Annex 7 - Greece

GREECE

General Comments

1. *Implementation by Greece of EU Directive No. 90/434 (EU Merger Directive)*

Greece has implemented the Directive No. 90/434 by means of Law 2578/1998 (hereinafter "the Implementation Law"), which apply only to transactions involving public limited liability companies. This "limited scope of the Implementation Law" is in accordance with art. 3 a) and the Annex of the Directive which provides that for the purposes of the Directive "company from a Member State" shall mean any company which takes the form of an anonimi eteria (i.e. public limited liability company) under Greek Law. Therefore, private limited liability companies fall outside the scope of the Implementation Law and are not covered by it.

2. *Taxation of capital gains*

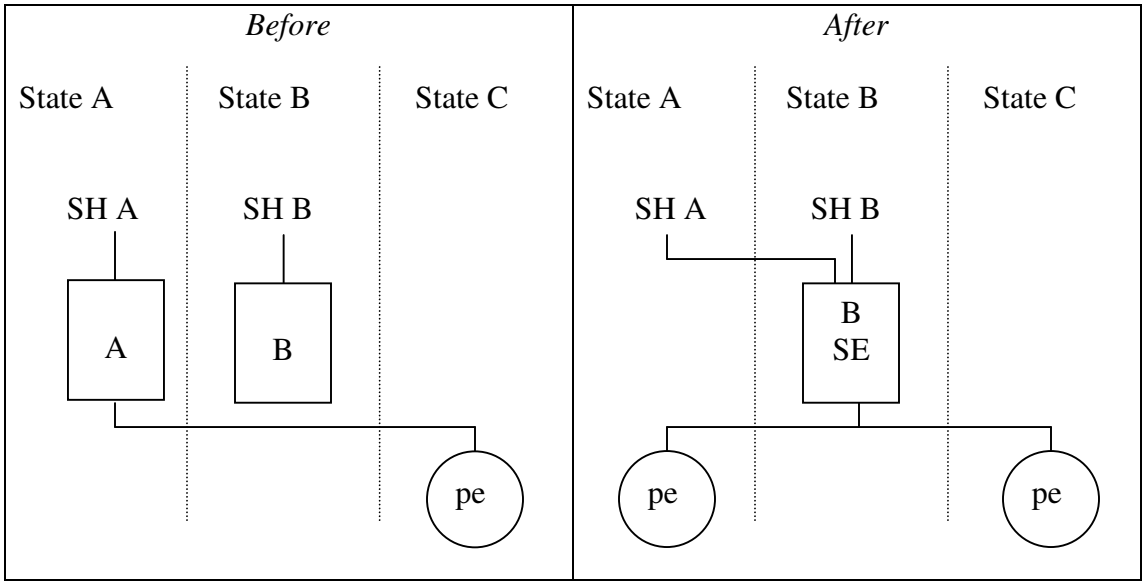
As a general rule, gains from the sale of fixed business assets (except ships) are taxed as part of the ordinary income and the gain is calculated as the difference between the sales price and the book value of the asset.
On the other hand, gains from the disposal of certain securities and other rights are taxed separately from ordinary income at flat rates (20% for CG from the sale of participations in private limited liability companies; 30% for CG from the assignment of rights such as trademarks, patents and licences of vehicles destined for public use; 30% for CG from assignment of leasing rights).
Such tax is not final: the gains are subject to normal corporate income tax rate upon distribution, with a credit being given for the tax paid.

Concerning the discipline of the transfer tax levied at a rate of 5% on the sale value of unlisted shares of an AE and unlisted shares of foreign corporation referred above; if a gain is realized from the sale of non-listed shares, such gain should be recorded in a tax-free reserve. Upon distribution or capitalization, it would be subject to tax at the ordinary corporate income tax rate, with a credit being given for that part of the 5% tax paid which corresponds to the gain. This treatment, which results from current provisions of tax law, has been confirmed by a circular of the Ministry of Finance (POL 1108/22.03.2000) following the introduction of the new 5% tax. If, however, the 5% tax paid exceeds the amount of the tax resulting from applying the corporate income tax rate on the realized gain, the above rules on the formation of a reserve do not apply. The reason for this is that the tax liability on the gain has been satisfied by the payment of the 5% tax. In such cases, the amount of gain is deducted from the profits calculated on the basis of the accounting books in order to determine taxable profits.

CASE 1

Merger by acquisition

(Art. 2 par. 1 jo. Art 17 par. 2(a) Reg. 2157/2001)



Facts and assumptions

- SH = shareholder(s), resident in the respective country in which SH is situated
- A and B are existing companies
- A and B are public limited-liability companies (see Annex I to Reg. 2157/2001)
- State A, State B, and State C are EU Member States
- A:
    - formed under law of Member State A
    - registered office in Member State A
    - head office in Member State A
    - has a permanent establishment in Member State C
- B:
    - formed under law of Member State B
    - registered office in Member State B
    - head office in Member State B
- B SE:
    - registered office in Member State B
    - head office in Member State B
    - will be covered by the EC Merger Directive

Transactions

- A:

- transfers all assets and liabilities to B
- in exchange for shares in B (and cash payment if any, not exceeding 10% of nominal value of shares to be issued) issued to shareholder(s) of A
- will be wound up without going into liquidation

- B / B SE:
  - as the acquiring company, B will take the form of an SE when the merger takes place (Art. 17 Reg. 2157/2001: "In the case of a merger by acquisition, the acquiring company shall take the form of an SE when the merger takes place". Consequently, there are in fact two transactions: 1) the merger and 2) a transformation of a public limited-liability company into an SE. With regard to the transformation, see also Case 9.)
  - will be regarded as public limited-liability company governed by law of Member State B

Questions

1) Assume Member State A is your country

Tax effects for A in Member State A

a) Will the merger give rise to any taxation of capital gains (= real value of assets & liabilities transferred minus their value for tax purposes), or is there rollover relief?

According to Art. 3, Par. 1, of the Implementation Law, capital gains derived by a transferring domestic company, at the time when the merger takes place, are not subject to income tax in Greece when these operations take place. Nevertheless, under Art. 3, Par. 3, the rollover relief does not apply when a domestic joint-stock company transfers its permanent establishment situated in another Member State of the European Union.

b) May provisions and reserves, which are partly or wholly exempt from tax and which are not derived from permanent establishments outside Member State A, be taken over with the same rollover relief by the permanent establishment of B SE in Member State A?

Under Art. 3, Par. 4, of the Implementation Law, these partly or fully exempt reserves are not subject to taxation at the time of the merger provided that they are listed in a separate account in the financial statement of the receiving permanent establishment.

c) Will B's permanent establishment in Member State A be allowed to take over the losses of A that have not been exhausted for tax purposes?

No.

If B would be a company resident in Member State A, would it then be allowed to take over these losses?

Yes. According to art. 9 of Law 2992 of 20 March 2002, losses of the acquired company can be transferred to the acquiring company and carried forward for 2 years, unless they are set off against the profits existing at the time of the restructuring.

d) Will Member State A renounce any right to tax the permanent establishment in Member State C?

No.

e) Or will Member State A tax profits or capital gains with respect to the permanent establishment as a result of the merger?

Yes.

If so, will Member State A give relief for any (notional) tax charged on these profits or capital gains by Member State C?

Art. 3, Par. 3, of the Implementation Law provides that the rollover relief does not apply when a domestic joint-stock company transfers its permanent establishment situated in another Member State of the European Union.
In such a case the capital gain will be taxed in Greece at the moment when the merger takes place.
Nevertheless, the tax that would be imposed in the Member State in which the permanent establishment is situated, if the provisions of the Directive did not apply, is deducted from the tax imposed in Greece.
The tax so deducted cannot exceed that part of the tax, as computed before the deduction is given, which is attributable to the same amount of the capital gains in Greece.

f) Will Member State A reinstate in the taxable profits of A such losses of the permanent establishment as have been set off against the taxable profits of A in Member State A and which have not been recovered at the time of the merger?

No.

<u>Tax effects for SH A in Member State A</u>

g) Will the issue of shares by B SE to SH A, resident in Member State A, in exchange for shares in A give rise to any taxation of the income, profits or capital gains of that shareholder?

Under Art. 6, Par. 1 and 2 of the Implementation Law, the allotment, in consequence of a merger, to a shareholder of the acquired company, of securities representing the capital of the acquiring company, in exchange for securities representing the capital of the former company, shall not, as such, give rise to any taxation of the capital gains of that shareholder.
This provision applies provided that the shareholder, at the time when receiving the securities of the receiving company, shall not attribute to the received securities a value for tax purposes higher than the exchanged securities had immediately before the merger. If this condition is not fulfilled, the above capital gains shall be taxed in the shareholder's name, according to the general provision in force at the time of the merger.
If a cash payment takes place to set off the securities of the receiving company to which the shareholder is entitled, this amount, which is a decreasing element of the capital gains, is liable to income tax on the name of the shareholder, according to the general provisions in force at the time of the merger.

