

EUROPEAN HOLDING LOCATIONS 2008

AUSTRIA
BELGIUM
CYPRUS
CZECH REPUBLIC
DENMARK
FINLAND
FRANCE
GERMANY
IRELAND
ITALY
LUXEMBOURG
MALTA
THE NETHERLANDS
NORWAY
POLAND
PORTUGAL
ROMANIA
RUSSIA
SPAIN
SWEDEN
SWITZERLAND
UNITED KINGDOM

Editor:

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EU/EEA HOLDING LOCATIONS 2008

	Austria [*]	Belgium ^{**}
Dividends Exemption	Yes	95%
(i) Minimum Holding (ii) In votes or in capital	(i) 10% ¹ (ii) Capital	(i) 10% or € 1.2M ² (only for dividend exemption) ³ (ii) Capital
Minimum Holding Period for Dividends	1 year	1 year full ownership
Capital Gains Exemption	Yes/No ⁴	Yes (100%)
Minimum Holding for Capital Gains (in percent or duration)	10% and 1 year	No
Capital Loss Deduction	Yes/No ⁴	No (except part of the loss in the event of a liquidation)
Write-Down of Participation	Yes/No ⁴	No
Deduction of Expenses (e.g., Interest)	Yes ⁵	Yes (in general)
Debt-Equity Ratio	No legislation	7:1 ⁶ / 1:1 ⁷
Capital Infusion Tax	1%	0%
WHT to Parent under Domestic Law	25%	0% ⁸
- To EU parent	0% ⁹	0% ¹⁰
- To US parent	5%/15% ¹¹	0%/5%/15% ¹²
Cross-Border Consolidation	Yes ¹³	No
CFC Legislation	No	Yes, in specific circumstances ¹⁴

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^{**} Werner Heyvaert, Stibbe, Brussels

¹ The Austrian Supreme Administrative Court held that the 10% threshold to qualify for the exemption violates EU law; yet the Court noted that it would be sufficient to grant a foreign tax credit (instead of an exemption). Changes in tax legislation are under active discussion presently.

² Acquisition value.

³ The shares must be booked as long-term financial assets (with exceptions for certain financial institutions).

⁴ For each qualifying participation the taxpayer can elect separately for tax neutrality of a capital gain/capital loss/write-down of the participation or for tax effectiveness of a capital gain/capital loss/write-down of the participation. Tax neutrality does, however, not apply in case of capital losses realized on the liquidation or insolvency of the foreign company. Such losses are still deductible ratably over 7 years but get decreased by profits, which have been generated tax free within 5 years prior to the beginning of the liquidation or insolvency. Such election must be exercised in the year of acquisition. For companies incorporated and registered after 31 December 2000 the binding election for tax effectiveness had to be exercised in the tax assessment 2004 at the latest.

⁵ Full deductibility of interest expenses relating to debt financing of the acquisition of a participation is granted even if the Austrian holding does not elect for tax effectiveness as described in the above footnote.

⁶ If the ultimate beneficiary of the interest is a low taxed person or entity, interest on the excess debt is not deductible to the Belgian corporate borrower (but no reclassification into dividend).

⁷ This ratio is separate and distinct from the 7:1 ratio and may apply simultaneously. It applies only to debt provided by (1) individual shareholders, or (2) individuals/corporations holding a mandate of director, liquidator, etc., in the debtor company. If this ratio applies, the excess interest is reclassified as a dividend (not deductible to the payor, and dividend withholding tax applies).

⁸ If the parent company holds at least 15% directly for an uninterrupted period of one year; the holding period can be post factum. Otherwise 15% or 25% withholding tax, creditable against corporate income tax and refundable.

⁹ If a company holds at least 10% directly, otherwise 25% (reduced by several DTT). Intervening tax transparent partnership is permissible.

¹⁰ Holding percentage has dropped from 20% to 15% as of January 1, 2007 and will drop to 10% as of January 1, 2009, in line with amended EU Parent Subsidiary Directive. Unilaterally extended to corporate shareholders (owning 10%/15% of share capital) based in a country that has a bilateral tax treaty in force with Belgium.

¹¹ 5% if a company holds at least 10% directly, otherwise 15%.

¹² 5% if a company holds at least 10% of the voting stock directly, otherwise 15%. Under the new Belgium-US DTT a zero-rate applies if the beneficial owner is either (1) a company that is a resident of the US and that has owned directly shares representing at least 10% of the capital for a 12-month period or (2) a pension fund that is a resident of the US (additional conditions may apply).

¹³ Special group taxation rules (domestic and cross-boarder tax consolidation) are available. The main requirements are a minimum direct or indirect participation of more than 50% of capital and voting rights and that the foreign subsidiary forms part of the group for at least 3 years. The consequence is that losses of a foreign group member will be deductible at the level of the domestic holding company at a proportion equal to the sum of all group members' interests in this foreign group member. Such losses have to be recaptured in subsequent years if they can be offset against future profits of the subsidiary in its home country. However, profits of the foreign subsidiary are not imputed to the Austrian parent.

¹⁴ If the Belgian company made a tainted contribution or transfer to a tax haven company, it is deemed to be the owner of the assets/cash contributed.

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	Cyprus [*]	Czech Republic ^{**}
Dividends Exemption	Yes	Yes ¹⁵
(i) Minimum Holding (ii) In votes or in capital	(i) 1% (ii) Capital	(i) 10% (ii) Capital
Minimum Holding Period for Dividends	None	12 months ¹⁶
Capital Gains Exemption	Yes	Yes ¹⁷ /No ¹⁸
Minimum Holding for Capital Gains (in percent or duration)	None	10% in Capital for 12 months
Capital Loss Deduction	No	No ¹⁹
Write-Down of Participation	No	No
Deduction of Expenses (e.g., Interest)	Generally no	Generally no ²⁰
Debt-Equity Ratio	N/A	2:1 for related persons 6:1 for unrelated persons ²¹
Capital Infusion Tax	0.6% on authorized capital ²²	N/A
WHT to Parent under Domestic Law	a) If parent is a non resident of Cyprus: 0% b) If parent is a resident of Cyprus: 15%	a) Exempt if 10% and 12 months ²³ b) 15% ²⁴
- To EU parent	0%	Exempt if 10% and 12 months
- To US parent	0%	5%
Cross-Border Consolidation	No	No
CFC Legislation	No	No

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¹⁵ As of 2008, the dividends exemption has been extended to dividends paid to a Czech parent (or a Czech permanent establishment of an EU resident company) by subsidiaries that are residents of a third state provided that (i) the subsidiary has a legal form similar to a Czech limited liability company, a Czech joint-stock company or a Czech cooperative, (ii) the subsidiary receives income for its own benefit and has some economic substance, (iii) the corporate income tax rate of the third state is at least of 12% and (iv) the Czech Republic has concluded a tax treaty with the third state.

