## CAPITOLO XI

### 11.6 *INTERNATIONAL ADDENDUM I*

#### Hybrid Loans in the Parent-Subsidiary-Directive[70]

#### Introduction

The EU's Action Plan to strengthen the fight against tax fraud and tax evasion[71] explicitly addresses the Parent-Subsidiary-Directive (PSD)[72] by foreseeing actions with regard to hybrid loans and a review of anti-abuse provisions in EU legislation[73]. Both items have been addressed in stakeholder consultations[74] and have been taken up in a proposal from the Commission to amend the Directive[75]. The two issues have, however, been split up in Council: while political agreement on the amendment regarding hybrid loans was reached in June 2014[76], the inclusion of an autonomous anti-abuse clause in the Directive has been postponed as it "*requires further discussion since so far different views have been expressed by Member States and several Member States have raised concerns on this part of the proposal*"[77]. The text of the amendment has been agreed upon by Council on 8 July 2014[78] and published in the Official Journal on 25 July 2014[79]. This contribution will hence take a closer look at the amendment of the Directive with respect to hybrid loans.

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[70] By Georg Kofler.
[71] See Actions 14 and 15 in the Communication from the Commission *An Action Plan to strengthen the fight against tax fraud and tax evasion*, COM(2012)722 final (6 December 2012).
[72] Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (recast), [2011] OJ L 345, pagg. 8 et seq., as amended by Council Directive 2013/13/EU of 13 May 2013 adapting certain directives in the fields of taxation, by reason of the access of the Republic of Croatia, [2013] OJ L 141, pagg. 30 et seq.
[73] See Action 15 in Communication from the Commission *An Action Plan to strengthen the fight against tax fraud and tax evasion*, COM(2012)722 final (6 December 2012).
[74] See the Stakeholders' Consultation *Amendment of the Parent Subsidiary Directive to ensure that the Application of the Directive does not inadvertently prevent Effective Action against Double Non-Taxation in the Area of Hybrid Loan Structures*, D.1 (2013) (27 March 2013), and the Stakeholder meeting *A review of anti-abuse provisions in EU legislation*, D(2013) (12 April 2013).
[75] Proposal for a Council Directive amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, COM(2013)814 final (25 November 2013).
[76] Dok. 10419/14 FISC 92 ECOFIN 529 (20 June 2014).
[77] Dok. 10419/14 FISC 92 ECOFIN 529 (20 June 2014), pag. 8; see also, e.g., Dok. 9397/14 FISC 78 (30 April 2014), pag. 7.
[78] Dok. 11647/14 PRESSE 387 (8 July 2014) in conjunction with Dok. 10996/14 FISC 99 ECOFIN 679 (27 June 2014).
[79] Council Directive 2014/86/EU of 8 July 2014 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, [2014] OJ L 219, pp. 40-41.

Measures against "*hybrid mismatch arrangements*" have not only been put on the agenda of the OECD's BEPS project[80], but have also been part of the work of the EU. One specific hybrid mismatch arrangement, where the different qualification of a financial instrument as debt or equity in two or more countries is used for tax planning, has raised specific concerns because of the ensuing unintended double non-taxation[81]. Such double benefit arises if a hybrid loan is deemed to be debt leading to deductible interest payments in the subsidiary's State while the parent State treats it as equity and payments upon it as exempt profit distributions[82]. Planning with such mismatches is largely viewed as an exploitation of "*loopholes*" and "*an unacceptable practice whereby companies escape proper taxation*"[83]. In that light the Code of Conduct group recommended that

> "*[i]n as far as payments under a hybrid loan arrangement are qualified as a tax deductible expense for the debtor in the arrangement, Member States shall not exempt such payments as profit distributions under a participation exemption*"[84].