In any event such a transaction of exchange of shares will give rise to the levying of a 5% transfer tax, as introduced by Law 2753/1999, on the sale value of unlisted shares of AE's and unlisted shares of foreign corporations if transferred by Greek residents. This tax operates likes a transfer tax but has been incorporated in the Income Tax Law No. 2238/1994 and is therefore treated as income tax. For further information regarding taxation of capital gains and transfer tax, see under General comments on page 1 of this report.

h) Will the issue of shares by B SE to a shareholder of A, not resident in Member State A, in exchange for shares in A give rise to any taxation of the income, profits or capital gains of that shareholder?

In principle no, according to art. 4, Par. 1, of L. 2578/1998.

In any event such a transaction will give rise to the levying of transfer tax at a rate of 5% according to art. 13 of the Income Tax Law No. 2238/1994. In this respect see also the observations expressed in the answer 1 g) above.

i) Will the answers to the questions 1g) and 1h) differ if SH A is:
   i) A corporate shareholder?

If SH is a Greek corporation then any capital gain which will be exempted (or taxed at a rate of 5%) at source will be subject to further taxation depending on the distribution of profits of such corporation or upon dissolution, according to art. 106, Par. 2, of Income Tax Law 2238/1994.

   ii) An individual shareholder not owning a substantial interest?
   iii) An individual shareholder owning a substantial interest?
   iv) An individual entrepreneur?

No.

2) Assume Member State B is your country

Tax effects for B and B SE in Member State B

a) According to Art. 37 par. 2 Reg. 2157/2001 the conversion of a public limited-liability company into an SE shall not result in the winding up of the company or in the creation of a new legal person. However, the Regulation itself does not give guidance with regard to taxation. Will the transformation of B into B SE have corporate income tax consequences in Member State B?

Transformation to a SE as a part of a merger covered by the Merger Directive will probably fall within the concept of merger and benefit of the rollover relief from capital gain tax according to art. 4, Par. 1 and 5, of Law 2578/1998.
In any event for transformation implications see case 9 below.

b) What is the value for tax purposes that B SE has to attribute to the assets and liabilities, which are transferred to B SE as part of the merger and that form a permanent establishment in Member States A and C?

No specific rules exist.

Tax effects for SH B in Member State B

c) Will the fact that B will take the form of an SE result in tax consequences for SH B?

No specific rules exist. Nevertheless, it is not likely that such a transaction will give rise to tax consequences simply because the form of the company resulting from the merger is an SE.

d) Will the answer to question 2c) above differ if SH B is:
   i) A corporate shareholder?
   ii) An individual shareholder not owning a substantial interest?
   iii) An individual shareholder owning a substantial interest?
   iv) An individual entrepreneur?

No.

3) Assume Member State C is your country

Tax effects for A and B SE in Member State C with respect to its permanent establishment in Member State C

a) Will the merger give rise to any taxation in A of capital gains (= real value of assets & liabilities transferred minus their value for tax purposes) or is there rollover relief?

Under art. 3, Par. 3 of the Implementation Law, rollover relief applies also when a foreign company of a Member State of the European Union transfers its permanent establishment in Greece to a receiving company which belongs to another Member State of the European Union.

b) May provisions and reserves, which are partly or wholly exempt from tax and which are not derived from permanent establishments outside Member State C, be taken over with the same rollover relief by the permanent establishment of B SE in Member State C?

Yes, provided they are listed in special accounts, according to art. 3, Par. 4, of the Implementation Law.

c) Will B SE's permanent establishment in Member State C be allowed to take over the losses of A's permanent establishment that have not been exhausted for tax purposes?

No.

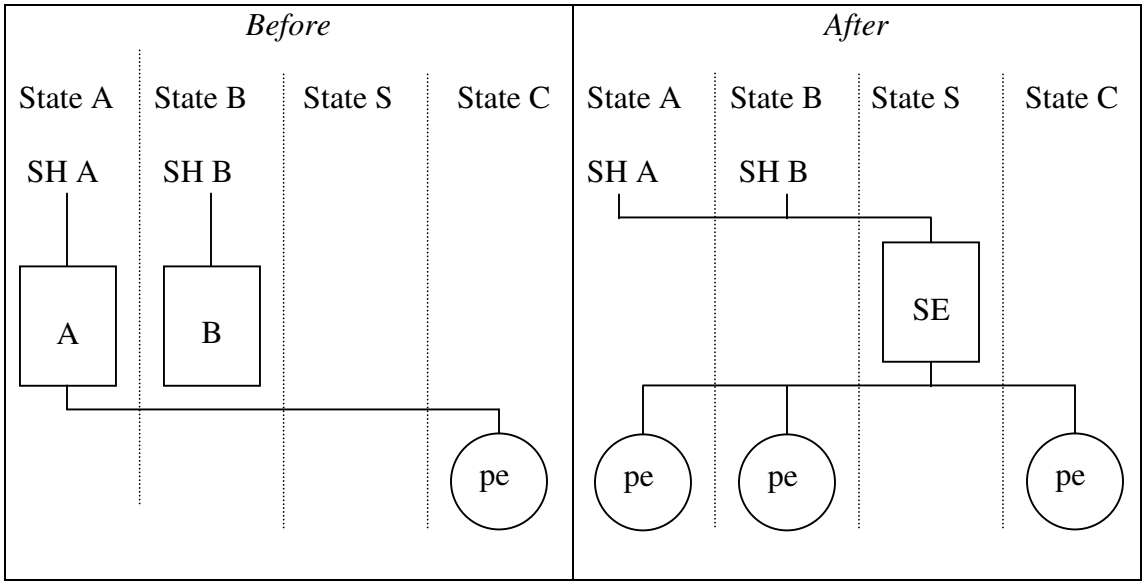
d) If B SE would be a company resident in Member State C, would it then be allowed to take over these losses? See Merger Directive Art. 6.

Yes.

CASE 2

Merger by formation of a new company

(Art. 2 par. 1 jo Art 17. par 2(b) Reg. 2157/2001)



Facts and assumptions

- SH = shareholder(s), resident in the respective country in which SH is situated
- A and B are existing companies
- A has a permanent establishment in Member State C
- SE is a new company
- A and B are public limited-liability companies (see Annex I to Reg. 2157/2001)
- State A, State B, State C, and State S are EU Member States
- A:
    - formed under law of Member State A
    - registered office in Member State A
    - head office in Member State A
- B:
    - formed under law of Member State B
    - registered office in Member State B
    - head office in Member State B
- SE:
    - formed under law of Member State S
    - registered office in Member State S
    - head office in Member State S
    - will be covered by the EC Merger Directive

Transactions

- A:
  - transfers all assets and liabilities to SE
  - in exchange for shares of SE (and cash payment if any, not exceeding 10% of nominal value of shares to be issued) issued to shareholder(s) of A
  - will be wound up without going into liquidation
- B:
  - transfers all assets and liabilities to SE
  - in exchange for shares of SE (and cash payment if any, not exceeding 10% of nominal value of shares to be issued) issued to shareholder(s) of B
  - will be wound up without going into liquidation
- SE:
  - will be a newly formed SE
  - will be regarded as public limited-liability company governed by the law of Member State S

Questions

1) Assume Member State A is your country

   Tax effects for A in Member State A

   a) Will the merger give rise to any taxation of capital gains (= real value of assets & liabilities transferred minus their value for tax purposes), or is there rollover relief?

      Under art. 3 of the Implementation Law, rollover relief is granted (see answer to case 1, question 1a) above).

   b) May provisions and reserves, which are partly or wholly exempt from tax and which are not derived from permanent establishments outside Member State A, be taken over with the same rollover relief by the permanent establishment of SE in Member State A?

      Under Art. 3, Par. 4, of the Implementation Law, these partly or fully exempt reserves are not subject to taxation at the time of the merger, provided they are listed in a separate account in the financial statement of the receiving permanent establishment.

   c) Will SE's permanent establishment in Member State A be allowed to take over the losses of A that have not been exhausted for tax purposes?

      No.

If SE would be a company resident in Member State A, would it then be allowed to take over these losses?

Yes, according to art. 9 of the Law 2992 of 20 March 2002, (see answer to case 1, question 1c) above).

d) Will Member State A renounce any right to tax the permanent establishment in Member State C?

No, according to art. 3, Par. 2, of the Implementation Law (see answer to case 1, question 1d), above).

e) Will Member State A reinstate in the taxable profits of A such losses of the permanent establishment as have been set off against the taxable profits of A in Member State A and which have not been recovered at the time of the merger?

No.

f) Or will Member State A tax profits or capital gains of the permanent establishment resulting from the merger?

Yes.

If so, will it give relief for any (notional) tax charged on these profits or capital gains by Member State C?

Yes, as rollover relief does not apply when a domestic joint-stock company transfers its permanent establishment situated in another Member State of the European Union.
In such a case the capital gain will be taxed in Greece at the moment when the merger takes place.
Nevertheless, the tax that would be imposed in the Member State in which the permanent establishment is situated, if the provisions of the Directive did not apply, is deducted from the tax imposed in Greece. The tax so deducted cannot exceed that part of the tax, as computed before the deduction is given, which is attributable to the same amount of the capital gains in Greece.

