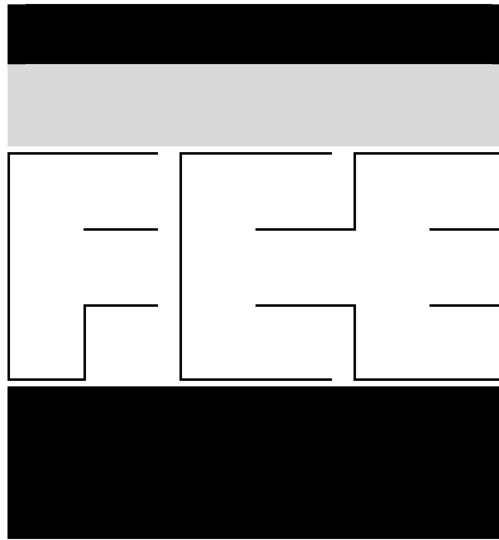

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# FEE POSITION PAPER ON TAX TREATMENT OF THE EUROPEAN COMPANY (SOCIETAS EUROPAEA)

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The Fédération des Experts Comptables Européens (FEE) is the representative organisation for the accountancy profession in Europe. It groups together 41 professional bodies from 29 countries. FEE member bodies are present in all fifteen Member States of the European Union, nine European Union candidate countries and three member countries of EFTA. Between them, these bodies have a combined membership of 500.000 individuals, of whom approximately 94% are from EU countries. Roughly 45% of the accountants represented in FEE work in public practice, providing a wide range of services to clients. The other 55% work in various capacities in industry, commerce, government and education.

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# 1. EXECUTIVE SUMMARY

As from October 2004 it will be possible to operate cross border in the EU under a common legal regime applicable in all Member States[1], which permits the creation of a European Company (Societas Europaea, SE). One of the most significant issues is that the taxation treatment of the SE is not addressed in the Statute on the SE and therefore the European Company will be subjected to domestic tax law of each Member State. As no common tax regime will apply, the result will be discrimination issues caused by the differences in tax treatment in EU Member States.

This position paper deals with the key taxation issues with respect to the formation and ongoing operation of SEs. FEE carried out a survey on EU Member States[2] related to the tax treatment of the SE, which were subsequently analysed in this paper.

The taxation of capital gains issue has recently been the subject of an in depth study by the IBFD[3] and by the FEE position paper on Taxation of Corporate Re-Organisations and is not therefore addressed with so much detail in this paper. The most troublesome area identified by FEE survey is the dividend issue, which does not appear to have yet been sufficiently highlighted elsewhere and constitutes in FEE view perhaps the major ongoing obstacle to the successful growth of European wide SE's.

FEE survey demonstrates that very significant additional tax liabilities would arise on shareholders receiving dividends from a foreign SE rather than a domestic company, as in many countries domestic tax law discriminates against foreign dividends.

The total additional tax charge on foreign dividends is highest in the case of individuals and portfolio (or minor) corporate shareholders and can be up to almost 30% for individuals and 25 to 34 % for portfolio corporate shareholders. Clearly these additional tax liabilities will make individual and portfolio corporate shareholders most reluctant to agree to exchange existing shares in a domestic company for shares in a foreign SE Holding company.

However, in the case of corporate shareholders with major direct investments in a SE, typically ownership of 25% or more of its shares, no additional tax liabilities should arise due to foreign tax credit and participation exemption rules.

In the area of transfer of assets and shares to a SE, although EU 'Merger Directive'[4] is aimed at reducing capital gains tax problems, the survey demonstrated that this is not often the case.

With regard to corporate shareholders, in many countries exemption from capital gains tax is only available if 50% or more of the shares in the new SE are acquired by the transferee company. The rules in this respect vary considerably but it can be seen that they will often create obstacles to large-scale European mergers.

With respect to individual shareholders, exemption from capital gains tax on share for share exchanges should be granted in most Member States, although in 2 countries, France and the Netherlands, no exemption provisions exist.

