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EU JOINT TRANSFER PRICING FORUM

FINAL REPORT ON SHAREHOLDER COSTS

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JTPF: DEFINITION AND TAX TREATMENT OF SO-CALLED SHAREHOLDER COSTS WITHIN THE EU[1]

1. INTRODUCTION

The 2007–2009 JTPF's work programme includes the review of the tax regime applicable to intragroup services and the boundaries of the expression "shareholder costs" defined by the "OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations" issued in 1995 (hereinafter the "1995 Guidelines") as:

> […] the expenses for the activities that a group member (usually the parent company or a regional holding company) performs solely because of its ownership interest in one or more other group members, i.e. in its capacity as shareholder. (Para. 7.9)

There are several reasons for the subject to be given special priority, in particular the risk of double taxation that may arise from diverging views of the tax authorities of the states of residence of the parent company and of the subsidiary receiving the services.

This report (i) describes the development of the recommendation issued on the subject matter by the OECD as from 1979 through the 1995 Guidelines; (ii) provides a survey on the interpretation of the concept of shareholders costs in the 27 EU Member States; (iii) highlights the discrepancies that may be found in the legislature or practice of the Member States; (iv) illustrates the guidance given by the US tax authorities on the features of shareholder costs and; (v) formulates a recommendation on the possible contribution the JTPF might offer on the subject matter.

2. SHAREHOLDER COSTS AND STEWARDSHIPS' ACTIVITIES IN THE OECD GUIDELINES ON TRANSFER PRICING

2.1. SHAREHOLDER COSTS IN THE 1979 REPORT "TRANSFER PRICING AND MULTINATIONAL ENTERPRISES"

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The OECD addressed shareholder costs for the first time in its 1979 recommendation titled "Transfer Pricing and Multinational Enterprises" (hereinafter the "1979 Report").

2.1.1. *GENERAL PRINCIPLE FOR DEDUCTION OF INTRAGROUP SERVICES AND DEFINITION OF SHAREHOLDER COSTS*

Chapter IV of the 1979 Report contains guidelines on the tax regime applicable to "intragroup services"; in particular, the 1979 Report makes a deduction of costs for such services conditional upon:

(i) the existence of *"*a real benefit accrued to the enterprise that has been charged for that service*"* (para. 153 of the 1979 Report);

(ii) the absence of "duplication of services" (no intragroup services should be found for activities undertaken by one group member that merely duplicates a service that another group member is performing for itself or that is being performed for such other group member by a third party);

(iii) the absence of "indirectness or remoteness of the benefit" (indirect and remote benefits to an associate enterprises do not justify a deduction of the relevant cost for tax purposes); as an example, the 1979 Report considers the case where the services comprise the decision-making activities of the top management of the parent company and argued that it falls into the category of activities performed by the parent company for its own benefit as shareholder and not for the benefit of the individual members of the group, although they may provide a benefit for one or another of these members (the OECD changed this view in the 1995 Guidelines – Para. 7.10); and

(iv) the likely purchase of the same service from a third party had the intragroup service not been available (the purpose of this test is to identify shareholders costs and segregate them from other intragroup services).

Shareholder costs are defined by the 1979 Report as "expenses incurred by the parent company in managing and protecting its investments (*that*) are incurred by the parent company as a shareholder" (para. 154) (italics added). Examples of shareholders costs included in the 1979 Report are:

- cost of the parent's audit of its subsidiaries;
- expenses incurred by the parent company in arranging meetings of its own shareholders;
- expenses incurred by the parent company for consolidating the results of the members of the group, including the necessary auditing; and

– expenses incurred by the parent company in providing finance for the extension of the group itself.