¹⁶ The exemption can be claimed even before the minimum holding period of 12 months has elapsed.

¹⁷ From 2008, capital gains from the sale of shares held in domestic, EU or third state subsidiaries are tax exempt in the hands of a Czech parent company (or a PE of an EU resident) under the same requirements applicable to the dividends exemption. The capital gains exemption is not applicable to shares that have been acquired together with other assets within an asset deal (i.e., purchased as a part of a whole business) and to capital gains in cases where the subsidiary is in liquidation.

¹⁸ The capital gains from the sale of shares held by a non-resident parent company in a Czech subsidiary are only subject to tax if that the shares are sold to a Czech resident or a Czech PE of a non-resident. Under most of the tax treaties concluded by the Czech Republic, the taxing rights are, however, attributed to the residence state of the parent company, but some exceptions exist (e.g., tax treaty with Germany).

¹⁹ The only exception is a sale of shares in a joint-stock company: if such shares are intended for securities trading, i.e. if they are subject to fair value assessment, and the holding does not exceed 20%, a capital loss deduction is allowed.

²⁰ Where capital gains are subject to tax some non-tax deductible expenses may be added to the tax-basis of the participation in the event and at the time of a disposal of such participation so that a capital gain is reduced.

²¹ Interest paid in excess of these ratios is, under the domestic law, considered as a constructive dividend, i.e., is not deductible and may be subject to WHT (15% or the rate reduced under the treaty) if the requirements for tax-exemption are not met. The Czech Supreme Administrative Court, however, held that the reclassification is only possible, where the respective tax treaty allows so.

²² The full amount of authorized capital is subject to tax, no matter how much of the authorized capital is actually issued to the shareholders (i.e. "anticipated taxation of capital infusion"). The actual issuance of capital to the shareholders does not trigger (additional) capital infusion tax.

²³ If the parent company sells its shares (or a part so that the minimum share of 10% in capital is no longer met) before the lapse of the 12-month period, the subsidiary will be obliged to pay the withholding tax additionally plus a tax penalty.

²⁴ Also applies to dividends on which the subsidiary's general meeting resolved after the date on which the subsidiary has been started its liquidation process regardless whether the parent has been met the holding threshold and period (however, different tax regime applies to liquidation proceeds in a technical sense).

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	Denmark [*]	Finland ^{**}
Dividends Exemption	100% ²⁵	100% ²⁶
(i) Minimum Holding	(i) 15% ²⁷	None ²⁸
(ii) In votes or in capital	(ii) Capital	
Minimum Holding Period for Dividends	12 months	None
Capital Gains Exemption	Yes	100% ²⁹
Minimum Holding for Capital Gains (in percent or duration)	3 years (no minimum interest required)	10% of share capital/one year
Capital Loss Deduction	Only within 3 years of acquisition.	No ³⁰
Write-Down of Participation	No	No
Deduction of Expenses (e.g., Interest)	Yes (in general) ³¹	Yes
Debt-Equity Ratio	4:1	None
Capital Infusion Tax	None	None
WHT to Parent under Domestic Law	28%/15% ³²	28% ³³
- To EU parent	0%	0% ³⁴
- To US parent	0%	0%, 5% or 15% ³⁵
Cross-Border Consolidation	Yes ³⁶	No
CFC Legislation	Yes	Yes

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²⁵ The dividend distributing subsidiary must be either (i) a resident within the EU/EEA or a tax treaty country, (ii) controlled by the Danish company or (iii) subject to Danish cross-border tax consolidation.

²⁶ From subsidiaries located in tax treaty countries or EU member states. 0% if the relevant requirements are not met.

²⁷ As from 2009: 10%

²⁸ 10% in capital in case the distributing company is a publicly traded company.

²⁹ Provided the shares sold are fixed assets for tax purposes and the selling entity is not a company engaging in venture capital/private equity activities. Further, the company being sold cannot be a real estate or housing company. The company sold must be Finnish or organized according to Articles 2 of the EU Parent Subsidiary Directive or be located in a tax treaty country. Some adjustments may be applicable based on certain tax deductions granted during the ownership. 0% if the relevant requirements are not met.

³⁰ If a capital gain would be tax exempt according to the above. If capital gain would not be tax exempt capital loss is deductible.

³¹ Net financing expenses exceeding DKK 20 million (approximately EUR 2.7 m) may be restricted.

³² If the recipient of the dividends holds less than 10% of the company distributing the dividends and the tax authorities in the state where the recipient is resident are obliged to exchange information with the Danish tax authorities then the Danish withholding tax rate on dividends will be reduced from 28% to 15%.

³³ 28% is the domestic tax rate applicable when dividends are paid to a foreign parent, unless a tax treaty provides for a lower rate. There is no withholding between Finnish subsidiary and parent, however.

³⁴ Minimum holding 15% in capital.

³⁵ 0% withholding if recipient is a company which directly or indirectly owns at least 80% of the shares in the distributing entity for at least the past 12 months prior to the distribution. 0% withholding also concerns Pension Funds receiving dividends, as defined in the Fin-US tax treaty. 5% applies to corporate recipient with minimum holding of 10% in votes. 15% is the general treaty rate.

³⁶ Cross-border consolidation is only permissible under the condition that all foreign group companies are included in the consolidation.