<u>Tax effects for SH A in Member State A</u>

g) Will the issue of shares by SE to SH A, resident in Member State A, in exchange for the assets and liabilities in A give rise to any taxation of the income, profits or capital gains of that shareholder or is there rollover relief?

No capital gain tax will arise under art. 6, Par. 1, of the Implementation Law.
For transfer tax see the observations expressed in answer to case 1, question 1g) above and the General comments on page 1 of this report.

h) Will the issue of shares by SE to a shareholder of A, not resident in Member State A, in exchange for the assets and liabilities in A give rise to any taxation of the income, profits or capital gains of that shareholder or is there rollover relief?

In principle no taxation will arise, according to art. 6, Par. 1, of Law 2578/1998, but see the observations expressed in the answer to case 1, question 1h) above.

i) Will the answers to the questions 1g) and 1h) differ if SH A is:
   i) A corporate shareholder?

Same as answer to case 1, question 1i i), above.

   ii) An individual shareholder not owning a substantial interest?
   iii) An individual shareholder owning a substantial interest?
   iv) An individual entrepreneur?

The same as answer to case 1, questions 1i ii) iii) iv).

2) Assume Member State S is your country

Tax effects for SE in Member State S

a) What is the value for tax purposes that SE has to attribute to the assets and liabilities, which are transferred to SE as part of the merger and that form a permanent establishment in Member States A, B and C?

No specific rules exist.

Tax effects for shareholder(s) of SE in Member State S

b) Is there any provision in the legislation of Member State S that affects the shareholder of SE whether resident in Member State S or not? For example, are there provisions with regard to the valuation of the shares received in SE?

No specific rules exist.

3) Assume Member State C is your country

Tax effects for A and SE in Member State C in respect of its permanent establishment in Member State C

a) Will the merger give rise to any taxation of capital gains (= real value of assets & liabilities transferred minus their value for tax purposes) or is there rollover relief?

According to art. 3, Par. 3, of the Implementation Law, rollover relief is granted. See also answer to case 1, question 3 a).

b) May provisions and reserves, which are partly or wholly exempt from tax and which are not derived from permanent establishments outside Member State C, be taken over with the same rollover relief by the permanent establishment of SE in Member State C?

Yes, provided they are listed in special accounts, according to art. 3, Par. 4, of the Implementation Law.
See also answers to case 1, question 3 b).

c) Will SE's permanent establishment in Member State C be allowed to take over the losses of A's permanent establishment that have not been exhausted for tax purposes?

No.

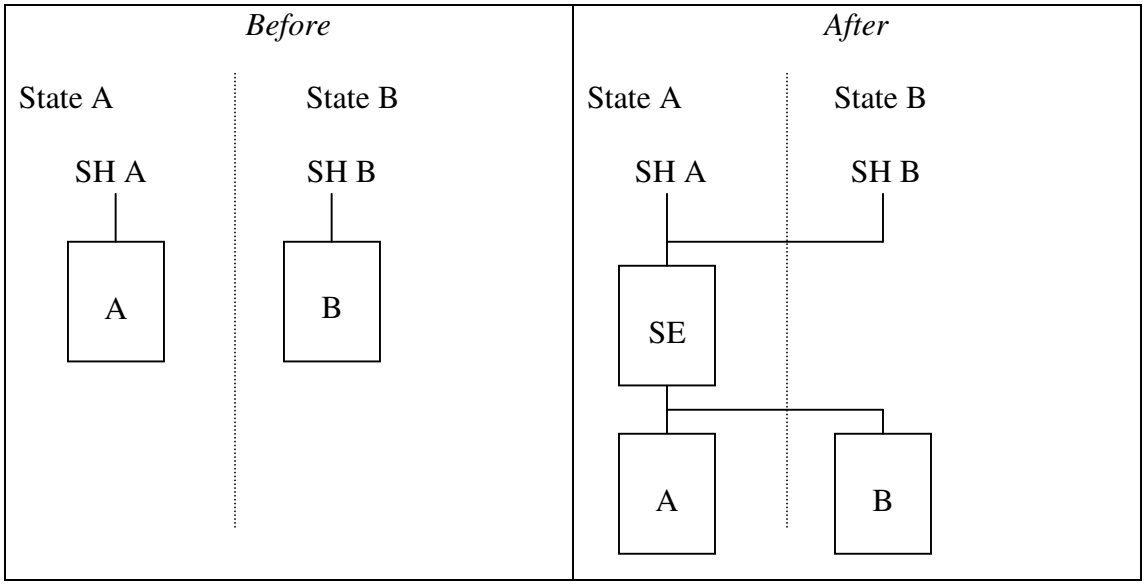
If SE would be a company resident in Member State C, would it then be allowed to take over these losses?

Yes. According to art. 9 of Law 2992 of 20 March 2002, carry forward would be allowed for the 2 years following the time of the merger.

CASE 3

Formation of a Holding – SE – 1

(Art. 2 par. 2(a) jo. Art. 32, Art. 33 and Art. 34 Reg. 2157/2001)



Facts and assumptions

- SH = shareholder(s), resident in the respective country in which SH is situated
- A and B are existing companies
- SE is a new company
- A and B are public or private limited-liability companies (see Annex II Reg. 2157/2001)
- State A and State B are EU Member States
- A:
  - formed under law of Member State A
  - registered office in Member State A
  - head office in Member State A
- B:
  - formed under law of Member State B
  - registered office in Member State B
  - head office in Member State B
- SE:
  - formed under law of Member State A
  - registered office in Member State A
  - head office in Member State A
  - will be covered by the EC Merger Directive

Transactions

- SE:
  - will be regarded as public limited-liability company governed by the law of Member State A
  - acquires holding in A and B
  - such that it obtains more than 50% of the permanent voting rights in A and B
  - in exchange for shares in SE
  - issued to the shareholders of A and B

Questions

1) Assume Member State A is your country

Tax effects for SE in Member State A

a) Are there any provisions for the valuation for tax purposes of the shares in A and B acquired by SE?

There is a minimum value to be attributed to shares of A and B, which is described in art. 13 of the Income Tax Law No. 2238/1994 and the relevant applicable regulation POL 1233/1999.

Do the shares have to be valued at the book value of the exchanging shareholder or at a higher value?

The applicable rules are the same that apply for the attribution of the minimum actual sales price in case the transfer tax is levied.

The Ministerial Decision (POL 1233/1999) issued on 2 December 1999 provides that the minimum actual sales price of a Greek non-listed share is calculated by dividing the equity of the company, as it appears on the day preceding the day the tax return is filed, by the number of shares. Para. 2 of the Decision further clarifies that the equity is taken as it appears in the most recent balance sheet (prepared at the end of a financial year), adjusted by any capital increases or reductions that have taken place from the year end to which the balance sheet refers up to the day the 5% tax return is filed.

The equity is further increased by the return it has produced in the last 5 years, or less if the company has operated less than 5 years. If the company has resulted from a merger and has not prepared at least three balance sheets, the balance sheets of its predecessors are taken into account to complete the requirement of 3 balance sheets. Such return is calculated by dividing the average net operating income (i.e. excluding extraordinary income and expenses) before tax of the last 5

years by the average equity of the last 5 years. If the ratio is negative, it is not taken into account.

b) Are there any provisions for the valuation for tax purposes of the shares issued to SH A and SH B?

There is a minimum value to be attributed to shares of A and B, which is described in art. 13 of the Income Tax Law No. 2238/1994 and the relevant applicable regulations.

Do the shares have to be valued at the book value of the shares exchanged by the shareholder or at a higher value?

Same as answer to question 1 a) of this case.

Tax effects for SH A in Member State A

c) Will the issue of shares by SE to SH A in exchange for shares in A give rise to any taxation of the income, profits or capital gains of SH A or is there rollover relief?

If A is a private limited liability company (EPE), no rollover relief is given since art. 3, Par. 1, of the Implementation Law covers only public limited liability companies (anonimes eteries AE).
Under Art. 6, Par. 1 and 2 of the Implementation Law, the allotment, in consequence of exchange of shares, to a shareholder of the acquired company, of securities representing the capital of the acquiring company, in exchange for securities representing the capital of the former company, shall not in principle, as such, give rise to any taxation of the capital gains of that shareholder.
Nevertheless, if A is a public limited liability company (anonimi eteria) then the acquisition of shares in SE by SH A through an exchange of his shares in A might be subject on both transactions to transfer tax of 5% under art. 13, par 2, of the Income Tax Law No. 2238/1994.

d) Will the answers to the question 1c) differ if SH A is:
   i) A corporate shareholder?

If A is a corporate shareholder then the capital gain will be subject to corporate income tax also, following the rules of the corporate income tax legislation, but after deduction of capital gains (or income tax as described above in answer c)) paid upon transaction.

   ii) An individual shareholder not owning a substantial interest?
   iii) An individual shareholder owning a substantial interest?
   iv) An individual entrepreneur?

No.

2) Assume Member State B is your country

Tax effects for SH B in Member State B

a) Will the issue of shares by SE to SH B in exchange for shares in B give rise to any taxation of the income, profits or capital gains of SH B or is there rollover relief?