While some Member States have already implemented rules following that recommendation under which no tax exemption should be granted for hybrid loan payments that are deductible in the source Member State[85], there were, however, doubts whether such rules (would) violate the Parent-Subsidiary-Directive[86]. While Art. 4 of the Parent-Subsidiary-Directive leaves Member States the choice to provide relief from economic double taxation either by exempting incoming dividends or by granting an indirect credit, the Directive could be understood as forcing a Member State that has chosen the exemption method to provide such exemption even if the

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[80] See Action 2 in the OECD's *Action Plan on Base Erosion and Profit Shifting* (19 July 2013), and the *Discussion Draft Hybrid Mismatch Arrangements* (4 April 2014); see also the preceding Report *Hybrid Mismatch Arrangements: Tax Policy and Compliance Issues* (March 2012); for analyses see, e.g., Schnitger, A., Oskamp, M., "Empfehlungen der OECD zur Neutralisierung von 'Hybrid Mismatches', 23 *Internationales Steuerrecht* (2014), pagg. 385 et seq.; Lüdicke J., ""Tax Arbitrage' with Hybrid Entities: Challenges and Responses", 68 *Bulletin of International Taxation* (2014), pagg. 309 et seq.

[81] See generally for the issues raised by hybrid mismatch arrangements or – in other terms – international tax arbitrage, e.g., Kofler, G.. "Steuergestaltung im Europäischen und Internationalen Recht", in: Hüttemann, R. (ed.), *Gestaltungsfreiheit und Gestaltungsmissbrauch im Steuerrecht*, Deutsche Steuerjuristische Gesellschaft 34, pagg. 213 et seq. (at pagg. 232 et seq.) (Cologne: Verlag Dr. Otto Schmidt, 2010); Kofler G., Kofler H., "Internationale Steuerarbitrage", in: Brähler, G. & Lösel, Ch. (eds.) *Deutsches und internationales Steuerrecht – Gegenwart und Zukunft*, Festschrift Djanani, pagg. 381 et seq. (Wiesbaden: Gabler, 2008).

[82] See, e.g., Commission Staff Working Document, *Impact Assessment*, SWD(2013)474 final (25 November 2013), pag. 11.

[83] See the explanation in the Proposal for a Council Directive amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, COM(2013)814 final (25 November 2013), pag. 4.

[84] See the Report of the Code of Conduct Group of 25 May 2010, Doc. 10033/10, FISC 47, par. 31, noting that *"[i]n as far as payments under a hybrid loan arrangement are qualified as a tax deductible expense for the debtor in the arrangement, Member States shall not exempt such payments as profit distributions under a participation exemption*".

[85] See, e.g., § 10(7) of the Austrian Corporate Income Tax Act and § 8b(1) 2nd sentence of the German Corporate Income Tax Act.

[86] See the explanation in the Proposal for a Council Directive amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, COM(2013)814 final (25 November 2013), pag. 3.

profit distribution has been treated as a tax deductible payment in the Member State where the paying subsidiary is resident[87].

Hence, and in line with a Parliament's resolution[88], the EU Commission has subsequently addressed this issue in its Action Plan to strengthen the fight against tax fraud and tax evasion[89] by noting:

> "*The area of mismatches, which deals with issues such as hybrid loans and hybrid entities, and differences in the qualification of such structures between jurisdictions, is an area of particular importance. Detailed discussions with Member States have shown that in a specific case an agreed solution cannot be achieved without a legislative amendment of the Parent-Subsidiary Directive. The objective will be to ensure that the application of the directive does not inadvertently prevent effective action against double non-taxation in the area of hybrid loan structures*"[90].

Following up on the Action Plan and after holding a stakeholder consultation[91], the Commission proposed a corresponding amendment to the Parent-Subsidiary-Directive in late 2013[92]. According to that proposal, Art. 4(1) of the Directive would be amended so that the Member State of the parent company (or the Member State of its permanent establishment) "*shall*" "*refrain from taxing such profits to the extent that such profits are not deductible by the subsidiary of the parent company*" or apply the indirect credit method. While the Commission clearly intended that the deductible portion must consequently be taxed in the Member State of the parent company[93], this conclusion

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[87] See the explanation in the Proposal for a Council Directive amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, COM(2013)814 final (25 November 2013), pagg. 2-3.

[88] In the European Parliament resolution of 19 April 2012 on the call for concrete ways to combat tax fraud and tax evasion (2012/2599(RSP)), P7_TA(2012)0137, the Parliament called "*for a review of the Parent-Subsidiary Directive and the Interests and Royalties Directive in order to eliminate evasion via hybrid financial instruments in the EU*".