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	France [*]	Germany ^{**}
Dividends Exemption	95/100% ³⁷	95% ³⁸
(i) Minimum Holding (ii) In votes or in capital	(i) 5% (ii) Dividend rights and voting rights ³⁹	(i) None for corporate tax; 15% for trade income tax ⁴⁰ (ii) For trade income tax = capital ⁴¹
Minimum Holding Period for Dividends	2 years ⁴²	None ⁴³
Capital Gains Exemption	95% exemption ⁴⁴	95% ⁴⁵
Minimum Holding for Capital Gains (in percent or duration)	Same conditions as dividends exemption	None, not even for trade income tax ⁴⁶
Capital Loss Deduction	No	No
Write-Down of Participation	Yes (limitation of tax deductibility may apply ⁴⁷)	No
Deduction of Expenses (e.g., Interest)	Yes	Yes ⁴⁸
Debt-Equity Ratio	1.5:1 ⁴⁹	Yes ⁵⁰
Capital Infusion Tax	None	None
WHT to Parent under Domestic Law	25% (general rate)/0%	21.1% ⁵¹
- To EU parent	0% ⁵²	0%
- To US parent	5% ⁵³	5%/0% ⁵⁴
Cross-Border Consolidation	No	No
CFC Legislation	Yes ⁵⁵	Yes

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³⁷ 5% of the gross dividend is added back upon receipt. This recapture is capped at the parent's total actual expenses. Thus, in effect only 95% of the dividend is exempt. 100% exemption is only achieved with a pure holding company with no expense.

³⁸ No exemption available to life insurance companies, health insurance companies and "2002 pension funds".

³⁹ If the parent company holds at least 5% of dividend and voting rights, any other non-voting stock also qualifies.

⁴⁰ 10% in case of a foreign subsidiary if a tax treaty so provides. Legislative pending discussion to impose a 10% threshold for corporate tax as of 2009.

⁴¹ If this requirement is not met, voting rights are sufficient if a participation exemption in a tax treaty so provides.

⁴² Parent companies benefit from exemption immediately but if shares are sold within 2 years, corporate tax is due retroactively.

⁴³ For trade income tax: held at the beginning of a fiscal year unless a tax treaty provides for less restrictive exemption.

⁴⁴ Excluding certain shares, essentially shares of real estate companies.

⁴⁵ Unless shares resulted from a tax-free contribution of assets (which took place prior to December 13, 2006) within the preceding seven years, or to the extent of previously claimed tax-deductible write-downs. In the event of a tax-free contribution of assets on December 13, 2006 or thereafter, any disposition following such date will fall under the 95% exemption regime. However, within a 7 year period following the contribution, any disposition (or similar event) will retro-actively disallow the tax exemption for such contribution by 1/7 and any such resulting gain would increase the basis of the shares. No exemption available to life and health insurance companies and "2002 pension funds".

⁴⁶ Legislative discussion to impose a 10% threshold as of 2009 for corporate tax (not for trade tax).

⁴⁷ Write-down not deductible to the extent of the total latent gain on the other shares qualifying for capital gains exemption.

⁴⁸ No deduction of expenses relating to dispositions of shares.

⁴⁹ In respect of loans from affiliated companies (excluding cash pooling companies), interest payments are capped at the highest of the following 3 cumulative thresholds: (i) interest computed on the basis of a 1.5/1 debt-equity ratio, (ii) 25% of adjusted pre-tax profits, and (iii) the amount of interest received from affiliated companies. Interest payments in excess of the highest of these thresholds are added back, or their deduction may be deferred.

⁵⁰ As of 2008 replacement of the old regime (debt equity ratio of 1.5:1). Limitation of interest deductions up to 30% of the tax EBITDA (subject to limited exceptions) regardless of shareholder or third party debt.

⁵¹ Foreign corporate shareholders: 15.825% regardless of EU/Treaty protection (but refund procedure). As of 2009: increase from 21.1% to 26.375%.

⁵² Zero rate under the EU Parent-Subsidiary Directive (15% holding in capital (10% as from 2009) for 2 years or a commitment to hold for 2 years). Alternatively, since January 1, 2007, dividends paid to a parent company located in the European Union, Iceland or Norway are exempt from withholding tax subject to a minimum holding of 5% during 2 years if the parent company would not be in a position to credit such withholding tax in its jurisdiction. This exemption does not apply where an artificial arrangement is set up to circumvent French tax law.

⁵³ Minimum holding 10% in capital; otherwise 15% withholding tax.

⁵⁴ Minimum holding 10% in voting rights held directly, not through intervening partnership/LLC; otherwise 15% WHT. 0% WHT if corporate parent directly holds 80% or if recipient is a pension fund (subject to a variety of conditions). The treaty entered into force in December 2007.

⁵⁵ Safe-harbor within the EU: application is limited to artificial arrangements set up to circumvent French tax law.

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	Ireland [*]	Italy ^{**}
Dividends Exemption	None in relation to dividends from overseas but generally taxed at a rate of 25% or 12.5%, subject to the availability of credit for any foreign tax suffered on the dividend. ⁵⁶ Dividends received from an Irish company are tax exempt.	95% ⁵⁷
(i) Minimum Holding (ii) In votes or in capital	(i) 5% shareholding for credit; (ii) share capital	None
Minimum Holding Period for Dividends	None	None
Capital Gains Exemption	Exemption from tax on chargeable gains known as the Holding Company Exemption (“HCE”). Otherwise standard rate of corporation tax on chargeable gains of 20%	95% ⁵⁸
Minimum Holding for Capital Gains (in percent or duration)	For HCE, company making disposal must hold a 5% shareholding in that subsidiary for at least 12 months.	12 months
Capital Loss Deduction	None available for HCE; otherwise yes.	No ⁵⁹
Write-Down of Participation	No	No
Deduction of Expenses (e.g., Interest)	Generally yes	Yes ⁶⁰
Debt-Equity Ratio	No	No
Capital Infusion Tax	No	None
WHT to Parent under Domestic Law	Standard rate of Dividend WHT is 20%	Standard rate of Dividend WHT is 27%
- To EU parent	0%	0% ⁶¹
- To US parent	0%	5%/10%/ 15%
Cross-Border Consolidation	No	Yes ⁶²
CFC Legislation	No	Yes ⁶³

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⁵⁶ The Finance Act 2008 introduced a reduction in the rate of Irish tax applicable to dividends paid out of trading profits of companies resident in an EU member state or a country with which Ireland has entered into a double taxation treaty. The paying company must meet certain trading related conditions. An Irish resident company in receipt of trading dividends can elect to treat all trading dividends as being subject to the 12.5% rate of tax. There is a flexible credit system whereby the Irish resident company can claim credit for tax for profits out of which the trading dividend was paid and any excess credit can be set off against tax on other trading dividends only. Credits for non-trading dividends are pooled separately to those available for trading dividends.