Same as answer to question c) above.

b) Will the answers to the question 1a) differ if SH B is:
   i) A corporate shareholder?

Same as answer to question d) above.

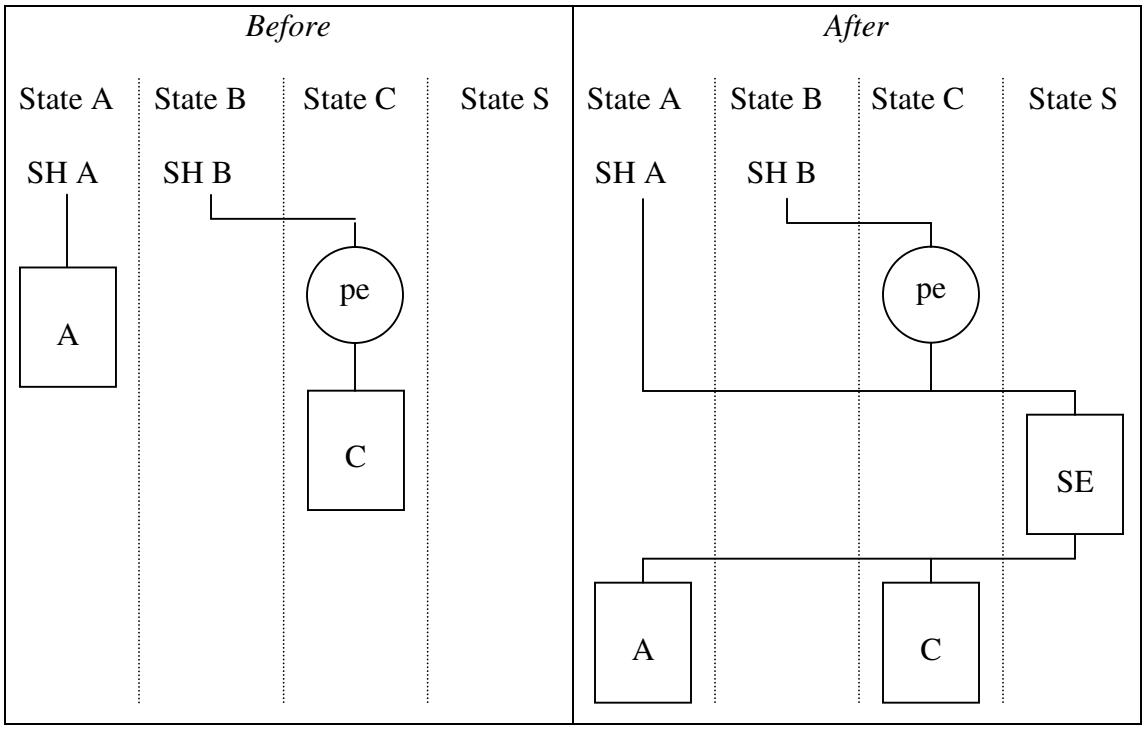
   ii) An individual shareholder not owning a substantial interest?
   iii) An individual shareholder owning a substantial interest?
   iv) An individual entrepreneur?

No.

CASE 4

Formation of a Holding – SE

(Art. 2 par. 2(a) and (b) jo. Art. 32, Art. 33, and Art. 34 Reg. 2157/2001)



Facts and assumptions

- SH = shareholder(s), resident in the respective country in which SH is situated
- A and C are existing companies
- SE is a new company
- A and C are public or private limited-liability companies (see Annex II)
- State A, State B, State C and State S are EU Member States
- A:
  - formed under law of Member State A
  - registered office in Member State A
  - head office in Member State A
- C:
  - formed under law of Member State C
  - registered office in Member State C
  - head office in Member State C
- SE:
  - formed under law of Member State S
  - registered office in Member State S

- head office in Member State S
- will be covered by the EC Merger Directive

Transactions

- SE:
  - will be regarded as public limited-liability company governed by the law of Member State S
  - acquires holding in A and B
  - such that it obtains more than 50% of the permanent voting rights in A and C
  - in exchange for shares in SE
  - issued to the shareholders of A and C

Questions

1) Assume Member State A is your country

   Tax effects for SH A in Member State A

   a) Will the issue of shares by SE to SH A in exchange for shares in A give rise to any taxation of the income, profits or capital gains of SH A or is there rollover relief?

      If A is a limited liability company (EPE) then no rollover relief is given since art. 3, Par. 1, of the Implementation Law covers only certain types of limited liability companies, that is public limited liability companies (anonimes eteries AE). Under Art. 6, Par. 1 and 2 of the Implementation Law, the allotment, in consequence of exchange of shares, to a shareholder of the acquired company, of securities representing the capital of the acquiring company, in exchange for securities representing the capital of the former company, shall not in principle, as such, give rise to any taxation of the capital gains of that shareholder. Nevertheless, if A is an public limited liability company (anonimi eteria) the transfer of shares in A to SE by SH A in exchange for shares in SE, might be subject to transfer tax at a rate of 5% under art. 13, par 2, of Income Tax Law No. 2238/1994.

   b) Will the answer to the above question be different in the case of:
      i) SH A being an individual shareholder not owning a substantial interest?
      ii) SH A being an individual shareholder owning a substantial interest?
      iii) SH A being an individual entrepreneur?

      No.

      iv) SH A being a corporate shareholder?

If A is a corporate shareholder then the capital gains will also be subject to corporate income tax, following the rules of the corporate income tax legislation, but after deduction of capital gains tax paid upon transaction (see also answer 1 d i) to case 3 above).

2) Assume Member State B is your country

Tax effects for SH B in Member State B

a) Will the issue of shares by SE to SH B in exchange for shares in C give rise to any taxation of the income, profits or capital gains of SH B or is there rollover relief?

Rollover relief based on art. 6, Par. 1, of the Implementation Law.

b) Will the answer to the above question be different in the case of:
i) SH B being an individual entrepreneur?

No.

ii) SH B being a corporate shareholder?

Capital gain enjoying a rollover relief based on art. 6, Par. 1, of the Implementation Law might be taxed according to corporate income tax rates depending on the distribution of profits made by the company under art. 106 of the Income Tax Law No. 2238/1994 (see also answer to case 1, question 1 i i).

3) Assume Member State C is your country

Tax effects for SH B in Member State C

a) Will the issue of shares by SE to SH B in exchange for shares in C give rise to any taxation of the income, profits or capital gains of SH B or is there rollover relief?

Under Art. 6, Par. 1 and 2 of the Implementation Law, the allotment, in consequence of exchange of shares, to a shareholder of the acquired company, of securities representing the capital of the acquiring company, in exchange for securities representing the capital of the former company, shall not in principle, as such, give rise to any taxation of the capital gains of that shareholder. Nevertheless, if C is a private limited liability company (EPE) then there is no rollover relief based on art 3, Par. 1, of the Implementation Law since the latter covers only limited liability companies falling in the type of public limited liability companies (anonimes eteries AE) (see also answer 1 a) above).

If C is an anonimi eteria (AE) then the transfer of shares in C to SE by SH B as an exchange for shares in SE, might be subject to transfer tax of 5% under art. 13, par. 2, of the Income Tax Law No. 2238/1994.

b) Will the answer to the above question be different in the case of:
   i) SH B being an individual entrepreneur?
   ii) SH B being a corporate shareholder?

   No.

4) Assume Member State S is your country

Tax effects for SE in Member State S

a) Are there any provisions for the valuation for tax purposes in Member State S of the shares of A and C acquired by SE?

   No.

Do the shares have to be valued at the book value of the exchanging shareholder or at a higher value?

No specific rules exist. It can be argued that the contractual value will be taken into account.

b) Are there any provisions for the valuation for tax purposes in Member State S of the shares issued to SH A and SH B?

   No.