[1] Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute of the European Company.
[2] Questionnaires were sent to the 15 Member States but answers were received from all but Greece and Portugal.
[3] "Survey on the Societas Europaea" – IBFD April 2003
[4] Directive 90/434/EEC on the common system applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States.

As regard the tax treatment of a permanent establishment (PE), the survey shows that in many cases a PE is taxed differently than a domestic company, although the same corporate rate is applied.

Based on the results of the survey, FEE concluded that significant obstacles exist which could restrict the creation and use of Europe wide SE's, due to potential additional taxation liabilities to SE's shareholders. FEE recommends that the following steps be taken to remedy this situation:

- Capital gains arising on a share exchange with a SE both by individual and corporate shareholders should be exempted from any capital gain taxes and from income or transfer taxes.

- Dividends received by domestic individual and corporate shareholders in a foreign SE should not suffer any tax additional to that paid on dividends received from a domestic company.

- Dividend withholding taxes should be reduced to 0% on all dividends paid by a SE to EU resident shareholders.

- Consideration should be given to the development of a common tax base system for SEs, possibly offering in appropriate areas by way of incentive a kinder tax regime than that currently operating in most Member States.

- Interest expense incurred by a SE and correctly allocated to a PE on the basis of funds loaned by the SE to its PE should be tax deductible in all countries under domestic law.

## 2. ANALYSIS OF SURVEY'S RESULTS

### 2.1 Introduction

The Regulation on the Statute of a European Company[5] and the Directive supplementing the Statute for a European Company with regard to the involvement of employees[6] will have to be implemented as from October 2004 by all EU Member States. The Statute provides a legal framework at EU level for the creation and management of companies with a European dimension, which will have the same corporate structure and governing law in all Member States.

The formation of a SE can take place in four possible ways:

1) By merger of EU public limited companies, provided that at least two of them are governed by the law of different Member States;

2) By formation of a holding by EU public or private limited companies, provided that at least two of them are governed by the law of a different Member State or have had for at least two years a subsidiary company governed by the law of a different Member State, or a branch situated in another Member State;

3) By formation of a subsidiary by EU public or private limited companies, provided that at least two of them are governed by the law of a different Member State or, if from the same Member State, have had for at least two years a subsidiary company or a branch governed by the law of a different Member State;

4) By transformation of a EU public limited company, provided that it had for at least two years a subsidiary company governed by the law of a different Member State.

The Statute, however, does not have any provision on the taxation treatment of the SE, which will therefore be dealt with by domestic tax laws of Member States. This position paper is specifically aimed at giving an analysis of the main taxation issues in EU Member States with respect to the formation and ongoing operation of a SE[7].

FEE carried out a survey related to the tax treatment of the SE sending a questionnaire at EU level. Answers were received from all Member States except Greece and Portugal. Therefore the term 'surveyed countries' will include from here onwards in the text thirteen Member States: Austria, Belgium, Denmark, France, Finland, Germany, Italy, Ireland, Luxembourg, the Netherlands, Spain, Sweden and the UK.

This paper analyses the possible changes in the tax position of individual and corporate shareholders in the following cases:

- They hold shares in merged companies which will constitute the SE; or
- They hold shares in companies which will become subsidiaries of a new SE holding; or
- They beforehand held the shares contributed into a new SE subsidiary.

[5] Council Regulation (EC) of 8 October 2001 No 2157/2001 on the Statute for a European Company (SE)
[6] Directive No 86/2001 supplementing the Statute for a European Company with regard to the involvement of employees.
[7] It should be noted that 'EC Regulation No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) 'also raises taxation issues, which differ from the ones dealt with in this paper.

Such exchange of shares could result in additional tax liabilities to shareholders, both as an immediate result of the conversion and on future dividend income.

The issues of transfers of other assets than shares, such as assets and liabilities contributed in the framework of a merger, or at the occasion of formation of a subsidiary, will also be examined.

The following fields were covered by the survey and analysed in the study:

- System of Taxation of Dividends;
- Capital Gain Taxation;
- Taxation of Permanent Establishments (PE);
- Impact of Tax Treaties;
- Preferred Tax Treatment of SE.