⁵⁷ Except for dividends distributed by a subsidiary resident in a “blacklist jurisdiction” or even indirectly deriving from a “black list jurisdiction”. In this case the dividends are fully taxed, unless a positive ruling from the Administrative Authority is obtained.

⁵⁸ From October 2005 on, the exemption has been reduced from 100% to 91%, so that in fact tax is levied on capital gains in the amount of 2.97% (33% IRES (Corporate Income Tax) on 9% of the realized gain). From January 1, 2007 on, the exemption has been further lowered to 84%. As of 2008 the exemption has been set back to 95%. The exemption is not contingent on a minimum participation but the following requirements need to be met: (i) a minimum shareholding period of 12 months (LIFO method applies); (ii) the shares of the subsidiary must be shown as a long-term investment in the first financial statement closed during the period of holding; (iii) the subsidiary must conduct an active business; (iv) the subsidiary must not be resident in a blacklisted jurisdiction; (v) the conditions *sub* (iii) and (iv) must be satisfied for 3 years before the disposal.

⁵⁹ Except for capital losses from the sale of participations that do not meet the requirements for the participation exemption regime. Further limitations apply to the deductibility of capital losses under the “anti dividend washing” provision (generally only applicable to stock of companies resident in non-black list countries (some exceptions may apply) and which actively conduct a business): capital losses upon the sale of shares purchased within 36 months prior to such sale cannot be deducted up to the amount of dividends received within such 36 month period to the extent that these dividends were not subject to tax.

⁶⁰ Interest payments are deductible for an amount equal to the interest received. The part of interest payments exceeding such sum is deductible but only for an amount not higher than 30% of the EBITDA. The exceeding amount can be carried forward or offset within the consolidated group.

⁶¹ The 0% rate applies in case of the Parent Subsidiary Directive. As of January 1, 2008, in cases not covered by the Directive, the withholding rate is only 1,375% in case of dividends paid to companies and similar entities that are subject to a corporate income tax and are resident for tax purposes in a EU country or in a country that has signed the Agreement on the European economic Area and are not resident in a black list country. The amount of the levy is measured in order it to be equal to the tax actually borne on the receipt of dividends by domestic companies (i.e. ordinary tax rate of 27,5% applied on 5% of the dividend).

⁶² The cross border consolidation is subject to the following conditions: (i) the holding company has to own directly more than 50% of voting rights; (ii) all in/all out clause; (iii) the compulsory review of the financial statement of all the companies included in the cross-border consolidation. As of September 1, 2007, intragroup dividends are taxed even within a consolidated group, except for dividends relating to profits arising from the tax period before the one still running at the date of December 31, 2007; this means that dividends distributed from the consolidated subsidiary to the parent company, unlike in the previous regime, will be subject to the ordinary taxation of dividends (i.e., ordinary corporate tax of 27,5% upon 5% of the dividend, resulting in an effective levy of 1,375%.

⁶³ Concerning an Italian resident company that owns directly or indirectly more than 50% of the ordinary shares of a company resident in a blacklisted country. Further, if an Italian resident company holds directly or indirectly a profit entitlement exceeding 20% (10% in the case of publicly listed companies).

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	Luxembourg*	NL**
Dividends Exemption	Yes ⁶⁴	Yes
(i) Minimum Holding (ii) In votes or in capital	(i) 10% or € 1.2m ⁶⁵ (ii) Nominal paid up capital	(i) 5% held by NLco or a related company ⁶⁶ (ii) Nominal capital or, in certain circumstances, the voting rights
Minimum Holding Period for Dividends	12 months ⁶⁷	None
Capital Gains Exemption	Yes ⁶⁸	Yes ⁶⁹
Minimum Holding for Capital Gains (in percent or duration)	10% or € 6m during 12 months ⁷⁰	Same as dividends
Capital Loss Deduction	Yes	No (except: liquidation)
Write-Down of Participation	Yes	None
Deduction of Expenses (e.g., Interest)	Potentially ⁷¹	Yes ⁷²
Debt-Equity Ratio	85:15 ⁷³	3:1
Capital Infusion Tax	0.5% ⁷⁴	None
WHT to Parent under Domestic Law	15%/0% ⁷⁵	15%/0% ⁷⁶
- To EU parent	0% ⁷⁷	0% ⁷⁸
- To US parent	0%/5%/15% ⁷⁹	15%/5%/0% ⁸⁰
Cross-Border Consolidation	No	No
CFC Legislation	No	Yes, under limited circumstances

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⁶⁴ Including liquidating distributions. The subsidiary must be either a collective organization covered by article 2 of the EU Parent-Subsidiary Directive, or a Luxembourg resident fully-taxable limited liability company that is not covered by the appendix to the paragraph 10 of article 166 LIR, or a non-resident joint-stock fully-taxable company liable to a tax corresponding to the Luxembourg corporate income tax (this condition is met if the company is mandatorily subject to a tax at an effective rate of at least 11% with a similar taxable basis).

⁶⁵ Unless reduced under a relevant tax treaty.

⁶⁶ Provided the subsidiary does not qualify as a "low taxed passive subsidiary".

⁶⁷ Exemption is already available during the first 12 months if the holding company commits itself to continue holding the required minimum participation for at least 12 months. The 12 month period can be reduced under a tax treaty.

⁶⁸ Capital gains are exempt to the extent they exceed all tax-deductible expenses directly related to the shareholding incurred by the company in previous financial years (recapture). Currency exchange gains on the participation are also exempt. The subsidiary must be either a collective organization covered by article 2 of the EU Parent-Subsidiary Directive, or a Luxembourg resident fully-taxable limited liability company that is not covered by the appendix to the paragraph 10 of article 166 LIR, or a non-resident joint-stock fully-taxable company liable to a tax corresponding to the Luxembourg corporate income tax (i.e. according to the administrative interpretation, this conditions is met when the company is mandatorily subject to a tax at an effective rate of at least 11% with a similar taxable basis).