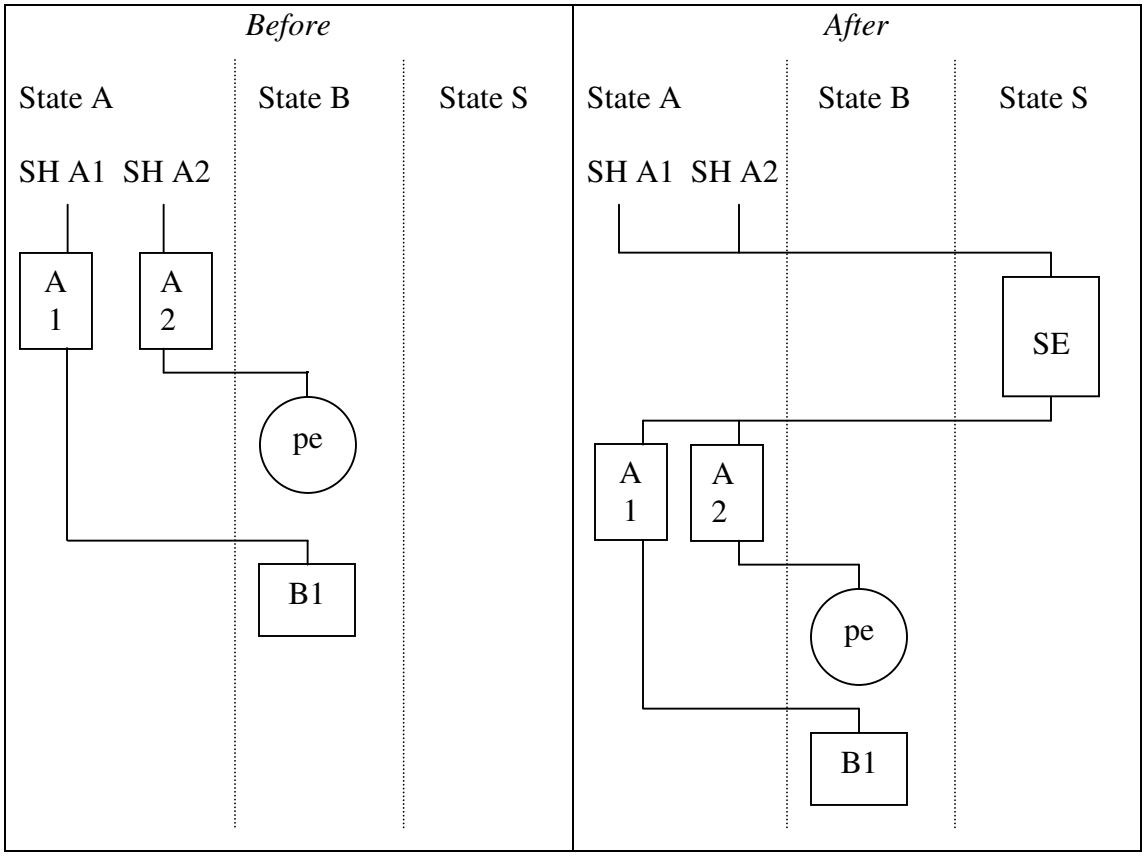
Do the shares have to be valued at the book value of the shares exchanged by the shareholder or at a higher value?

No specific rules exist. It can be argued that the contractual value will be taken into account.

CASE 5

Formation of a Holding – SE

(Art. 2 par. 2(b) jo. Art. 32, Art. 33, and Art. 34 Reg. 2157/2001)



Facts and assumptions

- SH = shareholder(s), resident in the respective country in which SH is situated
- A1, A2, and B1are existing companies
- pe is an existing permanent establishment of A2 in Member State B
- SE is a new company
- A1, A2, and B1 are public or private limited-liability companies (see Annex II to Reg. 2157/2001)
- State A, State B, and State S are EU Member States
- A1 and A2:
    - formed under law of Member State A
    - registered office in Member State A
    - head office in Member State A
- B1:
    - formed under law of Member State B

  - registered office in Member State B
  - head office in Member State B
- SE:
  - formed under law of Member State S
  - registered office in Member State S
  - head office in Member State S
  - will be covered by the EC Merger Directive

Transactions

- SE:
  - will be regarded as public limited-liability company governed by the law of Member State S
  - acquires holding in A1 and A2
  - such that it obtains more than 50% of the permanent voting rights in A1 and A2
  - in exchange for shares in SE
  - issued to the shareholders of A1 and A2

Questions

1) Assume Member State A is your country

   Tax effects for SH A2 in Member State A

   a) Will the issue of shares by SE to SH A1 in exchange for shares in A2 give rise to any taxation of the income, profits or capital gains of SH A2 or is there rollover relief?

      If A2 is a limited liability company (EPE) then no rollover relief is given since art. 3, Par. 1, of the Implementation Law covers only certain types of limited liability companies, i.e. only public limited liability companies (anonimes eteries AE). Rollover relief is granted under art. 6, Par. 1 and 2, of the Implementation Law. Nevertheless, if A2 is an anonimi eteria the transfer of shares in A2 to SE by SH A2 as an exchange for shares in SE, might be subject to transfer tax at a rate of 5% under art. 13, Par. 2, of Income Tax Law No. 2238/1994.

   b) Will the answer to the above question be different in the case of:
      i) SH A2 being an individual shareholder not owning a substantial interest?
      ii) SH A2 being an individual shareholder owning a substantial interest?
      iii) SH A2 being an individual entrepreneur?

      No.

      iv) SH A2 being a corporate shareholder?

If SH A2 is a corporate shareholder then the capital gains will be subject to corporate income tax also following the rules of the corporate income tax legislation but after deduction of capital gains tax paid upon transaction.

2) Assume Member State S is your country

Tax effects for SE in Member State S

a) Are there any provisions for the valuation for tax purposes in Member State S of the shares of A1 and A2 acquired by SE?

No.

Do the shares have to be valued at the book value of the exchanging shareholder or at a higher value?

No specific rules exist. It might be argued that the contractual value will be taken into consideration.

b) Are there any provisions for the valuation for tax purposes in Member State S of the shares issued to SH A1 and SH A2?

No.

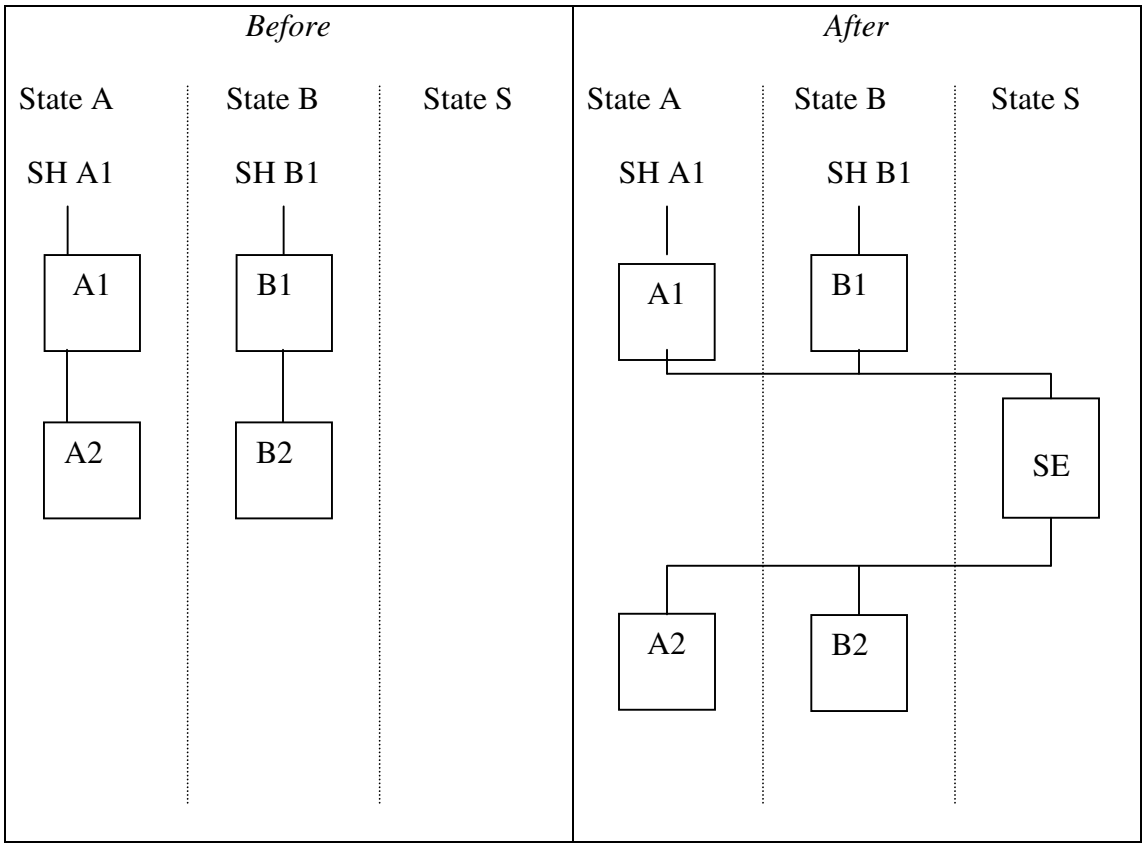
Do the shares have to be valued at the book value of the shares exchanged by the shareholder or at a higher value?

No specific rules exist. It might be argued that the contractual value will be taken into consideration.

CASE 6

Formation of a Subsidiary–SE by exchange of shares

(Art. 2 par. 3(a) jo. Arts. 35 and 36 Reg. 2157/2001)



Facts and assumptions

- SH = shareholder(s), resident in the country in which SH is drawn
- A1, A2, B1, and B2 are existing companies
- SE is a new company
- A1, A2, B1, and B2 are public or private limited-liability companies (see Annex II)
- A1 and B1 are companies or firms within the meaning of Art. 48 par. 2 of the Treaty establishing the European Community or other legal bodies governed by public or private law
- State A, State B, and State S are EU Member States
- A1 and A2:
    - formed under law of Member State A
    - registered office in Member State A
    - head office in Member State A

- B1 and B2:
  - formed under law of Member State B
  - registered office in Member State B
  - head office in Member State B

- SE:
  - formed under law of Member State S
  - registered office in Member State S
  - head office in Member State S
  - will be covered by the EC Merger Directive

Transactions

- A1 and B1:
  - *form a subsidiary SE by way of contributing their subsidiaries A2 and B2 respectively to SE*
- *SE:*
  - will be regarded a public limited-liability company governed by the law of Member State S
  - will acquire the shares in A2 and B2 in exchange for shares issued to A1 and B1

Questions

1) Assume Member State A is your country

   Tax effects for A1 in Member State A

   a) Will the issue of shares by SE to A1 in exchange for shares in A2 give rise to any taxation of the income, profits or capital gains of A1 or is there rollover relief?