[89] See Action 14 in Communication from the Commission *An Action Plan to strengthen the fight against tax fraud and tax evasion*, COM(2012)722 final (6 December 2012).

[90] Communication from the Commission *An Action Plan to strengthen the fight against tax fraud and tax evasion*, COM(2012)722 final (6 December 2012), pag. 9.

[91] Stakeholders' Consultation *Amendment of the Parent Subsidiary Directive to ensure that the Application of the Directive does not inadvertently prevent Effective Action against Double Non-Taxation in the Area of Hybrid Loan Structures*, D.1 (2013) (27 March 2013).

[92] Proposal for a Council Directive amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, COM(2013)814 final (25 November 2013). This proposal was accompanied by Commission Staff Working Documents on an impact assessment (SWD(2013)474 final), an executive summary of that impact assessment (SWD(2013)473 final), and an implementation plan (SWD(2013)475 final); moreover, the Commission issues a press release on Questions and Answers on the Parent Subsidiary Directive, MEMO/13/1040 (25 November 2013). The European Parliament has issued its report on 24 March 2014 (A7-0243/2014). For analyses of the Commission's proposal see Weber, D., "Proposal for a Common Anti-abuse provision and anti-hybrid loan arrangements in the Parent-Subsidiary Directive", 6 *Highlights & Insights on European Taxation* (2014/3), pagg. 47 et seq.; Marchgraber C., "Tackling Deduction and Non-Inclusion Schemes – The Proposal of the European Commission", 54 *European Taxation* (2014), pagg. 133 et seq.

[93] See the Proposal for a Council Directive amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, COM(2013)814 final (25 November 2013), pag. 4 ("*Accordingly, the Member State of the receiving company (parent company or permanent establishment of the parent company) shall tax the portion of the profit distribution payments which is deductible in the Member State of the paying subsidiary*".) and pag. 7 ("*The Member State of the receiving company shall therefore tax the portion of profits that is deductible in the source Member State*".). See also Commission Staff Working Document, *Impact Assessment*, SWD(2013)474 final (25 November 2013) pag. 15 ("*obligation to tax*").

 

has been doubted in literature. It has been argued that the Commission's proposal would merely give Member States the option (but not impose the obligation) to withdraw the exemption in such cases[94], or that the proposed language of Art. 4(1)(a) would force Member States to "switch" to the indirect credit method insofar as the exemption method would not be applicable because the payments have been deductible in the source State[95]. This discussion is, however, largely moot. Following the political agreement reached in Council on addressing hybrid-loan structures in the Parent-Subsidiary-Directive[96] the text of the subsequently published amendment[97] clearly establishes an obligation to tax[98]. According to the political agreement reached in Council in June 2014, Member States that choose the exemption method under Art. 4(1)(a) "*shall*"

> "*refrain from taxing such profits to the extent that such profits are not deductible by the subsidiary, and tax such profits to the extent that such profits are deductible by the subsidiary*".

This amendment will have to be implemented by Member States by 31 December 2015 at the latest. Technically, the amendment addresses only situations where (part of) the payment itself is deductible in the subsidiary's State[99]. Only that portion shall be "*taxed*" by the parent's State. Hence, general rules on deductibility in the subsidiary's State that do not directly relate to the payment itself, e.g., provisions on a notional interest deduction, do not trigger taxation in parent's State. As for the subsidiary's State, the Commission has moreover taken the position that

> "*[n]o withholding tax would be imposed on the profits distributed by the subsidiary as the payment in the Member State of the subsidiary would be treated as an interest payment under the Interest and Royalties directive. There is a pending proposal in Council to align the current 25% eligibility shareholding threshold in the Interest and Royalties directive to the 10% of*