2.1.2. *CONCLUSION*

The 1979 Report adopts a broad definition of shareholder activities and makes the deductibility subject to an "accrued real benefit" and a "specific charge for the service" ("*any payment for services rendered between associated enterprises would be required or allowed for tax purposes only if a real benefit has accrued* to the enterprise that has been charged for that service*"*). [Para. 151 – emphasis added]

2.2. SHAREHOLDER COSTS IN THE 1984 REPORT "TRANSFER PRICING AND MULTINATIONAL ENTERPRISES: THREE TAXATION ISSUES"

2.2.1. *BIAC COMMENTS TO THE 1979 REPORT*

A report released by BIAC in January 1980 criticized the broad definition of shareholder costs set forth by the 1979 Report and expressed the view that "shareholders costs should be limited to only those costs incurred by a parent company *solely* in its capacity as a shareholder (investor) in the group affiliates. It should not include any costs attributable to coordinating the various business activities of the group" [emphasis added]. For example, BIAC suggested that the costs for the parent company personnel employed in the internal audit department should not be included among "shareholder costs" because the information gathered is usually provided both to the parent company and to the group members that use it for management purposes.

2.2.2. *OECD REACTION TO THE BIAC COMMENTS*

The 1984 OECD report titled "Transfer Pricing and Multinational Enterprises – Three Taxation Issues" (hereinafter the "1984 Report") partially endorses the view expressed by BIAC. In particular, the 1984 Report identifies two approaches in relation to services provided by the parent company:

1. Under the first approach – shared by the majority of Member countries – any extra profits arising from these "additional" activities of the parent company are seen as accruing primarily to the subsidiaries and only indirectly to the parent company (in the form of dividends or an

increase in the value of the participations).[2] For this reason, a considerable part of the costs of central management and coordinating and control activities should be charged to the subsidiaries. On the basis of such approach, the 1984 Report provides the following list of expenses incurred by the parent company that should be considered as prima facie incurred solely for its own benefit and therefore not chargeable to the other members of the group:

(a) "costs of activities relating to the juridical structure of the parent company itself, such as meetings of shareholders of the parent, issuing of shares in the parent company and costs of the supervisory board";
(b) "costs relating to reporting requirements of the parent company, including the consolidation of reports";
(c) "cost of raising funds for the acquisition of its participations"; and
(d) "costs of managerial and control (monitoring) activities related to the management and protection of the investment as such in participations".

The list follows the 1979 Report with the exception of "managerial and control (monitoring) activities" [paragraph (d)] in respect of which it is said that they "should be distinguished from the costs of managerial, control and co-ordinating activities performed to improve the operation of the subsidiaries, since these latter activities primarily benefit those subsidiaries". The 1984 Report points out for the first time that shareholder costs should be distinguished from costs incurred in order to render the conglomerate more profitable than the total of the various individual parts of it would be if not related.

2. Under the second approach, which was endorsed by a very limited number of Member countries, it is not appropriate to require a charge to be made during any particular accounting period for tax purposes unless "it is possible to identify and quantify with a reasonable degree of certainty services which have been rendered during that period and which provide *a real or expected benefit* to the chargeable entity and reduce its costs" [emphasis added]. Therefore, under this approach, "costs incurred by the parent company would tend to be regarded as appropriately borne by the parent company unless there was a positive case for charging them out."[3]

In conclusion, the 1984 Report suggested different bilateral solutions, such as the insertion of specific provisions in protocols of tax treaties and specific agreement during simultaneous tax audits or mutual agreement procedures. For example, the Protocol to the tax treaty between Italy and the Netherlands, signed in 1990, provides that with reference to Art. 9,

[2] The 1984 Report clarifies that "the underlying justification for this approach is the view that it is characteristic of MNEs that the subsidiaries or other affiliates contain the profit-making capacity which is often enhanced by the managerial and coordinating activities of the parent company."

[3] The 1984 Report clarifies that the second approach derives from the national law of some Member countries that requires a benefit test to be applied on a strictly annual basis without taking into account the fact that the company concerned is part of a multinational group.