      If A2 is a limited liability company (EPE) then rollover relief is not granted, since art. 3, Par. 1, of the Implementation Law covers only certain types of limited liability companies, i.e. anonimes eteries (AE).
      If A2 is an anonimi eteria (AE) rollover relief is granted under art. 6, Par. 1 and 2, of the Implementation Law.
      Nevertheless, the transfer of shares in A2 to SE by A1 in exchange for shares in SE, might be subject to income tax at a rate of 5% which is not clear whether it falls within the notion of capital gains tax (art. 13, Par. 2, of Income Tax Law 2238/1994).

2) Assume Member State S is your country

   Tax effects for SE in Member State S

a) Are there any provisions for the valuation for tax purposes in Member State S of the shares of A2 and B2 acquired by SE?

No.

Do the shares have to be valued at the book value of the exchanging shareholder or at a higher value?

No specific rules exist. It might be argued that the contractual value will be taken into account.

b) Are there any provisions for the valuation for tax purposes in Member State S of the shares issued to A1 and B1?

No.

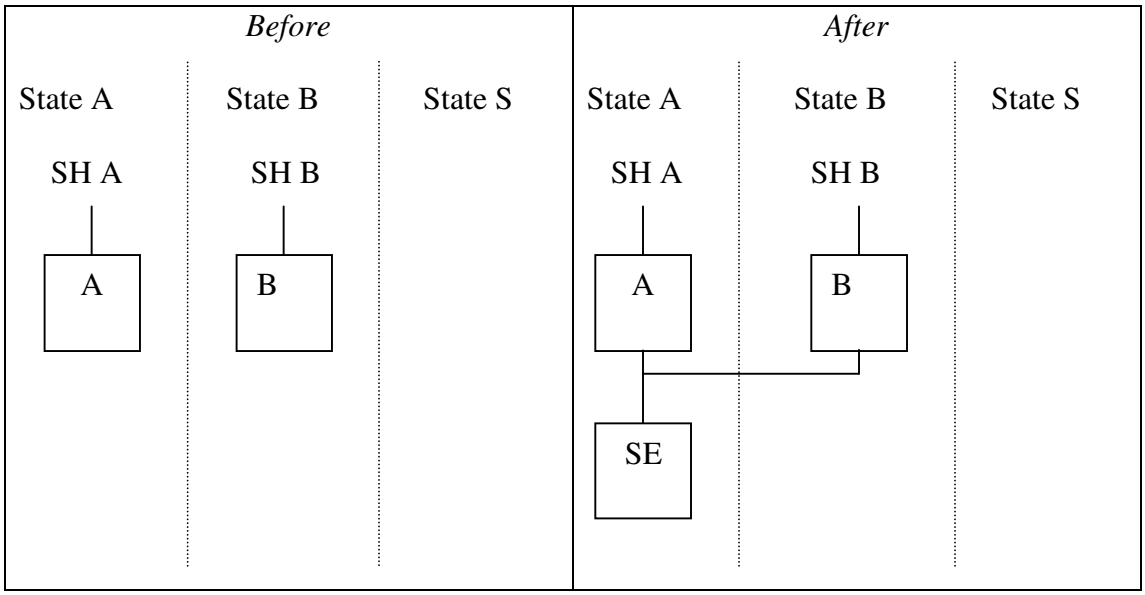
Do the shares have to be valued at the book value of the shares exchanged by the shareholder or at a higher value?

No specific rules exist. It might be argued that the contractual value will be taken into account.

CASE 7

Formation of a Subsidiary–SE by contribution of cash

(Art. 2 par. 3(a) jo. Arts. 35 and 36 Reg. 2157/2001)



Facts and assumptions

- SH = shareholder(s), resident in the respective country in which SH is situated
- A, and B are existing companies
- SE is a new company
- A, and B are public or private limited-liability companies (see Annex II)
- A and B are companies or firms within the meaning of Art. 48 par. 2 of the Treaty establishing the European Community or other legal bodies governed by public or private law
- State A, State B, and State S are EU Member States
- A:
    - formed under law of Member State A
    - registered office in Member State A
    - head office in Member State A
- B:
    - formed under law of Member State B
    - registered office in Member State B
    - head office in Member State B
- SE:
    - formed under law of Member State A
    - registered office in Member State A
    - head office in Member State A

- will be covered by the EC Merger Directive

Transactions

- *SE:*
  - will take the form of an SE
  - will be regarded a public limited-liability company governed by the law of Member State A
- A and B:
  - *form a subsidiary SE*

Questions

It is generally assumed that an SE will for domestic corporate income tax purposes be treated as a corporate entity. However, there may be differences between the treatment of an SE and other legal entities, if certain facilities, e.g. participation exemption or fiscal unity etc. are only possible between certain types of legal entities and the SE is not yet included. If relevant, please mention some of these situations in your answers to the following questions.

1) Assume Member State A is your country

   Tax effects for A in Member State A

   Will there be any tax effect for A in Member State A as a consequence of the formation of the subsidiary SE in Member State A?

   Provided that all the conditions of the participation exemption regime are met, dividends and other profits distributions received by A will be exempted from corporate income tax.
   If subsidiary SE is not expressly subject to corporate income tax it is doubtful whether its dividends will qualify for the participation exemption provided by domestic law.

2) Assume Member State B is your country

   Tax effects for B in Member State B

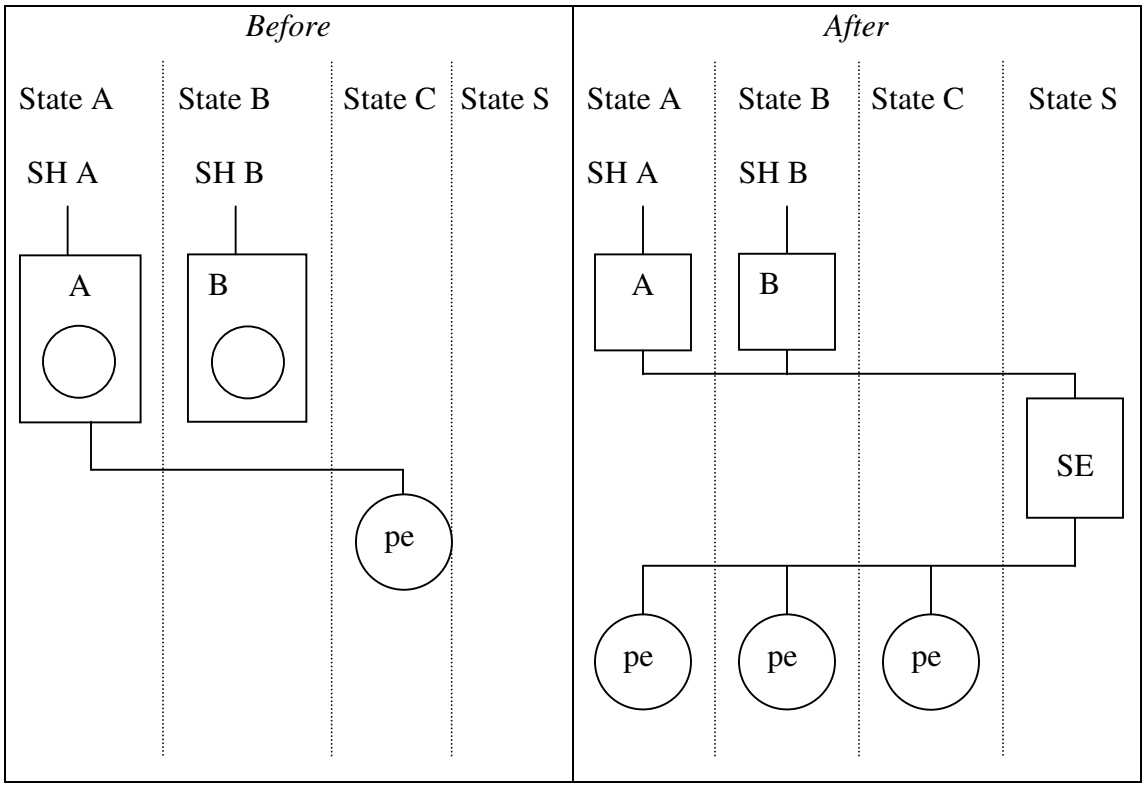
   Will there be any tax effect for B in Member State B as a consequence of the formation of the subsidiary SE in Member State A?

   If subsidiary SE does not qualify for the Parent-Subsidiary Directive it is doubtful whether its dividends will qualify for participation exemption (or credit) in Member State B.