⁶⁹ Same conditions as for dividend exemption apply, cf. footnote 66 above.

⁷⁰ The holding period of 12 months may be fulfilled after the distribution; however, a disposal of the shares leading to a shareholding of less than 10% of total ownership and less than an acquisition price of € 6 million before the end of 12 months triggers tax retroactively.

⁷¹ Expenses incurred during the financial year are only deductible to the extent they exceed the tax exempt income (capital gains and dividends) in that year and are subject to a recapture on later capital gains.

⁷² Deduction of interest expenses may be curtailed under debt-to-equity rules, hybrid debt rules and certain other provisions. Costs relating to the acquisition or the sale of a participation to which the participation exemption applies are not deductible.

⁷³ The ratio is a safe harbor rule based on administrative practice and is applicable to financing of participations only. If a higher leverage is desired, the holding company bears the burden of proof that such leverage ratio meets an arm's length test. Upfront clearance with the tax authorities is recommended.

⁷⁴ Reduced from 1% as of January 1, 2008. Luxembourg actively considers repealing capital infusion tax.

⁷⁵ Zero rate for liquidating distributions. Under domestic law, reduction to 0% for distributions to resident recipients that are subject to normal taxation if the recipient holds (or commits itself to continue holding) the required minimum participation (same as for dividend participation exemption, see above) for at least 12 months.

⁷⁶ A 0% rate applies if the distribution is made to a Dutch parent company which is able to invoke the Dutch participation exemption.

⁷⁷ 0% rate is available if the EU recipient (that is entitled to the EC parent subsidiary directive) holds (or commits itself to continue holding) the required minimum participation (same as for dividend participation exemption, see above) for at least 12 months. Similar treatment applies to distributions to a Swiss parent company that is subject to comparable tax.

⁷⁸ 0% rate is available if the EU recipient (that is entitled to the EC parent subsidiary directive) holds generally at least 5% of the nominal share capital (or, under circumstances, the voting rights) of the Dutch company distributing the dividend.

⁷⁹ 15% general tax rate; 5% if the beneficial owner is a company that owns directly 10% or more of the voting stock; 0% if the beneficial owner is a company that owns directly for at least two years 25% of the voting stock and the dividend is derived from the active conduct of a trade or business in Luxembourg.

⁸⁰ 15% general rate; 5% if the beneficial owner is a company that holds directly at least 10% of the voting power of the payor; 0% for qualifying distributions to (i) pension funds, (ii) certain exempt organizations and (iii) qualifying corporate shareholders that are the beneficial owners of the dividend, own directly at least 80% of the voting power for at least 12 months and either already owned, directly or indirectly, 80% of the voting stock prior to October 1, 1998, or meet one of certain specific limitation on benefits tests.

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	Malta*	Norway**
Dividends Exemption	Income from specified foreign sources is taxed at the rate of 35% ⁸¹ On a distribution of dividends from foreign-source income to shareholders, the latter are entitled to a refund of tax ⁸² . Alternatively, a participation exemption is also available with effect from January 1, 2007 ⁸³	Company shareholders are exempted from taxation.
(i) Minimum Holding (ii) In votes or in capital	(i) 10% (ii) Voting rights/capital ⁸⁴	EU/EEA: None Outside EU/EEA: (i) 10% (ii) Votes and capital
Minimum Holding Period for Dividends	None	EU/EEA: None Outside EU/EEA: 2 years
Capital Gains Exemption	A participation exemption on capital gains from participating holdings ⁸⁵ is applicable with effect from January 1, 2007 ⁸⁶	Exemption for company shareholders.
Minimum Holding for Capital Gains (in percent or duration)	N/A ⁸⁷	EU/EEA: None Outside EU/EEA: (i) 10% (ii) Votes and capital
Capital Loss Deduction	Set off only against capital gains of the current and following years.	None if the exemption applies.
Write-Down of Participation	No ⁸⁸	No, unless considered dividend distribution to personal shareholders
Deduction of Expenses (e.g., Interest)	Yes ⁸⁹	Yes
Debt-Equity Ratio	None	Arms length principle (4:1 "rule of thumb")
Capital Infusion Tax	No	None
WHT to Parent under Domestic Law	0%	Outside EU/EEA: 25%
- To EU parent	0%	0% ⁹⁰
- To US parent	0%	15% according to treaty ⁹¹
Cross-Border Consolidation	No	No
CFC Legislation	No	Yes

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⁸¹ Foreign investment income including capital gains, profits of a foreign permanent establishment and profits derived from foreign investments, assets or liabilities of a bank licensed in Malta.

⁸² The refund generally amounts to 6/7ths of the Maltese tax paid on that income. The refund is increased to 100% in the case of dividends and capital gains emanating from a "participating holding".

⁸³ Applicable on dividends and capital gains from participating holdings – see note 82 – some anti-abuse provisions may apply with respect to the participation exemption on dividend income but not to capital gains.

⁸⁴ To qualify as a participating holding, the shareholding of the Maltese company in the foreign company must satisfy at least one of the following conditions: (i) the holding is at least 10% of the equity capital of the foreign company; or (ii) the value of the holding is at least approx. EUR 1,165,000 or its equivalent in foreign currency and was held by the Malta company for 183 days; or (iii) the Maltese company must be entitled to be represented on the board of the foreign company; or (iv) the Maltese company must enjoy a right of first refusal in the event of a proposed disposal, redemption or cancellation of all of the equity shares in the company; or (v) the shares in the foreign company are held to further the Maltese company's business and do not constitute a portfolio investment.

⁸⁵ See note 82

⁸⁶ Some other exceptions may apply, among others gains derived from securities listed on the Malta Stock Exchange other than units in a collective investment scheme investing less than 85% of its total investments in Malta-based securities and Malta Government Stock. Capital gains are otherwise taxed in the same way as dividend income, and in such case, refunds are also applicable in the same way.

⁸⁷ See note 82. A minimum holding period of 183 days applies in situations where the participation exemption is being availed of on the basis that the holding is of at least EUR 1,165,000 (approx.) but not in other situations.

⁸⁸ Provision for diminution in value of investment not tax deductible. Realized impairment of the investment is tax deductible.

⁸⁹ Provided these are incurred wholly and exclusively in the production of the income.

