

# **Companies of different Member States: taxation of mergers, divisions, transfers of assets, exchanges of shares (amend. Directive 90/434/EC)**

2003/0239(CNS) - 17/02/2005 - Final act

**PURPOSE** : to amend the Merger Regulation with respect to company taxation on restructuring.

**LEGISLATIVE ACT** : Council Directive 2005/19/EC amending Directive 90/434/EEC on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States.

**CONTENT** : the Council adopted a Directive aimed at improving the system of taxation for companies of different Member States applicable to mergers, divisions, transfers of assets and exchanges of shares, thus confirming the agreement reached at its meeting on 7 December 2004.

The Directive is intended to contribute to the elimination of obstacles to the functioning of the internal market by amending Directive 90/434/EEC on the EU's common system of taxation.

The new provisions of the Directive concern:

- the extension of the scope to cover types of division where the company transferring branches of activity is not dissolved;
- the extension of the scope to cover entities which carry out cross-border activities in the Community;
- the addition of public limited-liability companies (Societas Europaea or SE) and cooperative societies (SCE) to the list of European companies under the scope of the Directive;
- the possibility for Member States not to apply provisions of the Directive when taxing a direct or indirect shareholder of certain corporate taxpayers;
- non taxation of persons having an interest in the shareholder on the occasion of restructuring transactions;
- clarification of the application of the rules to operations regarding conversion of branches into subsidiaries;
- amendment of the definition of exchange of shares;
- amendment of the scope of a provision regarding the countering of tax avoidance and tax evasion.

**DATE OF TRANSPOSITION** :

- regarding the transfer of the registered office of an SE or of an SCE, and with the entry (a) in the Annex to this Directive by 1 January 2006.
- all other provisions by 1 January 2007.