CASE 8

Formation of a Subsidiary–SE by transfer of assets

(Art. 2 par. 3(a) jo. Arts. 35 and 36 Reg. 2157/2001)



Facts and assumptions

- SH = shareholder(s), resident in the respective country in which SH is situated
- A, and B are existing companies
- SE is a new company
- A and B are public or private limited-liability companies (see Annex II)
- A and B are companies or firms within the meaning of Art. 48 par. 2 of the Treaty establishing the European Community or other legal bodies governed by public or private law
- A has a permanent establishment in State C
- State A, State B, State C and State S are EU Member States
- A:
    - formed under law of Member State A
    - registered office in Member State A
    - head office in Member State A
- B:

  - formed under law of Member State B
  - registered office in Member State B
  - head office in Member State B
- SE:
  - formed under law of Member State S
  - registered office in Member State S
  - head office in Member State S
  - will be covered by the EC Merger Directive

Transactions

- *SE:*
  - will take the form of an SE
  - will be regarded a public limited-liability company governed by the law of Member State S
- A (and B):
  - *form a subsidiary by way of contributing their branches in Member State A (and B respectively) to SE in exchange for the issue of shares by SE to A (and B respectively)*
- A:
  - will transfer its permanent establishment in Member State C to SE in exchange for the issue of shares by SE to A

Questions

1) Assume Member State A is your country

Tax effects for A and SE in Member State A

a) Will the transfer of assets give rise to any taxation of capital gains (= real value of the assets and liabilities minus their value for tax purposes) or is there rollover relief?

   Under Art. 3, Par. 1, of the Implementation Law, capital gains derived by a domestic company upon the transfer of assets, are not subject to income tax in Greece when these operations take place. Nevertheless, under Art. 3, Par. 3, the rollover relief does not apply when a domestic joint-stock company transfers its permanent establishment situated in another Member State of the European Union.

b) May provisions or reserves which are partly or wholly exempt from tax and which are not derived from permanent establishments outside Member State A be taken over with the same rollover relief by the permanent establishment of SE in Member State A?

Under Art. 3, Par. 4, of the Implementation Law, these partly or fully exempt reserves are not subject to taxation on the transferring company at the time of the transfer provided they are listed in a separate account in the financial statement of the permanent establishment.

c) Are there any provisions in the legislation of Member State A for the valuation for tax purposes of the shares in SE acquired by A?

No specific rules exist.

d) Will SE's permanent establishment in Member State A be allowed to take over the losses of A which have not been exhausted for tax purposes?

No.

(If SE would be a company resident in Member State A, would it then be allowed to take over these losses?)

Yes, for the following two years, under art. 9 of Law 2992/2002, which covers also transfer of assets.

e) Will Member State A renounce any right to tax the permanent establishment in Member State C?

No.

f) Will Member State A reinstate in the taxable profits of A such losses of the permanent establishment in Member State C as have been set off against the taxable profits of A in Member State A and which have not be recovered (see art. 10 par. 2 of the EC Merger Directive)?

No.

g) Or will Member State A tax profits or capital gains of the permanent establishment resulting from the transfer of assets?

Yes.

h) If question g) is answered affirmatively, will Member State A give relief for the notional tax charged on these profits or capital gains by Member State C, assuming that Member State C would have levied tax (see art 10 par. 2 of the EC Merger Directive)?

Yes, under art. 3, Par. 2, of the Implementation Law.

2) Assume Member State S is your country

Tax effects for SE in Member State S

a) What is the value for tax purposes that SE has to attribute to the assets and liabilities of the permanent establishments in Member States A, B and C that is transferred to SE as part of the merger?

No specific rules exist.

Tax effects for A as shareholder of SE in Member State S

b) Is there any provision in the tax legislation of Member State S that affects A as shareholder of SE?

No specific rules exist.

3) Assume Member State C is your country

Tax effects for A and SE in Member State C in respect of its permanent establishment in Member State C

a) Will the transfer of assets give rise to any taxation of capital gains (= real value of assets & liabilities transferred minus their value for tax purposes) or is there rollover relief?

Under art. 3, par. 3 of the Implementation Law, rollover relief applies also when a foreign company of a Member State of the European Union transfers its permanent establishment in Greece to a receiving company which belongs to another Member State of the European Union.

b) May provisions and reserves, which are partly or wholly exempt from tax and which are not derived from permanent establishments outside Member State C, be taken over with the same rollover relief by the permanent establishment of SE in Member State C?

Yes, provided they are shown in special accounts under art. 3, Par. 4, of the Implementation Law.

c) Will SE's permanent establishment in Member State C be allowed to take over the losses of A's permanent establishment that have not been exhausted for tax purposes?

No.

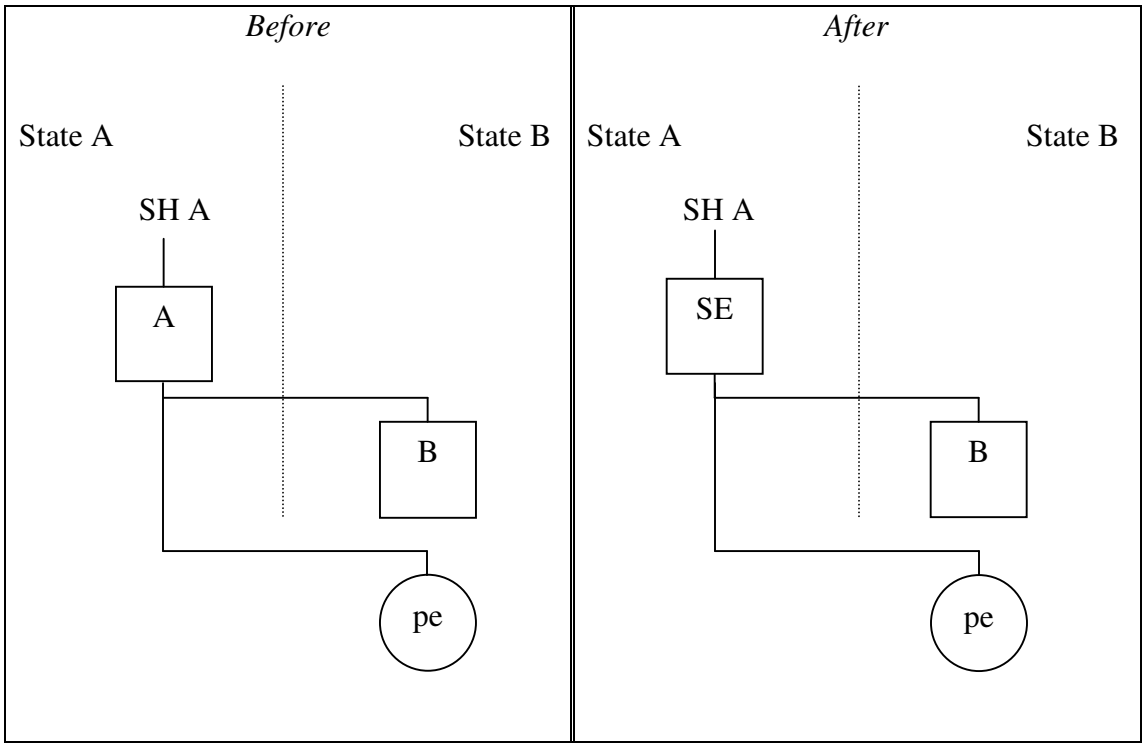
If SE would be a company resident in Member State C, would it then be allowed to take over these losses?

Yes, under Law 2166/1993 and Law 2992/2002.
According to art. 9 of Law 2992 of 20 March 2002, losses of the acquired company can be transferred to the acquiring company and carried forward for 2 years, unless they are set off against the profits existing at the time of the restructuring.

CASE 9

Transformation of public limited-liability company into an SE

(Art. 2 par. 4 jo. Art. 37 Reg. 2157/2001)



Facts and assumptions

- SH = shareholder(s), resident in the respective country in which SH is situated
- A and B are existing companies
- pe is an existing permanent establishment
- A and B public limited-liability companies (see Annex I of Reg. 2157/2001)
- State A and State B are EU Member States
- A:
    - formed under law of Member State A
    - registered office in Member State A
    - head office in Member State A
- B:
    - formed under law of Member State B
    - registered office in Member State B
    - head office in Member State B

Transactions

- A will be transformed into an SE, governed by the law of Member State A (Pursuant to Art. 37 par. 2 Reg., the transformation shall not result in the winding up of A or in the creation of a new legal person. However, the Regulation itself does not give guidance with regard to taxation.)

Questions

1) Assume Member State A is your country

   Tax effects for A in Member State A

   a) Will the transformation of A into an SE give rise to any taxation of capital gains (= real value of assets and liabilities transferred minus their value for tax purposes) or is there rollover relief for the business carried on in Member State A, or in Member State B through a permanent establishment?

      No specific rules exist concerning the transformation of an anonimi eteria into an SE.
      Under Greek Tax Law capital gains taxation occurs if there is a revaluation of assets in the course of an ordinary domestic transformation, when a private limited liability company or a partnership is transformed into a public limited liability company. In this case the revaluation of assets and liabilities is carried out by the Committee of the Ministry of Development specified in art. 9 of Legislative Decree 2190/1920.
      Notwithstanding what expressed above, capital gains taxation may be deferred if incentive rules, such as Law 1297/1972, apply (i.e. the corporation resulting from the conversion has a minimum capital of EUR 300,000 (EUR 146,735 for limited liability companies)).

   b) May provisions and reserves, which are partly or wholly exempt from tax and which are not derived from permanent establishments outside Member State A, be carried over to SE in Member State A?

