 euro) is available.
- c) The inheritance tax rate for 1996 are:
- First IR£ 10 000 (12 603 euro) c.20%
 - Next IR£ 30 000 (37 812 euro) c.30%
 - Balance c.40%

The gift tax rates are 75 % of the inheritance tax rates.

Assume exempt 75 %

Allowance	IR£ 182 250	
Inheritance tax rate	40 %	
Inheritance tax	IR£ 401 816	8 % of the tax base

Italy

See 2.2.

Luxembourg

Allowance	Not applicable	
Gift tax rate	Not applicable	
Gift tax	0	0 % of the tax base

Netherlands

Allowance	0 euro	
Inheritance tax rate	5 to 27 %	
Inheritance tax	1.301.424 euro	25.95 % of the tax base.

When a sales price is not considered at arm's length (e.g. in case of inheritance), income tax is levied as if a normal sale took place. So both income tax (see under 1.3) and inheritance tax are to be paid.

Profits with transfers of business and transfers in a partnership mortis causa will be taxed for income tax at a flat rate of 20 %.

Income tax and inheritance tax are to be paid. Also here the possibility to defer income tax under the same conditions as mentioned under 2.1. But due to the fact that the income tax is only 20 % in most cases one prefers not to defer. This practice differs from the transfer of shares. With share transfer mortis causa nearly always a deferral is suggested.

Spain

Same as 3.1.

Sweden

Same as 3.1.

For calculation of tax base, see answer 2.13 on questionnaire concerning transfers without consideration.

United Kingdom

See answer to 3.1

3.3 Transfer of shares in a limited liability company or a corporation

Facts: *The ownership of shares in a limited liability company or in a corporation is transferred "mortis causa" from A (60 years old) to his son C.*

Tax base (allowances not yet considered): 5 Mill. euro.

Allowance:..... euro

Inheritance tax rate:..... %

Inheritance tax:..... euro = % of the tax base.

Belgium

Allowance: 500.000 BEF

Inheritance tax: 1.432.181 euro or 28,64 % of the tax basis.

Allowance	500.000 BEF	
Inheritance tax rate	Scaled from 3 to 30 %	
Inheritance tax	1.432.181 euro	28.64 % of the tax base

Denmark

Allowance	30.000 euro	
Gift tax rate	15 %	
Gift tax	745 500 euro = 15 % of the tax base (5 000 000 - 30000)	15 % of the tax base

Finland

See above 2.3.

France

See 3.1. 5

⁵ Since January 2000, a 50% reduction of the value of the shares may apply if the owner of the shares and his heirs take certain commitments in certain circumstances.

Germany

Allowance	2.357.356 euro	
Inheritance tax rate	19 %	
Inheritance tax	502.102 euro	10.04 % of the tax base

Greece

Allowance	10.000 euro	
Inheritance tax rate	Category A scaled	
Inheritance tax	40.600 euro	1.35 % of the capital gain

Ireland

- a) Maximum business relief has been claimed i.e. 75 %
- b) It is also assumed that the maximum threshold between father and child i.e. IR£ 182 250 (229708 euro) is available.
- c) The inheritance tax rate for 1996 are:
- First IR£ 10 000 (12 603 euro) c.20%
 - Next IR£ 30 000 (37 812 euro) c.30%
 - Balance c.40%

The gift tax rates are 75 % of the inheritance tax rates.

Assume exempt 75 %

Allowance	IR£ 182 250	
Inheritance tax rate	40 %	
Inheritance tax	IR£ 401 816	8 % of the tax base

Italy

See 2.3.

Luxembourg

Allowance	Not applicable	
Gift tax rate	Not applicable	
Gift tax	0	0 % of the tax base

Netherlands

Allowance	0 euro	
Inheritance tax rate	5 to 27 %	
Inheritance tax	1.301.424 euro	25.95 % of the tax base.

Also in principle income tax over the value of the shares less the acquisition price of the shares.

Normal practice will be that the heirs will not pay income tax. One can defer the income tax for an unlimited time under the condition that the old acquisition price of the testator will be the basis of future calculations of tax. But there is a choice to pay tax at a flat rate of 20 %. This tax will be considered as a liability for inheritance tax. So if the heir expects to sell the shares in the near future, it is better not to defer the payment of the income tax.

When a sales price is not considered at arm's length (e.g. in case of inheritance), income tax is levied as if a normal sale took place. So both income tax (see under 1.3) and inheritance tax are to be paid.

Normally a dividend will be taxed at a progressive rate. But in case of mortis causa dividends which will be used to pay inheritance tax it will be taxed at a 20 % rate. Maximum one third of the value of the shares.

Spain

Same as 3.1.

Sweden

Same as 3.1.

For calculation of tax base, see answer 3.13 on questionnaire concerning transfers without consideration.

United Kingdom

See answer to 3.1.