⁹⁰ The Ministry of Finance stated that it is required that the parent, through ordinary operations, participate permanently and continuously in the economic life of the country of the subsidiary.

⁹¹ Treaty currently under renegotiation.

EU/EEA HOLDING LOCATIONS 2008

	Portugal* (SGPS-Main-Land) ⁹²	Portugal/Madeira ⁹³
Dividends Exemption	Yes	Yes
(i) Minimum Holding (ii) In votes or in capital	(i) None (ii) N/A	(i) None (ii) N/A
Minimum Holding Period for Dividends	1 Year	No
Capital Gains Exemption	Yes ⁹⁴	Yes
Minimum Holding for Capital Gains (in percent or duration)	1 Year	None
Capital Loss Deduction	No	No
Write-Down of Participation	No	No
Deduction of Expenses (e.g., Interest)	Yes ⁹⁵	Yes
Debt-Equity Ratio	2:1 ⁹⁶	2:1 ⁹⁷
Capital Infusion Tax	No	No
WHT to Parent under Domestic Law	0% ⁹⁸	0% ⁹⁶
- To EU parent	0% ⁹⁹	0%
- To US parent	15%/5%	0%
Cross-Border Consolidation	No	No
CFC Legislation	Yes	Yes ¹⁰⁰

* Francisco de Sousa da Câmara, Morais Leitão, Galvão Teles Soares da Silva, & Associados, Lisboa

⁹² SGPSs are pure holding companies, i. e., entities that must have as their exclusive purpose the management of participations in other companies.

⁹³ Mixed Holding Companies with a license to operate in the International Business Center of Madeira (until the year 2000 inclusive) may accumulate this regime with an exemption applying to fees of different services as well as with no WHT when payments of interest or royalties are made abroad.

⁹⁴ This is not applicable when: (i) the shares giving rise to the capital gains were acquired from associated companies (i. e. entities with "special relationships". In Portugal a 10% relationship is sufficient to qualify as such); (ii) the shares were acquired from companies included in the black list published by the Ministry of Finance; (iii) the shares were acquired from Portuguese resident companies subject to a special tax regime. These exceptions do not apply when the shares were held by the SGPS for at least three years. Furthermore, the exemption does not apply when a company was transformed into a SGPS and less than three years have elapsed between the date of the transformation and the date of disposition of the shares.

⁹⁵ Interest on borrowings contracted for the purposes of buying shares benefiting from capital gains exemption (the exemption is not granted in the cases illustrated in the previous footnote and when the participation is not held for 1 year) is not deductible. Thin capitalization rules only apply to loans rendered by non-resident entities located in jurisdictions outside the EU.

⁹⁶ See preceding footnote.

⁹⁸ No WHT applies to distributions of dividends if the participation is maintained, uninterruptedly, during the year prior to the distribution and the parent company has a direct participation in the SGPS of at least 10% or with an acquisition cost of at least € 20 million.

⁹⁹ See preceding footnote.

¹⁰⁰ Considering that these mixed holding companies might be exempt from corporate income tax, CFC legislation does not have an impact, unless the mixed holding company is owned by another Portuguese company located onshore.

EU/EEA HOLDING LOCATIONS 2008

	Poland [*]	Romania ^{**}
Dividends Exemption	Yes	Yes/No ¹⁰¹
(i) Minimum Holding (ii) In votes or in capital	(i) Yes (ii) 15% in share capital ¹⁰²	(i) 15% ¹⁰³ (ii) Capital
Minimum Holding Period for Dividends	2 Years ¹⁰⁴	2 Years ¹⁰⁵
Capital Gains Exemption	No	No
Minimum Holding for Capital Gains (in percent or duration)	N/A	N/A
Capital Loss Deduction	Yes	Yes ¹⁰⁶
Write-Down of Participation	No	No
Deduction of Expenses (e.g., Interest)	Yes	Yes/Potentially ¹⁰⁷
Debt-Equity Ratio	3:1	3:1
Capital Infusion Tax	0.5%	No
WHT to Parent under Domestic Law	19% ¹⁰⁸	16%/10%/0% ¹⁰⁹
- To EU parent	0%	0%
- To US parent	15%/5%	10% ¹¹⁰
Cross-Border Consolidation	No	N/A
CFC Legislation	No	N/A

^{*} Jaroslaw Bieronski, Soltysinski Kawecki & Szlezak, Warsaw

^{**} Angela Rosca, Taxhouse, Bucharest

¹⁰¹ Dividends from Romanian subsidiaries are always exempt regardless of any ownership threshold or holding periods. Dividends from non-EU (including EEA) subsidiaries are fully taxable regardless of ownership thresholds. Dividends from EU subsidiaries are 100% exempt subject to the thresholds and holding periods indicated hereafter.

¹⁰² This exemption applies to dividend payments between domestic companies, companies based in the EU, the European Economic Area ("EEA") and Switzerland, and dividend payments received from such companies by a Poland's based permanent establishment of any of the companies referred to above. The direct shareholder's interest in the share capital of dividend distributor should amount to 15% if dividend is to be distributed between January 1, 2007 and December 31, 2008 and 10% if dividend is to be distributed afterwards. In respect of dividends paid or received by Swiss companies, interest in the share capital of the dividend distributor should amount to at least 25%. Alternatively, instead of this dividend tax exemption, the tax paid on dividend distributed by a subsidiary from a country other than EU, the EEA or Switzerland to its Polish parent may be credited against Polish corporate tax of the Polish parent, provided that such other country has a tax treaty with Poland and the parent directly holds at least 75% of the share capital of such subsidiary.

¹⁰³ Ownership threshold only relevant for EU subsidiaries. Reduction to 10% as of 2009.

¹⁰⁴ The tax exemption also applies if the 2-year period is met post-distribution.

¹⁰⁵ 2 year holding period can be met subsequently (retroactive exemption via amendment of prior tax returns)

¹⁰⁶ Capital gains and losses are afforded ordinary income treatment such that capital losses offset ordinary trading income and capital gains are taxed at ordinary rates.

¹⁰⁷ Deductible if related to taxable income; uncertain regarding acquisition related interest (exempt dividends vs. taxable capital gains).