It is understood that the fact that associated enterprises have concluded arrangements such as cost-sharing arrangements or general service agreements for, or based on, the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, shall not of itself constitute a condition as referred to in Article 9.[4]

2.2.3 CONCLUSION

The 1984 OECD Report no longer makes the deduction conditional upon the existence of an "accrued real benefit" and a "specific charge for the service"; it is acknowledged that under the approach preferred by the majority of Member countries the *costs of managerial, control and coordinating activities performed to improve the operation of the subsidiaries* may be excluded from shareholders costs since these latter activities primarily benefit those subsidiaries [Para. 39]. Consequently, difficulties in identifying and quantifying services with certainty do not make such services become shareholder activities if they are expected to provide a benefit for the subsidiary.

2.3. SHAREHOLDER COSTS IN THE 1995 GUIDELINES

The 1995 Guidelines provide for a revision and compilation of previous reports and deal more extensively with shareholder costs.

2.3.1. *GENERAL PRINCIPLE FOR DEDUCTION OF INTRAGROUP SERVICES AND DEFINITION OF SHAREHOLDER COSTS*

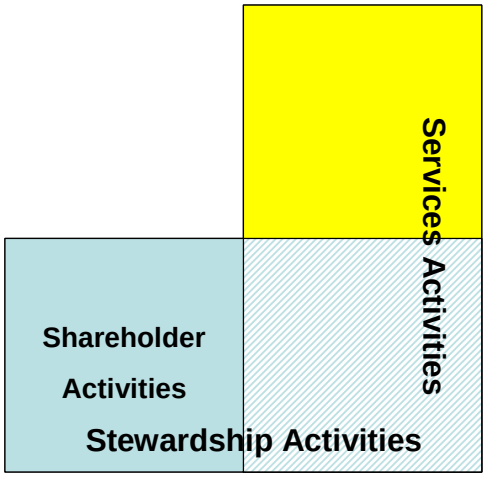
The 1995 Guidelines completely revisited the "justification of benefit" principle set forth by the 1979 Report. In particular, according to the 1995 Guidelines an intragroup service is rendered when "the activity provides a respective group member with economic or commercial value to enhance its commercial position" [Para. 7.6] and this can be determined by considering whether an independent enterprise in comparable circumstances would have

[4] The meaning of such provision, included in the protocol of different treaties concluded by the Netherlands, has been explained by the Dutch Parliament (*Tweede Kamer*, *vergaderjaar* 1987–1988, 20 365, nrs. 1-2) as follows: "The internationalization of Dutch trade and industry has led to the situation that Dutch parent companies increasingly function as a service centre for subsidiaries located abroad. The general costs connected hereto are on-charged by the Dutch parent companies to the related enterprises located abroad. As long as this is done as customary between unrelated parties (the so-called arm's length-principle) no reason exists to not respect this on-charging of costs. To provide Dutch parent companies with the certainty required in this respect, for some years the Netherlands propose including this in Article 9 sub 1 when negotiating a Tax Treaty. However, some countries deem such a paragraph to be unnecessary, as it only elaborates on what in fact is already part of the arm's length principle. In such case, this paragraph is omitted."

been willing to pay for the activity if performed by an independent enterprise or would have performed the activity for itself in-house.

Furthermore, the 1995 Guidelines modified the definition of "shareholder activity" by introducing a reference to the *sole* interest of the parent company, as recommended by BIAC in 1980. In particular, shareholder activities are defined as the activities "that a group member (usually the parent company or a regional holding company) performs *solely* because of its ownership interest in one or more other group members, i.e. in its capacity as shareholder" [emphasis added].[5]

The 1995 Guidelines make a clear distinction between "shareholder activity" and "stewardship activities". In particular, the latter cover a wider range of activities performed by a shareholder that may include the provision of services to other group members, as for example, services that would be provided by a coordinating centre. Therefore, as illustrated in the diagram below, according to the 1995 Guidelines "stewardship activity" is a broad term that includes "shareholder activity" (that cannot be charged to the group companies) and some provision of services (that should be charged to the subsidiaries). These terms and expressions are used throughout this paper under the meaning given by the OECD Reports and Guidelines.