[94] Marchgraber C., "Tackling Deduction and Non-Inclusion Schemes – The Proposal of the European Commission", 54 *European Taxation* (2014), pagg. 133 et seq. (at pagg. 135-136). This argument is partly based on Pt. 3 of preamble to the proposal, according to which the Member State of the parent company and the Member State "*should*" – and not "*shall*" or "*must*" – not allow those companies to benefit from the tax exemption applied to received distributed profits, to the extent that such profits are deductible by the subsidiary of the parent company. Moreover, it is asserted that Member States under the current version of the Directive may extend the benefits foreseen in the Directive also to situations not fulfilling the criteria laid down in the Directive (e.g., the 10% ownership requirement). While this certainly true (see, e.g., Kofler, G., *Mutter-Tochter-Richtlinie* Art. 3 at m.nos 29 et seq. (Vienna: LexisNexis, 2011)), this conclusion is based on the wording of the Directive itself (*argumentum* "*at least*" in Art. 3). No such clause is, however, found in Art. 4: Member States must apply the Directive to certain qualified situations (Arts. 1, 2 and 3), and Arts. 4 and 5 define the legal ramifications with binding force once a situation falls under the Directive (*argumentum* "*shall*" in Arts. 4 and 5).

[95] Weber D., "Proposal for a Common Anti-abuse provision and anti-hybrid loan arrangements in the Parent-Subsidiary Directive", 6 *Highlights & Insights on European Taxation* (2014/3), pagg. 47 et seq. (at pag. 56).

[96] See the Council's press release Dok. 9402/14 PRESSE 254 (20 June 2014).

[97] Council Directive 2014/86/EU of 8 July 2014 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, [2014] OJ L 219, pp. 40-41.

[98] See Dok. 10419/14 FISC 92 ECOFIN 529 (20 June 2014); see also Dok. 9397/14 FISC 78 (30 April 2014).

[99] See also the explanation of the Proposal for a Council Directive amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, COM(2013)814 final (25 November 2013), pag. 4.

*the PSD [COM (2011)714]. Moreover, typically hybrid financial arrangements are set up in Members States having a zero withholding on interest payments under domestic or double tax conventions provisions*"[100].

However, the "*obligation to tax*" raises some issues. First, no details on this obligation are specified in the Directive. The preamble, however, establishes that the companies should not be allowed "*to benefit from the tax exemption applied to received distributed profits, to the extent that such profits are deductible by the subsidiary of the parent company*"[101]. Hence, the amendment aims at non-exemption of the deductible portion. Therefore the new rule requires that the deductible portion be included in the parent's tax base. It does, however, neither require effective taxation (e.g., in a loss situation of the parent company), nor does it exclude Member States' ability to apply a special (non-discriminatory, non-state aid) tax rate to such profits. This former point is also made clear in the statement by the Commission for the Council minutes: In it the Commission stresses that the proposed amendments to Art. 4(1)(a) "*are applicable in situations of double non-taxation deriving from mismatches in the tax treatment of profit distributions between Member States which generate unintended tax benefits*" and confirms that these amendments "*are not intended to be applicable if there is no double non-taxation or if their application would lead to double taxation of the profit distributions between parent and subsidiary companies*"[102]. Second, an obligation to tax based on the general Internal Market harmonization competence under Art. 115 TFEU (Treaty on the Functioning of European Union) seems, at first glance, to be at odds with the principle of subsidiarity. The Commission has hence spent some effort to demonstrate that Member States' individual or bilateral actions would not solve the problem but might even "*result in additional mismatching or in the creation of new tax obstacles in the Internal Market*"[103]. Indeed, one could even make the argument that double non-taxation (just as double taxation)[104] is generally not in line with the Internal Market and warrants EU action[105].

Apart from the technical operation of Art. 4(1)(a), this amendment raises a broader issue of interpretation. As noted above, the Commission thought that rules

[100] See the explanation of the Proposal for a Council Directive amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, COM(2013)814 final (25 November 2013), pag. 7.

[101] See Pt 3 of the Preamble of Council Directive 2014/86/EU of 8 July 2014 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, [2014] OJ L 219, pp. 40-41; see also Dok. 10419/14 FISC 92 ECOFIN 529 (20 June 2014).

[102] See Dok. 11291/14 ADD 1 FISC 104 ECOFIN 706 (27 June 2014); Dok. 10419/14 FISC 92 ECOFIN 529 (20 June 2014), pag. 9.