¹⁰⁸ No dividend withholding tax if the requirements for the tax exemption referred to in footnote 104 are satisfied.

¹⁰⁹ Currently, the 16% rate applies to all dividend payments towards non-resident entities (except Parent-Subsidiary Directive); the 10% rate applies on dividend distributions by a Romanian subsidiary to its Romanian parent; 0% applicable under Parent-Subsidiary Directive (not implemented yet for Norway, Liechtenstein, Iceland and Switzerland).

¹¹⁰ Under the Romanian-US Tax Treaty regardless of ownership thresholds (controlling and portfolio interests treated alike).

EU/EEA HOLDING LOCATIONS 2008

	Russia ^{**}	Spain ^{*111}
Dividends Exemption	Yes ¹¹²	Yes
(i) Minimum Holding (ii) In votes or in capital	(i) 50% (ii) Capital	(i) 5% or € 6M ¹¹³ (ii) Capital or equity
Minimum Holding Period for Dividends	1 year	1 year ¹¹⁴
Capital Gains Exemption	No	Yes ¹¹⁵
Minimum Holding for Capital Gains (in percent or duration)	N/A	1 year ¹¹⁶
Capital Loss Deduction	Only against capital gains on shares of the current and following years	Yes
Write-Down of Participation	No	Yes ¹¹⁷
Deduction of Expenses (e.g., Interest)	Yes	Yes
Debt-Equity Ratio	3:1 ¹¹⁸	Only for non EU related parties ¹¹⁹ : 3:1 or ruling
Capital Infusion Tax	No	1%/0% ¹²⁰
WHT to Parent under Domestic Law	9%/15% ¹²¹	0%/18% ¹²²
- To EU parent	15% ¹²³	0%
- To US parent	10% / 5% ¹²⁴	0% ¹²⁵
Cross-Border Consolidation	No	No
CFC Legislation	No	Only for non-EU resident subsidiaries

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^{*} Rafael Garcia Llana, Uria Menéndez, Madrid

¹¹¹ To qualify as a *Qualified Foreign Investment* (QFI) subject to the favorable tax treatment here shown, the non-resident subsidiary (1) must be subject to, and not exempt from, a tax similar in nature to the Spanish Corporate Income Tax, and (2) must be engaged in an active trade or business.

¹¹² As from January 1, 2008, dividends received by a Russian company from its subsidiary, may be exempt from taxation provided that: (a) such company holds at least 50% of the equity of the distributing entity or depositary receipts and the participation confers the right to receive at least 50% of the dividends distributed; (b) it has owned the participation or depositary receipts for an uninterrupted period of at least 365 days at the time the decision is made to distribute the dividends; (c) the cost of the acquisition or other receipt of the participation or depositary receipts, in accordance with the legislation of the Russian Federation, exceeds 500 million Rubles (approximately 13.5 m Euros); and (d) the jurisdiction of the subsidiary's permanent location is not included in the list published by the Russian Ministry of Finance of countries and territories with beneficial tax treatment and/or which do not require the disclosure and provision of information when financial operations are carried out (so-called "offshore zones"). If the participation in the subsidiary does not comply with the said requirements, the rate is 9% for the dividends received from both foreign and Russian subsidiaries.

¹¹³ Acquisition value. The 6 M € applies exclusively if the holding qualifies as an ETVE.

¹¹⁴ Holding period within the group is taken into consideration. The holding period may be met before or after the distribution.

¹¹⁵ As a general rule, gains on the sale of shares of a Spanish company by a non-resident are subject to a 18% capital gains tax unless a reduced Tax Treaty rate applies or, generally, if the seller is resident in the EU and not operating through a tax haven jurisdiction. However, gains deriving from the sale of shares in a Spanish holding company (ETVE) corresponding to income or gains from qualified foreign subsidiaries are exempt from capital gains tax, unless obtained by residents in a tax haven jurisdiction.

¹¹⁶ Again, holding period within the group is taken into consideration for this purpose.

¹¹⁷ Except if the write-down derives from a dividend distribution that was exempt from tax at the level of the Spanish company.

¹¹⁸ 12.5:1 for banks and leasing companies.

¹¹⁹ Direct or indirect remunerated indebtedness must be taken into consideration. Interest corresponding to excess indebtedness over the 3:1 ratio is reclassified as dividends, and, therefore, not deductible for corporate income tax purposes and subject to dividend withholding tax, if any. If the direct or indirect lender is resident in the EU, thin capitalization rules do not apply unless the EU shareholder is resident in tax haven jurisdictions.

¹²⁰ 1% general tax rate; contributions of shares of qualified foreign subsidiaries and other qualified in-kind contributions are exempt.

¹²¹ 9% to a Russian parent; 15% to a foreign parent.

¹²² As a general rule, dividends distributed by a Spanish company to a foreign parent company are subject to a 18% withholding tax unless a reduced Tax Treaty rate applies. However, dividends distributed by a Spanish holding company (ETVE) out of income received from qualified foreign subsidiaries are exempt from withholding tax, unless obtained by residents in a tax haven jurisdiction.

¹²³ As Russia is not a member of EU, exemptions available under the EC Parent Subsidiary Directive do not apply. However, it should be noted that Russia has a wide network of bilateral tax treaties, including tax treaties with the EU member states which provide for reduced rates of withholding tax on dividends. The lowest tax rate available under the tax treaties concluded by Russia (including *inter alia* treaties with the Netherlands, Cyprus, Germany and France) is 5%.

¹²⁴ The rate is 5% of the gross amount of the dividends if the beneficial owner is a company which owns at least 10% of the statutory capital of a Russian subsidiary paying the dividends.

¹²⁵ Dividends distributed by a Spanish holding company (ETVE) out of income received from qualified foreign investments are exempt from Spanish dividend withholding tax. If such exemption does not apply, dividends distributed to a US parent company will be subject to a 10% (25% direct holding required; some indirect participations – in case a look-through regime applies – may also benefit from 10% rate) or 15% rate.