Shareholder Activities (part of Stewardship Activities)

Part of Stewardship Activities different from Shareholder Activities (included in the Services Activities)

+ Services Activities

+ Stewardship Activities

[5] Para. 7.9.

2.3.2. *OTHER FACTORS FOR IDENTIFICATION OF SHAREHOLDER COSTS*

The other factors for the identification of shareholder costs set forth by the 1995 Guidelines coincide substantially with those identified by the 1979 Report. Nevertheless, more detailed indications and examples have been provided:

(i) *Duplication of services*: The general rule is confirmed according to which no intragroup service should be found for activities performed by one group member that merely duplicate a service that another group member is performing for itself or that is being performed for such other group member by a third party. Nevertheless, the 1995 Guidelines illustrate some exceptions to such rules, such as the case where the duplication of services is only temporary because of a group reorganization to centralize its management functions or where the duplication is undertaken to reduce the risk of a wrong business decision (a typical example is a second legal opinion on a specific issue).

(ii) *Incidental benefit*: The rule is the same as set forth by the OECD in the 1979 Report but more detailed guidance for its application is provided. For example, the reorganization of a group, the acquisition of new companies or the termination of a division could constitute intragroup services to the specific group members involved (namely those members who will make the acquisition or terminate one of their divisions), but they may also produce economic benefits for other group members not involved by increasing efficiencies, economies of scale or other synergies. Similarly, an associated enterprise should not be considered to receive an intragroup service when it obtains incidental benefits attributable solely to its being part of a larger concern and not to any specific activity being performed. For example, no service would be received where an associated enterprise by reason of its affiliation alone has a credit rating higher than it would if it were unaffiliated, but an intragroup service would usually exist where the higher credit rating was due to a guarantee by another group member[6] or where the enterprise benefited from the group's reputation deriving from global marketing and public relations campaigns. In general, the 1995 OECD Guidelines make a distinction between passive association and active promotion of the group's attributes that positively enhances the profit-making potential of particular members of the group.[7]

2.3.3. *EXAMPLES*

[6] The same conclusion should be applicable when the parent company releases a letter of patronage.
[7] It is not clear if the attribute "passive" refers to role of the parent company or of the subsidiary.

The 1995 Guidelines provide the same list of expenses incurred by the parent company that should prima facie be considered as shareholder costs that was provided by the OECD in 1979 and slightly modified in 1984; namely, a) costs of activities relating to the juridical structure of the parent company itself, such as meetings of shareholders of the parent, issuing of shares in the parent company and costs of the supervisory board; b) costs relating to reporting requirements of the parent company including the consolidation of reports; and c) costs of raising funds for the acquisition of its participations. With reference to the last category mentioned in the 1984 Report (i.e. the "costs of managerial and control (monitoring) activities related to the management and protection of the investment as such in participations"), the 1995 Guidelines point out that to determine if such activity falls within the definition of shareholder activities, it is necessary to verify if, under comparable facts and circumstances, the activity is one that an independent enterprise would have been willing to pay for or to perform for itself.[8]

Furthermore, the 1995 Guidelines provide additional guidance; for instance, with reference to the *"*costs of raising funds for the acquisition of its participations*"* it is affirmed that if a parent company raises funds on behalf of another group member that uses them to acquire a new company, the parent company would generally be regarded as providing a service to the group member.

The 1995 Guidelines also provide examples of activities typically centralized in the parent company or a group service centre (such as a regional headquarters company) that could be charged to the members of the group. In particular, after pointing out that the possibly centralized activities depend on the kind of business and on the structure of the group, the 1995 Guidelines state that, in general, they "may include administrative services such as planning, coordination, budgetary control, financial advice, accounting, auditing, legal, factoring, computer services; financial services such as supervision of cash flows and solvency, capital increases, loan contracts, management of interest and exchange rate risks, and refinancing; assistance in the fields of production, buying, distribution and marketing; and services in staff matters such as recruitment and training. Group service centres also often carry out research and development or administer and protect intangible property for all or part of the MNE group." Further, these types of activities ordinarily will be considered intragroup services because they are the type of activities that independent enterprises would have been willing to pay for or perform for themselves.