## *2.2 Taxation of Dividends*

This is an area which could well be the most powerful obstacle to the successful implementation of the European wide SE, as it could result in the creation of large and ongoing additional tax liabilities for shareholders.

In general, domestic tax laws frequently discriminate against foreign dividend income. Therefore, in the case where the company that distributes dividends ceases to be a domestic company and becomes a foreign SE, there might be an additional tax burden, with the consequence of discrimination issues.

Although this is not the case with qualifying direct corporate investors, who will normally not pay tax on dividends from foreign investments, this category may find that on contribution of shares to a much larger SE, their shareholding is diluted in such a way that they no longer qualify for treatment as a direct investor and as a result face very significant additional tax costs.

Therefore, adverse consequences may arise from:

a) The re-localisation for tax purposes of the company in which shares were held,
b) The dilution of the holding in the company that was detained.

The survey clearly identifies that most Member States (8 out of the 13 reviewed) tax dividends from foreign companies differently from those distributed by domestic companies. Such additional tax liabilities create significant discrimination issues among Member States, and have an impact on the taxation of SE, whose Regulation does not provide any tax principle

In order to see to what extent the system itself creates potential tax differences, the types of tax system in operation must be examined in the first place. There are currently three systems of taxation of dividends in the EU: Imputation, Partial Imputation or Classical.

The classical system generally means one in which there are two layers of tax on company income. The first one is at the corporate level; the second is levied on the shareholders without any credit for taxes paid by the corporation.

On the other hand, an imputation system is one under which all or part of the tax paid by the corporation is credited against tax payable by shareholders on dividend received.

An exemption system, whereby dividends distributed by a tax-paying corporation are exempt from any further taxation, may apply to mitigate the severity of the classical system.

The survey shows that five out of the thirteen countries reviewed operate a full (Italy and Finland) or partial (UK, Spain and France) imputation system. The residual eight countries have a classical tax system, although all of them apply a form of participation exemption to dividends received by direct corporate investors.

The study looked at taxation of domestic and foreign dividends received by resident individual and corporate shareholders; where a difference was found the additional tax cost involved was quantified.

Only approximate tax differences were identified, as the actual additional tax burden varies considerable depending on foreign dividend withholding tax rates and on domestic individual tax rates which are often levied on a progressive scale. In the case of corporate recipients the additional tax is linked to the percentage of ownership of the capital of the foreign company paying the dividends.

*Individual shareholders*

Additional tax burdens on individual shareholders receiving dividends from foreign companies, including the impact of foreign dividend withholding taxes, arise on residents of all countries with an imputation system (either full or partial). On the other hand, out of the eight countries with a classical tax system, additional domestic tax liabilities on resident individuals will only arise in Austria and Belgium.

As regard the actual figures, approximate additional tax liabilities on foreign dividends received by individuals in imputation system countries range from 13% in Italy to over 25% in Finland and Spain. In classical system countries approximate additional taxes range from 11,55% in Belgium to 25% in Austria. Full details are shown in the tables at the end of the paper.

*Corporate shareholders*

The situation when the recipient of the foreign dividends is a corporation owing a sufficient percentage of the shares to qualify as direct investors (typically 10 or 25%) is generally that no additional taxes will result. The reason for that is that corporate shareholders with major direct investments in the foreign SE qualify either under treaty provisions, the provisions of domestic law or the Parent-Subsidiary Directive for exemption or full credit for dividend withholding taxes and foreign corporate taxes underlying the dividend.

In order to qualify for this type of treatment, however, a 10 or 25% shareholding will typically be required, although in some cases, in the Netherlands and Spain for instance, a 5% holding may be sufficient, provided that certain other conditions are met. Proposed amendments to the Parent Subsidiary Directive would introduce a maximum 10% holding requirement. A further advantage to direct corporate investors is that typically a 0% rate of dividend withholding tax will apply.