      No specific rules exist.

      However, assuming that an ordinary domestic transformation has taken place, carry over of these partly or fully tax-free reserves is allowed by Law 2166/1993 and Law 2992/2002. As a rule those reserves must also be listed in separate accounts in the financial statement.

c) Will SE be allowed to take over the losses of A that have not been exhausted for tax purposes?

No specific rules apply.

However, if an ordinary domestic transformation has taken place, carry-over of losses for the following two years is allowed under Law 2166/1993 and Law 2992/2002.

Tax effects for SH A in Member State A

d) Will there be any effect for SH A because of the transformation of its subsidiary company A into an SE?

No specific rules exist concerning the transformation from an AE into an SE.

e) Will the answer to question d) be different in the following situations:
   i) SH is a corporate shareholder?
   ii) SH is an individual shareholder not owning a substantial interest?
   iii) SH is an individual shareholder owning a substantial interest?
   iv) SH is an individual entrepreneur?

No specific rules exist.

2) Assume Member State B is your country

Tax effects for the shareholder of B in Member State B

a) Will there be any effect for the shareholder of B because of the transformation of its parent company A into an SE?

No tax effects will arise for shareholder of B upon transformation.

Tax effects for A and SE in Member State B

b) Will A be subject to any taxation of capital gains (=real value of assets and liabilities minus their value for tax purposes) or is there rollover relief?

No tax consequences would arise.

c) If not, what is the value for tax purposes that SE has to attribute to the assets and liabilities of the permanent establishment in Member State B?

No specific rules exist, but it could be argued that the market value will be taken into consideration.

d) May provisions and reserves, which are partly or wholly exempt from tax and which are not derived from permanent establishments outside Member State B, be taken over with the same rollover relief by the permanent establishment of SE in Member State B?

No specific rules exist, but it is likely that this kind of provisions and reserves will not taken over with a rollover relief, as Law 2166/1993 and 2992/2002 do not deal with these kind of transactions.

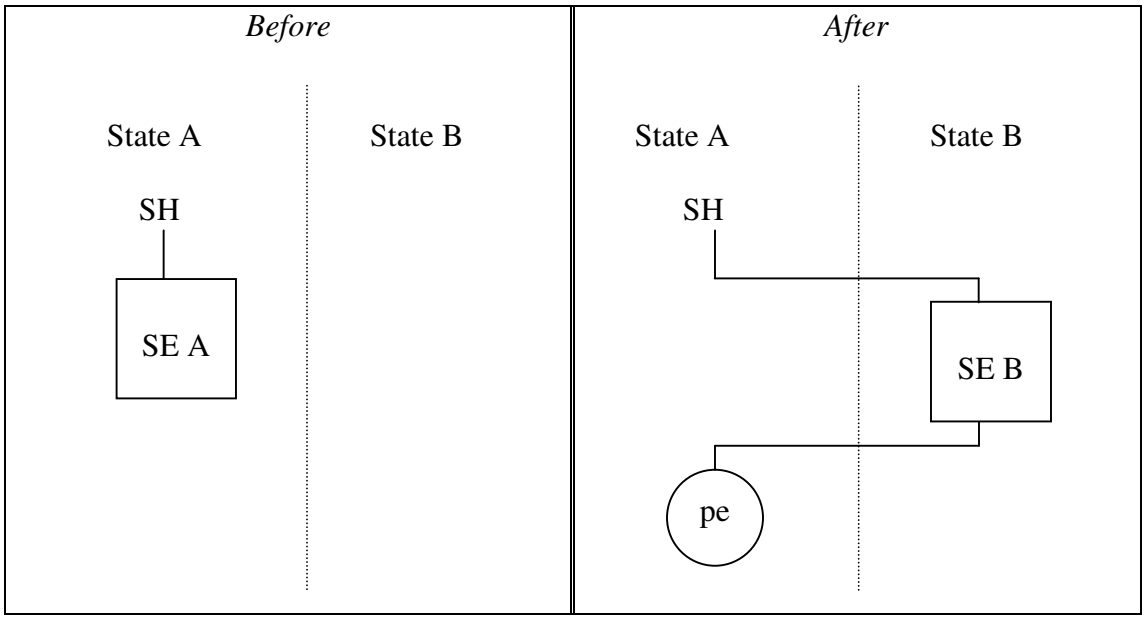
e) Will SE's permanent establishment in Member State B be allowed to take over the losses of A's permanent establishment that have not been exhausted for tax purposes?

Same as answer to question 2 d) above.

CASE 10

Transfer of registered office of an SE

(Art. 8 par. 1 jo. Art. 37 Reg. 2157/2001)



Facts and assumptions

- SE is an existing SE
- State A and State B are EU Member States
- SE A:
  - formed under the law of Member State A
  - registered office in Member State A
  - head office in Member State A
- SE B:
  - statutes are amended to conform to the law of Member State B
  - registered office in Member State B
  - head office in Member State B

Transactions

- registered office and head office of SE are transferred to Member State B (pursuant to Art. 8 Reg. 2157/2001 such a transfer shall not result in the winding up of SE or in the creation of a new legal person)

Questions

1) Assume Member State A is your country

Tax effects of the transfer for SE

a) Does the transfer entail a winding up of SE for tax purposes?

In principle Greek civil and tax legislation do not include yet the type "Societas Europaea", but Article 8 of the Regulation 2157/2001 should be binding also for tax purposes.

b) What are the tax consequences in case of a winding up of SE?

No specific rules exist in Greece (see answer above) but in principle the transfer of registered office and head office of an public limited liability company (anonimi eteria AE) will encompass, from a civil point of view, the dissolution of the company and, as a consequence, the company will cease to exist as a resident legal entity.
In such a case the company will be deemed to cease also for tax purposes, therefore the rules for liquidation will apply.
Under art 106, Par. 6, of the Income Tax Law No. 2238/1994, upon liquidation the anonimi eteria (AE) is subject to income tax for the amount received by its shareholders in excess of the actually contributed share capital and profits already taxed.
The "actually contributed share capital" is the paid-in share capital of the company, increased by reserves formed from the amounts in excess of par value paid by shareholders upon the issue of shares. The company must file a tax return within 1 month from the end of dissolution with regard to the income arose in the dissolution period. If the period extends to more than 1 year, a temporary return is filed within 1 month from the end of the year, with the obligation to file a final return upon completion of the dissolution.

c) Does it make a difference whether or not a permanent establishments of SE B remains in Member State A?

No specific rules exist (see answer a) above).
However, from a tax point of view, if SE B is an anonimi eteria (AE) which transfers its registered office and head office leaving the permanent establishment in Greece, SE B will be considered as a non-resident company, but no liquidation will take place for tax purposes.

d) If after the transfer of the registered office, SE B will have a permanent establishment in Member State A, can SE B take over the provisions and reserves which are partly or wholly exempt from tax with the same rollover relief?

This will depend on the legislation of Country B where the new office will be registered.

e) If after the transfer of the registered office, SE B will have a permanent establishment in Member State A, can SE B's permanent establishment in Member State A take over the losses of SE A that have not been exhausted for tax purposes?

No specific rules exist.
Nevertheless, if the permanent establishment is considered as belonging to SE A and, on the other hand, the losses correspond to the branch of activities that remain with the permanent establishment, it might be argued that losses will be taken over by the permanent establishment.

Tax effects of the transfer for SH

f) What are the tax effects for SH in case the transfer results in a winding up of SE for tax purposes?

Assuming that SE is an anonimi eteria (AE) there are no tax consequences for SH. Upon liquidation the AE is, in effect, subject to income tax for the amount received by its shareholders in excess of the actually contributed share capital and profits already taxed. The "actually contributed share capital" is the paid-in share capital of the company, increased by reserves formed from the amounts in excess of par value paid by shareholders upon the issue of shares.

g) Is the answer to 1f) different if:
   i) SH is a corporate shareholder?
   ii) SH is an individual shareholder?
   iii) SH is an individual not owning a substantial interest?
   iv) SH is an individual owning a substantial interest?
   v) SH is an individual entrepreneur?

No.

h) Are there any effects for tax purposes if the transfer of the registered office is not considered as a winding up for tax purposes?

No specific rules exist.

i) Is the answer to 1h) different if:
   i) SH is a corporate shareholder?
   ii) SH is an individual shareholder?
   iii) SH is an individual not owning a substantial interest?
   iv) SH is an individual owning a substantial interest?
   v) SH is an individual entrepreneur?

No specific rules exist.

2) Assume Member State B is your country

Tax effects of the transfer for SE

a) If SE is considered to be a new company, how should the assets and liabilities of SE be valued?

No specific rules exist.

Tax effects of the transfer for SH

b) Are there any tax effects for SH in case the transfer results in a formation of a new SE in your country? For example, with regard to the valuation of the shares in SEB?

No specific rules exist.