The following table illustrates the comparison between the examples illustrated by the OECD in the 1979 and 1984 Reports and the 1995 Guidelines.

[8] Para. 7.10.

1979 REPORT	1984 REPORT	1995 GUIDELINES
Some MNEs consider that certain costs of central staff activities are incurred with a view to benefit the parent company. In such cases, no charge would be made for what are sometimes called "administrative", "managerial" or "parental" services.		For example, an intragroup service would normally be found where an associated enterprise repairs equipment used in manufacturing by another member of the MNE group.
Other expenses incurred by the parent company may also be distinguished as prima facie incurred solely for its benefit and similarly not properly chargeable to the other members of the group. These latter would include, for example, the cost of the parent's audit of its subsidiaries, expenses incurred by a parent company in arranging meetings of its own shareholders and for consolidating the results of the members of the group, including the necessary auditing, and in providing finance for the extension of the group itself.	On the basis of this approach the categories of central costs to be borne by the parent company would not be extensive, but clearly at least the following categories of costs would be regarded as shareholder costs appropriately borne by the parent company: (a) costs of activities relating to the juridical structure of the parent company itself, such as meetings of shareholders of the parent, issuing of shares in the parent company and costs of the supervisory board; (b) costs relating to reporting requirements of the parent company including the consolidation of reports; (c) cost of raising funds for the acquisition of its participations;	The following examples (which were described in the 1984 Report) will constitute shareholder activities, under the standard set forth in paragraph. 7.6: a) costs of activities relating to the juridical structure of the parent company itself, such as meetings of shareholders of the parent, issuing of shares in the parent company and costs of the supervisory board; b) costs relating to reporting requirements of the parent company including the consolidation of reports; c) costs of raising funds for the acquisition of its participations.
The central coordination and control of the group is a service which the parent company provides at least partly for itself and to some extent as shareholder of the subsidiaries, but this service will normally in fact benefit the individual members of the group, though it will not necessarily benefit them all equally, and may even provide a positive disadvantage to some in particular instances. Where the services comprise, for example, the decision-making activities of the top management of the parent company, it may be argued that they fall into the category of services provided by the parent company for its own benefit as shareholder and not for the benefit of the individual members of the group, although they may provide a benefit for one or other of these members.	(d) costs of managerial and control (monitoring) activities related to the management and protection of the investment as such in participations. Category (d) should be distinguished from the costs of managerial, control and coordinating activities performed to improve the operation of the subsidiaries, since these latter activities primarily benefit those subsidiaries; problems may arise in practice because they may be performed by the same persons and the same departments as activities in category (d) and may, therefore, be intertwined with them. If this first approach is adopted, a practical solution may be to split the total costs of the persons and departments concerned (board of directors, staff departments, control and auditing department) according to an estimate of the proportion of their time that the persons and departments concerned spend on the different activities.	In contrast, if, for example, a parent company raises funds on behalf of another group member that uses them to acquire a new company, the parent company would generally be regarded as providing a service to the group member. The 1984 Report also mentioned "costs of managerial and control (monitoring) activities related to the management and protection of the investment as such in participations." Whether these activities fall within the definition of shareholder activities as defined in these Guidelines would be determined according to whether under comparable facts and circumstances the activity is one that an independent enterprise would have been willing to pay for or to perform for itself. An exception may be where the duplication of services is only temporary; for example, where an MNE group is reorganizing to centralize its management functions. Another exception would be where the duplication is undertaken to reduce the risk of a wrong business decision (e.g., by getting a second legal opinion on a subject).