However, the situation is very different for portfolio corporate shareholders, typically owing less than 5, 10 or 25% of the shares in the foreign company. They will often not be entitled to exemptions, foreign tax credits for underlining taxes nor full imputations credits. They will also suffer foreign dividends withholding taxes, which under most tax treaties will approximate an average of 15%. As a result, portfolio corporate shareholders could pay up to 17,5 % (Spain) or 30% (UK) additional tax. Generally no additional domestic tax will be payable in classical countries, although a 34% (Austria), 25% (Ireland) and 11,25% (Belgium) additional tax can arise on portfolio shareholders.

If a SE is formed by way of a merger, corporate shareholders, by exchanging shares of pre-existing companies, will now participate in a company with a broader share capital; this could dilute existing shareholdings so as to create a portfolio investor position resulting in very significant additional domestic and foreign taxes.

To summarise, both individuals resident in seven out of the surveyed countries and portfolio corporate investors (i.e. companies owing less than 10 or 25% of the equity of the dividend paying company) in eight out of the surveyed countries could suffer very significant additional domestic tax liabilities.

Therefore, very significant changes and harmonisation of the taxation of foreign dividends are essential if shareholders are to be encouraged to exchange shares in a domestic company for shares in a foreign SE.

## *2.3 Capital Gains Taxation*

Capital gain taxation may arise in the case of transfer of assets or transfer of shares.

The transfer of assets, liabilities and business operations may result from a merger, either in a existing or a newly formed SE[8], or from the formation of a SE subsidiary to which either single assets or liabilities or PE in domestic countries or abroad are contributed[9]. Some of these cases may have been covered by the Merger Directive, but as shown by FEE's Position Paper on Corporate re-organizations, the Directive has not been fully implemented in all Member States.

The transfer of shares to a SE takes usually place in a share for share exchange.

As regard individual shareholders, our findings show that there are no exemption provisions in France and the Netherlands with respect to share for share exchanges with a foreign company. All the other Member States exempt capital gains realised at the occasion of a contribution of shares to a new company in exchange for shares in that company although, generally, only if specific conditions are met, and/or formal approval of the authorities revenue is obtained. It could be anticipated that on approved mergers of EU companies the conditions for exemption to be granted to individual shareholders would be met.

With respect to corporate shareholders, exemption provisions do exist in the majority of the surveyed countries, although they are subject to specific rules on the size of the transaction (with the exception of Belgium, Ireland and Luxembourg) and often to specific revenue approval.

A typical example are the Austrian rules, under which, in order to qualify for exemption from tax, the shares contributed must either represent at least 25% of the total registered share capital or provide the transferee with the majority of the voting rights in the newly held company.

The rules of individual countries do however vary considerably. For example in Spain, Netherlands and Sweden exemption only applies if the transferee acquires more than 50% of the shares of the new company. In contrast, in the United Kingdom it is only necessary that at least 25% of the shares in the transferred company be transferred to the new company in order for tax exemption to apply to all shareholders, whether corporate or individual.

In Germany, Finland, Italy, the Netherlands and Spain, the findings could be different if the new company is foreign, subject to the implementation of the EU Merger Directive.

Additionally, in Germany, Finland and Spain, the exemption for domestic operations is subject to the condition that the acquiring company owns a minimum percentage of the voting rights of the corporation, the shares of which are contributed.

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[8] That possibility may entail the re-organisation of an existing subsidiary company to become a Permanent Establishment of a non-resident SE.

[9] That possibility may have as consequence that a Permanent Establishment becomes a subsidiary.

The taxation implications of transfer of business assets were not specifically examined in our survey. This type of corporate restructuring is, however, typically subject to direct taxation, and sometimes VAT, in many countries.

The International Bureau of Fiscal Documentation (IBFD) concluded in April 2003 a "Survey on the European Company", which specifically examined the capital gains tax consequences arising on formation of SE by existing corporate groups. This detailed survey arrived at the same conclusions and set out the taxation implications in EU Member States at length. Accordingly, in order to avoid duplications, this review has not gone into great detail on the capital gains tax implications.

The conclusion arising from these findings can only be that taxation liabilities may arise on unrealised capital gains resulting from exchange of shares with a foreign (or often even a local) SE. Transfer of assets, liabilities and business operations may also result in the creation of tax liabilities, even though economic ownership has not changed. It will be necessary to find ways to eliminate these additional tax burdens if the SE structure is to be successfully implemented in the short term.