EU/EEA HOLDING LOCATIONS 2008

	Sweden ^{**}	Switzerland [*]
Dividends Exemption	Yes ¹²⁶	Yes ¹²⁷
(i) Minimum Holding (ii) In votes or in capital	(i) N/A ¹²⁸ (ii) N/A ⁹⁹	(i) 20% or CHF 2M (ii) Nominal capital As from January 1, 2009 (i) 10% or CHF 1M ¹²⁹ (ii) Nominal capital
Minimum Holding Period for Dividends	No ¹³⁰	None
Capital Gains Exemption	Yes ¹³¹	Yes ¹³²
Minimum Holding for Capital Gains (in percent or duration)	N/A ¹³³	20% and 12 months As from January 1, 2009: 10% and 12 months ¹³⁴
Capital Loss Deduction	No ¹³⁵	Yes
Write-Down of Participation	No	Yes ¹³⁶
Deduction of Expenses (e.g., Interest)	Yes	Yes
Debt-Equity Ratio	None	Detailed list of requirements ¹³⁷
Capital Infusion Tax	None	1% ¹³⁸
WHT to Parent under Domestic Law	0%/30% ¹³⁹	No
- To EU parent	0% ¹⁴⁰	0% ¹⁴¹
- To US parent	0% ¹⁴²	5% ¹⁴³
Cross-Border Consolidation	No	No
CFC Legislation	Yes	No

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^{*} Stephan Neidhardt, LL.M., Walder Wyss & Partners Ltd., Zurich

¹²⁶ Applies to dividends on non-listed shares. Dividends on listed shares must meet holding period and voting power requirements.

¹²⁷ On all cantonal levels: Holding companies are exempt from profit tax. On the federal level: participation reduction.

¹²⁸ Special, more restrictive rules apply to listed shares.

¹²⁹ As from January 1, 2009, dividend distributions to a Swiss company which holds a participation of least 10% or with a fair market value of at least CHF 1 million in the distributing company will be subject to the participation exemption.

¹³⁰ Special, more restrictive rules apply to listed shares.

¹³¹ Special, more restrictive rules apply to listed shares.

¹³² Under certain conditions, capital gains realized by a Swiss company upon sale of a portion of at least 20% of a participation (per sale) are subject to the participation reduction. A holding period of at least one year is necessary.

¹³³ Special, more restricted rules apply to listed shares.

¹³⁴ As from January 1, 2009, capital gains realized by a Swiss company upon sale of a portion of at least 10% of a participation (per sale) or less than 10% of a participation, if such participation has been reduced to less than 10% through prior sales, will be subject to the participation exemption, provided the value of the participation in the latter case has a fair market value of at least CHF 1 million at the end of the tax period prior to the sale. In both cases a holding period of at least one year is necessary.

¹³⁵ Capital losses are not deductible, unless made on shares on which a gain would be taxable. Capital losses on shares that are deductible may only be offset against taxable gains on shares and other equity related securities.

¹³⁶ Certain restrictions apply.

¹³⁷ On the federal level: Directives of the Federal Tax Administration regarding financing and interest rates, and Circular No. 6 of June 6, 1997 concerning thin capitalization. The tendency of the cantonal tax administrations is to apply this Circular, unless cantonal tax legislation provides specific rules. The 1:6 rule only applies to finance companies.

¹³⁸ No tax on share capital up to CHF 1,000,000 (as of January 1, 2006) per company and exemptions in case of reorganizations.

¹³⁹ The general withholding tax rate under domestic Swedish tax law is 30%. However, if the recipient is a corporate entity that is not resident in a tax haven the dividend is normally exempt from withholding tax under domestic Swedish tax law. More restrictive rules apply to listed shares.

¹⁴⁰ On listed shares, the EU Parent Subsidiary Directive or, if more favorable, the relevant tax treaty will be applicable. On non-listed shares, there is no withholding tax pursuant to domestic law.

¹⁴¹ As from January 1, 2005, the new general exemption system applies to dividends paid to parent companies, generally subject to the applicable treaty rates for subsidiaries. The refund system has been abolished in these cases as per December 31, 2004.

Since entry into force of the Bilateral Agreements II as of July 1, 2005, the then applicable rates for dividends to EU parents (at least 25% participations and holding period of at least two years) will always be 0%.

¹⁴² On listed shares, the provisions of the tax treaty will be applicable (0%, 5% or 15%). On non-listed shares, there is no withholding tax pursuant to domestic law.

¹⁴³ If participation is at least 10% of all voting rights.

EU/EEA HOLDING LOCATIONS 2008

	UK ^{**}
Dividends Exemption	No ¹⁴⁴
(i) Minimum Holding (ii) In votes or in capital	N/A
Minimum Holding Period for Dividends	N/A
Capital Gains Exemption	Yes ¹⁴⁵
Minimum Holding for Capital Gains (in percent or duration)	10% and 12 months
Capital Loss Deduction	Yes/No ¹⁴⁶
Write-Down of Participation	No
Deduction of Expenses (e.g., Interest)	Generally yes
Debt-Equity Ratio	1:1 (Revenue practice)
Capital Infusion Tax	None
WHT to Parent under Domestic Law	0%
- To EU parent	0%
- To US parent	0%
Cross-Border Consolidation	Yes/No ¹⁴⁷
CFC Legislation	Yes

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¹⁴⁴ UK government is currently consulting with the view to introducing a participation exemption (for holdings 10% or more) on foreign dividends. In conjunction with the proposal to introduce the participation exemption it is intended that CFC rules will continue to be operated by UK companies subject to the introduction of additional more restrictive measures. New legislation to this effect may be introduced in 2009.

¹⁴⁵ The exemption is available subject to a number of conditions the most important being: a minimum 10% holding in capital and equity for a minimum period of 12 months, and the holding must be in a trading company or the holding company of a trading group. The trading requirement must be satisfied both during the qualifying period and immediately after the disposal.

¹⁴⁶ There is no deduction for losses on the disposal of the 10% or more participation qualifying for the capital gains exemption. Other capital losses may be carried forward and set off against other capital gains which are chargeable to tax.

¹⁴⁷ Following the decision of the European Court of Justice in Marks + Spencer plc v. David Halsey (Case C-446/03) the UK has extended its group relief rules so that UK companies may claim relief for losses incurred by subsidiaries which are resident, or which carry on a trade through a permanent establishment in an EEA territory. However, the circumstances in which relief can be claimed are very limited; in particular the losses must not be capable of being offset or otherwise relieved against income or gains in any other jurisdiction.