1979 REPORT	1984 REPORT	1995 GUIDELINES
For example, the audit of a subsidiary might on rare occasions prevent duplication by fulfilling to some extent the audit requirements of the relevant national law in regard to that subsidiary. However, a claim that there was a benefit for a subsidiary in such circumstances would need to be well supported by evidence.		There are some cases where an intragroup service performed by a group member such as a shareholder or coordinating centre relates only to some group members but incidentally provides benefits to other group members. Examples could be analysing the question whether to reorganize the group, to acquire new members or to terminate a division. These activities could constitute intragroup services to the particular group members involved; for example, those members who will make the acquisition or terminate one of their divisions, but they may also produce economic benefits for other group members not involved in the object of the decision by increasing efficiencies, economies of scale or other synergies.
	A subsidiary should not be required to pay for benefits derived simply from being part of a concern (i.e. benefits which cannot be related to the specific activities of the parent); for instance, the higher credit standing – apart from guarantee agreements – resulting from being part of a concern with a good reputation.	For example, no service would be received where an associated enterprise by reason of its affiliation alone has a credit rating higher than it would have if it were unaffiliated, but an intragroup service would usually exist where the higher credit rating was due to a guarantee by another group member or where the enterprise benefited from the group's reputation deriving from global marketing and public relations campaigns. In this respect, passive association should be distinguished from active promotion of the MNE group's attributes that positively enhances the profit-making potential of particular members of the group.

2.3.4. CONCLUSION

The 1995 Guidelines – in accordance with the observations made by BIAC in 1980 – conclude that shareholder activities are those incurred by the parent *"*solely*" because of its ownership interest* in the subsidiaries (Para. 7.9). However, the examples proposed do not provide sufficient guidance.

3. COUNTRY SURVEY

The contributors to this report were provided two questionnaires to ascertain the existence of legislation, case law and practice, if any, in their respective countries. These questionnaires are attached to this report. The outcome of the survey is described in the following paragraphs.

3.1. DEFINITION OF SHAREHOLDER COSTS IN NATIONAL LEGISLATIONS

3.1.1. IN GENERAL

Most of the 27 EU Member States have no specific provisions in their respective internal legislations dealing expressly with the deduction of shareholder costs (see Annex 1). Specific rules are set forth only by the Greek and Romanian income tax codes and by the Slovenian transfer pricing regulation. Nevertheless, even in such countries the provisions are quite generic. Indeed, in Greece there is no definition of shareholder costs but only a rule providing for an auditing by the tax authority if the costs for services related to the general interests of a group, allocated to a local subsidiary from affiliated entities or third parties, exceed specific thresholds.[9] Also, the Romanian legislation does not define the concept of shareholder costs but stipulates that costs incurred by a parent company for administration, management, consulting and other services provided to the subsidiaries shall be borne only by such parent company unless under similar circumstances such services would be requested by an independent party.[10]

The Slovenian legislation is the only one providing for a definition that is to some extent similar to that set forth by the 1995 Guidelines. In particular, the Slovenian regulation on transfer pricing[11] provides that "activity costs are not justified to be charged as services if such costs are charged by the associated entity to [an]other entity because of its own share in the capital, management, control or voting rights, and the associated persons would not be willing to pay for such an activity in the same or comparable circumstances.

"Comparably, such activity costs are:

- activity costs regarding legal regulation of "parent/head entity" (costs in relation to the shareholder meetings of "parent/head entity", share capital issuing in "parent/head entity" and supervisory board),
- costs regarding requirements of "parent/head entity" for reports, including consolidated reports,
- costs of asset collection for takeover of shares."