## *2.4 Taxation of Permanent Establishments (PEs)*

As already mentioned, one method of creating a European Company would be to merge together two or more companies into one single SE and thereafter operate in individual Member States through taxable Permanent Establishments (PEs). The survey accordingly raised the issue of whether this might lead to increased corporate income tax liabilities.

The findings demonstrate that in many cases a PE is taxed differently than a local company, although the same corporate tax rate is applied. Only one of the countries surveyed, Spain, has an additional tax on branches. Such tax, at 25% rate, is reduced to zero under most of Spain's tax treaties and in any event is not applicable to companies located in the EU.

The main potential stumbling block to the use of the parent SE company with local operating PE's is the question of deductibility of interest charges incurred by the head office on funds eventually used by the PE in its business activities. According to the survey, in 5 of the countries (Belgium, Denmark, Ireland, Spain and Sweden), in the case of a loan from a head office to its branch or PE, interest expense allocated to the PE is not tax deductible under domestic law.

On the other hand, under the terms of tax treaties and OECD guidelines, correctly allocated interest expense should be deductible in all Member States irrespective of domestic law.

Nevertheless, restrictions on interest deductions under domestic law could discourage the formation of SE by way of merger. Steps to eliminate such disallowance should therefore be taken.

## 2.5 Impact of Tax Treaties

The survey asked whether Member States had signed tax treaties allowing some form of credit for foreign corporate tax suffered. According to the results, in almost all cases Treaties grant foreign tax credit for underlying corporate taxes, provided that minimum shareholdings (typically 10 to 25%) are held and certain other conditions are met. In similar circumstances exemption from tax on foreign dividends is granted.

In a limited number of treaties (for example those related to France and the United Kingdom) refunds of domestic imputation credits may be granted to foreign individual and corporate shareholders.

As a number of countries have in recent years switched from imputation to classical systems, or are in the process of doing so, and others have reduced the imputation credits, the impact of these refunds on the taxation of cross border dividend flows has been reduced. No account of this factor has therefore been taken in calculation of approximate additional tax costs of cross border dividends used in this study.

It can be concluded that the terms of tax treaties do not impact in any adverse way the intrinsic difference between tax burdens on dividends from domestic or foreign companies. Their impact is positive rather than negative in that they will operate so as to reduce the impact of double taxation.

## 2.6 Preferred Tax Treatment of SE

As part of the survey, Member States were asked to indicate whether they considered a special tax system was required for SE, and if so, what type of system they would prefer.

According to the results of the survey, the majority (62%) of the countries surveyed preferred a national tax collection system and tax rate to be applied to profits calculated under a common base system. They would like to retain the national tax collection system and tax rate but have profits calculated according to a common base system. These results appear to be in line with preferences generally expressed at various conferences and roundtable discussions on the topic of future developments in European Corporate Tax systems.

None of the Member States would wish to see a European tax system operated centrally with tax revenues allocated to countries.

Four countries would prefer to see no special tax system for SE's.

Only Sweden (Denmark indicated it as an alternative) would like to see a Home State Taxation (HST) system, under which the total income of the group is calculated under the tax rules of the country of residence of the SE and then apportioned under a formula basis to each country of operations, where it is subject to tax at their domestic tax rates.

## 2.7 *Conclusions and Recommendations*

FEE recognises that the Statute on the Societas Europaea provides the possibility to create and manage companies with a European dimension, free from the disparities and limited territorial application of national company law.

However, it must be emphasised that the lack of tax provisions in the SE Statute can cause discrimination issues in Member States and represent an obstacle to the efficiency and effectiveness of the Internal Market.

The findings of FEE survey show significant ongoing additional domestic tax liabilities on dividends paid to individual and corporate shareholders and potential taxation of unrealised capital gains on exchange of assets and shares at the creation of a SE. Taken together, these issues unless resolved will seriously restrict the use of the SE's by existing and future shareholders.