[103] Commission Staff Working Document, *Impact Assessment*, SWD(2013)474 final (25 November 2013) pag. 14; see also the analysis in the explanation of the Proposal for a Council Directive amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, COM(2013)814 final (25 November 2013), pag. 5.

[104] See, e.g., Kofler G., "Double Taxation and European Law: Analysis of the Jurisprudence", in: Rust, A. (ed.), *Double Burdens within the European Union* pagg. 97 et seq. (Kluwer, 2011).

[105] Some years ago the Economic and Social Committee has even proposed to alter (former) Art. 293 EC and add a provision to the EC Treaty to the effect that "*[d]ouble taxation or the absence of taxation is incompatible with the internal market*". See the Opinion of the Economic and Social Committee on *Taxation in the European Union — Report on the development of tax systems*, [1997] OJ C 296, pag. 37, Appendix II.

 

implementing the Code of Conduct recommendation under which no tax exemption should be granted for hybrid loan payments that are deductible in the source Member State "*cannot be safely implemented under the PSD without an explicit amendment of the text of the PSD*"[106], and that Member States that would nevertheless implement such solution would risk facing "*complaints from businesses for infringement of EU law*"[107]. It is, however, not entirely clear why unilateral action was viewed as infringing on the Parent-Subsidiary-Directive. While the Commission clearly states that the problem of double non-taxation does not arise if the Member State of the parent company chooses the credit method[108], it seems that it also believes that Member States can exercise the choice between the exemption method and the indirect credit method provided in Art. 4 of the Directive only once (and not "*switch-over*" to the indirect credit method in specified situations, such as low taxation or passive income)[109]. Relying on the ECJ's *Cobelfret* decision[110], the Commission specifically notes that "*[t]he tax exemption obligation under Article 4(1)(a) in the PSD applies unconditionally when Member States have opted for relieving double taxation on subsidiaries' profit distributions through exemption*"[111]. This interpretation was not shared by all Member States[112], does not follow from the *Cobelfret* case and seems to threaten domestic "*switch-over*" clauses. Indeed, as mentioned before, Art. 4(1) of the Parent-Subsidiary Directive leaves Member States

[106] Commission Staff Working Document, *Impact Assessment*, SWD(2013)474 final (25 November 2013) pag. 11.

[107] Commission Staff Working Document, Impact Assessment, SWD(2013)474 final (25 November 2013) pag. 11; see also See the explanation in the Proposal for a Council Directive amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, COM(2013)814 final (25 November 2013), pag. 3.

[108] See Commission Staff Working Document, *Impact Assessment*, SWD(2013)474 final (25 November 2013), pag. 5.

[109] Stakeholders' Consultation *Amendment of the Parent Subsidiary Directive to ensure that the Application of the Directive does not inadvertently prevent Effective Action against Double Non-Taxation in the Area of Hybrid Loan Structures*, D.1 (2013) (27 March 2013) paras. 7 and 8 with note 8: "*The Commission Services expressed the view that the Code of Conduct Group guidance would clash with the obligations contained in the PSD. In fact, the way the directive is currently drafted obliges the Member State of the parent company to exempt received profit distributions irrespective of the tax treatment to which they have been subject in the Member State of the subsidiary (e.g. even though they are deductible). […] The Commission Services also found the alternatives of switching from exemption to tax credit or of taking national measures to prevent abuse of law by taxpayers not suitable to solve the double non-taxation issue*". This is because *"[t]he option to avoid double taxation through exemption or tax credit is a choice of methods, but Member States must be consistent in their choice and apply that method across the board. National measures to prevent abuse of law by taxpayers may apply to transactions which are considered to be wholly artificial, entered into mainly for the purpose of avoiding taxation; but that is a high threshold, not suitable for justifying the denial of exemption in case of hybrid loan payments*". See also Commission Staff Working Document, *Impact Assessment*, SWD(2013)474 final (25 November 2013) pag. 5: "*In October 2011, an analysis carried out by the Commission Services stated that the solution agreed by the Code of Conduct Group clashes with the Parent Subsidiary Directive ('PSD'). Under the PSD, subject to various eligibility conditions, the Member State of the receiving parent company (or, under certain circumstance, of a permanent establishment of that parent company) is obliged to exempt profit distribution payments from subsidiaries of another Member State from taxation (or to grant a credit for the taxation levied abroad on the subsidiary level or lower tier levels). This is the case even if the profit distribution has been treated as a tax deductible payment in the Member State where the paying subsidiary is resident*".