FEE acknowledges that the existing tax discrimination may be viewed as contra to EU law and is subject to a number of existing and potential ECJ cases. However, we believe it preferable that specific rules be instituted with respect to SEs rather than wait for legislative changes enforced through ECJ decisions.

FEE recommends that the following steps be taken to remedy this situation:

- Capital gains arising on a share exchange with a SE both by individual and corporate shareholders should be exempted from any capital gain taxes and from income or transfer taxes.

- Dividends received by domestic individual and corporate shareholders in a foreign SE should not suffer any tax additional to that paid on dividends received from a domestic company.

- Dividend withholding taxes should be reduced to 0% on all dividends paid by a SE to EU resident shareholders.

- Consideration should be given to the development of a common tax base system for SEs, possibly offering in appropriate areas by way of incentive a kinder tax regime than that currently operating in most Member States.

- Interest expense incurred by a SE and correctly allocated to a PE on the basis of funds loaned by the SE to its PE should be tax deductible in all countries under domestic law.

# 3. TABLES

## *3.1 Potential additional tax on foreign dividends[10] - Individuals*

| | AU | BE | DE | DK | ES | FI | FR | IT | IR | LU | NL | SW | UK |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Imputation Tax Systems** | | | | | | | | | | | | | |
| Approximate additional tax arising assuming tax rate payable highest | | | | | 26% | 29% | 20% | 13% | | | | | 15% |
| **Classical Tax Systems** | | | | | | | | | | | | | |
| Approximate additional tax arising assuming tax rate payable highest | 25% | 11,25% [11] | 0% | 0% | | | | | 0% | 0% | 0% | 0% | |

[10] The additional tax arising is the combined effect of foreign dividend withholding taxes and domestic tax liabilities – dividend withholding tax rates vary by treaty but typically are 15% for individuals and portfolio corporate investors and 0% for direct corporate investors.

[11] In Belgium dividends are exempted in the hands of individual shareholders, provided Belgian withholding tax has been applied by a paying-agent.

### 3.2 *Potential additional tax on foreign dividends*[12] *-* ***Corporations***

| Approximate additional tax arising – assuming highest tax rate payable | AU | BE | DE | DK | ES | FI | FR | IT | IR | LU | NL | SW | UK |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Imputation Tax Systems** | | | | | | | | | | | | | |
| Portfolio investors - typically owing less than 5% or 10% of the shares | | | | | 17.5% | 10% | 15% | 14.4% | | | | | 30% |
| Direct Investors - typically owing more than 10% or 25% of the shares | | | | | 0% | 0% | 0% | 1.8% | | | | | 0% |
| **Classical Tax Systems** | | | | | | | | | | | | | |
| **Exemption** | | | | | | | | | | | | | |
| Portfolio investors - typically owing less than 5% or 10% of the shares | 34% | 11.25% | 0% | 0% | | | | | 25% | 0% | 0% | 0% | |
| Direct Investors - typically owing more than 10% or 25% of the shares | 0% | 0% | 0% | 0% | | | | | 0% | 0% | 0% | 0% | |

[12] The additional tax arising is the combined effect of foreign dividend withholding taxes and domestic tax liabilities – dividend withholding tax rates vary by treaty but typically are 15% for individuals and portfolio corporate investors and 0% for direct corporate investors

## 3.3 *Matrix of the questionnaires sent to the 15 Member States* [13]

| | AU | BE | DE | DK | ES | FI | FR [14] | IT [15] | IR | LU | NL | SW | UK |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Tax Exemption under domestic law of capital gains arising from a contribution of shares to a new co. in exchange for shares:** | | | | | | | | | | | | | |
| • By an individual | Y | Y | Y | Y | Y | Y | N | Y [16] | Y | Y | N | Y | Y |
| • By a company | Y | Y | Y | Y | Y | Y | N | Y | Y | Y | Y | Y | Y |
| • By a foreign co. | Y | Y | N | Y | N | Y | N | Y | Y | Y | N | Y | Y |
| **System of Taxation of Dividends** | | | | | | | | | | | | | |
| • Imputation system | N | N | N | N | Y | Y | Y | Y [17] | N | N | N | N | Y |
| Partial | | | | | Y | N | Y | N | | | N | N | 33.3% |
| Full | | | | | N | Y | N | Y | | | N | N | N |
| • Classical system (non imputation system) | Y | Y | Y | Y | N | N | N | N | Y | Y | Y | Y | N |
| • Is the Taxation system the same for dividends paid to an individual by foreign and domestic co.? | N | N | Y | Y | N | N | N | N | Y | Y | Y | Y | N |
| • Is the Taxation system the same for dividends paid to a company by foreign and domestic co.? | N | N | Y | Y | N | N | N | N | N | Y | | Y | N |
| • The Taxation system differs when dividends paid by EU co. or non EU co. | N | Y | N | N | N | N | N | N | N | N | N | Y | N |
| **Taxation System of a Permanent Establishment (PE)** | | | | | | | | | | | | | |
| • Is a PE taxed differently than a local co.? | N | Y | Y | Y | Y | N | Y | N | Y | Y | Y | Y | N |
| • Does corporate Tax Rate differ when applied to branch profits? | N | N | N | N | N | N | N | N | N | N | N | N | N |
| | | | | | | | | | | | | | |
| • In the case of a loan from the foreign head office to a branch, is interest expense allocated to the branch tax deductible? | Y | N | Y | N | N | Y | Y | Y | N | Y | Y | N | Y |
| • Is there an additional branch tax? | N | N | N | N | Y | N | N | N | N | N | N | N | N |
| Rate applied | | | | | 25% | | | | | | | | |
| • Is it reduced/eliminated by tax treaties? | | | | | Y | | | | | | | | |
| Rate applied | | | | | 0% | | | | | | | | |

[13] The following Member States answered: AU: Austria, BE: Belgium, DE: Germany, ES: Spain, FI: Finland, FR: France, IT: Italy, IR: Ireland, LU Luxembourg NL: Netherlands, UK: United Kingdom, SW: Sweden.

[14] France is also proposing major changes to their tax system, which if adopted, will from 2005 significantly change the method of taxation of both domestic and foreign dividends and should tend to reduce the existing level of discrimination.

15 Italy is currently in the process of agreeing to a new taxation system, which would result in a change from an imputation system to a classical system. These changes will have a major impact on the differing levels of taxation on domestic and foreign dividends.

[16] In Italy exchange of shares with a foreign company can be tax exempt, but no exemption exists for share exchanges with a domestic company.

[17] According to the current proposed tax reform, Italy will move to the classical system.

| Impact of Tax Treaties | AU | BE | DE | DK | ES | FI | FR | IT | IR | LU | NL | SW | UK |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Has your country signed any bilateral tax treaty with a Member State allowing a tax credit for foreign corporate tax paid or exemption from taxation of foreign dividends received? | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| If corporate dividends are exempted, or credit allowed for underlying foreign taxes, is there a minimum shareholder requirement? | Y | Y | N | Y | Y | Y | N | Y | N | Y | Y | Y | Y |
| Percentage applied | 25% | 10% | | 20% | 5% | 10 to 25% | | 25% | | 10 to 25% | 5% | 25% | 10% |
| **Taxation of capital gains on contribution of shares** | | | | | | | | | | | | | |
| Are contributions of shares of resident co. to an SE tax exempted in appropriate circumstances? | Y | Y | Y | Y | Y | | N | Y | Y | Y | Y | Y | Y |
| Minimum % of shares required in the new co. | 25% | N | >50% voting right shares | >50% | >50% | | | | 0% | | >50% | >50% | 25% |
| Is the position the same if the SE is a foreign resident co.? | Y | Y | N | Y | Y | | Y | N | Y | Y | N | Y | Y |
| **Preferred tax treatment of SE** | | | | | | | | | | | | | |
| National tax collection and tax rate applied to profits calculated under a common based system | Y | Y | Y | Y | | | Y | | Y | | | | |
| European tax system operated centrally with tax revenues allocated to countries | | | | | | | | | | | | | |
| Home State taxation for SE | | | | Y | | | | | | | | Y | |
| No special tax system for SE | | | | | Y | Y | | Y | | | Y | | |