[110] ECJ, 12 February 2009, Case C-138/07, *Belgische Staat v Cobelfret NV*, [2009] ECR I-731.

[111] Commission Staff Working Document, *Impact Assessment*, SWD(2013)474 final (25 November 2013) pag. 5 with note 4.

[112] Commission Staff Working Document, *Impact Assessment*, SWD(2013)474 final (25 November 2013) pag. 6, noting that "*[on the need to amendment the PSD, some Member States expressed doubts – mainly on the grounds that they did not believe it was necessary to change the PSD in order to implement the guidance. Nevertheless, it seemed that most Member States would either support or not oppose a targeted amendment of the PSD to remove any possible barrier to the effective implementation of the Code of Conduct Group solution*".

with the choice of providing relief from economic double taxation either by exempting incoming dividends or by granting an indirect credit for the underlying corporate tax. Even though both methods may lead to different results[113], they are considered to be equivalent and it is left to the discretion of the Member States to decide which method should apply. Art. 4, moreover, grants a Member State leeway to provide for the application of both methods simultaneously, one method to apply in its relations with some Member States and the other method in its relations with other Member States[114], based, for example, on the method chosen in a particular tax treaty. In addition, it is also permissible to provide for the application of both methods for dividends from different subsidiaries in one and the same Member State, the method to be applied to a concrete dividend payment being determined according to specified conditions, such as the level of taxation[115]. Against this background, the amendment of the Parent-Subsidiary-Directive was not necessary to enable Member States to take action against hybrid loan structures, but rather only to oblige them to do so. This also implies that even before the amendment of the Directive, rules denying exemption in hybrid loan structures could be structured in accordance with the Directive. While there might be some doubts as to how the indirect credit system operates with regard to hybrid loan situations in multi-tier situations[116], it seems clear that in a two-country situation an indirect credit works just like a non-exemption because the deductibility in the subsidiary's State leaves no tax on the "*distribution*" to be credited by the parent's State[117].

## CAPITOLO XI

### 11.7 *INTERNATIONAL ADDENDUM* 2

La seguente tavola illustra i risultati dell'indagine condotta dal Comitato Fiscale della CFE in merito alle disposizioni anti-abuso, sia generali che specifiche, presenti negli ordinamenti degli Stati membri dell'UE.

[113] Case C-446/04, *FII Group Litigation* [2006] ECR I-11753, paras. 43-44; ECJ, 12 February 2009, Case C-138/07, *Belgische Staat v Cobelfret NV*, [2009] ECR I-731, par. 31.
[114] See de Hosson F., "The Parent-Subsidiary Directive", 18 *Intertax* (1990), pagg. 414 et seq. (at pagg. 432-433); Tumpel M., *Harmonisierung der direkten Unternehmensbesteuerung in der EU* pag. 270 (Österreichische Staatsdruckerei, 1994); Deutsch E., "Internationales Schachtelprivileg und Quellenbesteuerung nach der Mutter-Tochter-Richtlinie", 48 *Österreichische Steuerzeitung* (1995), pagg. 458 et seq. (at pag. 459).
[115] For a discussion see Kofler G., *Mutter-Tochter-Richtlinie* Article 4 at m.no. 6 (Vienna: LexisNexis, 2011).
[116] See for calculations and analyses Marchgraber C., "Tackling Deduction and Non-Inclusion Schemes – The Proposal of the European Commission", 54 *European Taxation* (2014), pagg. 133 et seq. (at pagg. 136-138).
[117] Kofler G., Kirchmayr S., "Beteiligungsertragsbefreiung und Internationale Steuerarbitrage", 12 *Zeitschrift für Gesellschaftsrecht und angrenzendes Steuerrecht* (2011), pagg. 449 et seq.

 