In Bulgaria, there is no a specific legislation dealing with the deduction of shareholder costs but there are two provisions that affect the deductibility of specific expenses incurred by the shareholder. In particular, according to Art. 32 of the Law on Corporate Income any costs associated with the incorporation of a commercial company, such as registration fees, legal fees, translation costs, etc., would be recognized at the level of the newly incorporated entity

[9] Article 31 §1 (ih) of the Greek Income Tax Code (law 2238/1994).
[10] Point 41 of the Fiscal Norms (Government Decision 44/2004) under Art. 11 of the Romanian Fiscal Code (law 571/2003).
[11] Article 22 of the Slovenian Transfer Pricing Regulation.

only and could not be recognized at the level of the shareholder that incurred them. Only in cases where the incorporation of the new entity is cancelled for some reason and does not take place could said costs be recognized as deductible in the books of the respective shareholder.

The second statutory provision – set forth by Art. 33 of the Law on Corporate Income – deals with travel and per diem/accommodation expenses of members of the managing bodies of the commercial company and its employees, to the extent related to the business operations of the company. From this category of deductible expenses the law explicitly carves out as non-deductible the travel and accommodation expenses for shareholders when incurred in their capacity of shareholders (e.g. travel and accommodation costs of shareholders related to their participation at the shareholders' meeting are non-deductible).

Spain has a general provision dealing with the deduction of intragroup services that provides for the deductibility only when the services generate an identifiable benefit or a potential benefit, or create value for the recipient.[12]

In the UK, there is no specific provision dealing with shareholder costs but the transfer pricing legislation expressly defers to the OECD Guidelines.[13]

In all other Member States the deductibility for expenses incurred vis-à-vis a parent company for services rendered is generally governed by:

(i) the general rule on the deduction of costs in the computation of business income; and/or

(ii) the general provisions concerning transfer pricing.

For example, in Austria, expenses are generally deductible if they are "caused by the business".[14] With special regards to intercompany charges, the arm's length principle is laid down in a quite generic way in Sec 6(6) Austrian Income Tax Act.[15]

Under the Irish general rule on the deduction of costs, expenses are deductible if "wholly and exclusively" incurred for the purpose of the company's trade.[16] A strict legal interpretation of

[12] Article 16 of the Spanish Corporate Income Tax Act (*Real Decreto Legislativo 4/2004*).

[13] Schedule 28AA ICTA 1988 states that "this Schedule shall be construed [...] in such manner as best secures consistency between: (a) the effect given to paragraph 1 above; and (b) the effect which, in accordance with the transfer pricing guidelines, is to be given, in cases where double taxation arrangements incorporate the whole or any part of the OECD model, to so much of the arrangements as does so. [...] In this paragraph "the transfer pricing guidelines" means: (a) all the documents published by the Organisation for Economic Co-operation and Development, at any time before 1st May 1998, as part of their Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations; and (b) such documents published by that Organisation on or after that date as may for the purposes of this Schedule be designated, by an order made by the Treasury, as comprised in the transfer pricing guidelines."

[14] In particular, Sec. 4(4) Austrian Income Tax Act states, "Costs or expenses are regarded as deductible business expenses if they are caused by the business."

[15] Section 6(6) Austrian Income Tax Act stipulates that in the case of supply of goods or services between related parties a fair market price (as it would have been agreed upon between unrelated parties) has to be charged.

this provision might lead to the odd conclusion that a payment by a subsidiary to a parent company for a service that is partly for the benefit of the parent company would not be deductible at all in the computation of the subsidiary's trading profits (see Annex 1). The Irish legislation is consequently not clear on such point. It is worth noting that in Ireland there is no transfer pricing legislation.

In Italy, expenses and other charges are deductible if and to the extent to which they relate to activities or assets that (actually or potentially) generate earnings included in the taxable income.[17] In addition, under general transfer pricing provisions items of income deriving from transactions with non-resident companies belonging to the same group shall be valued on the basis of the "normal value" (i.e. arm's length value) of the services received.[18]

Similarly to Italy, the deduction of shareholder costs in France is subject to the general provisions regarding the deductibility of costs[19] and transfer pricing.[20] Under these provisions, costs are deductible to the extent they are incurred in the interest of the paying company, i.e. if (i) they relate to a service actually rendered to the paying company and (ii) the price for such service is arm's length.

In Germany, expenses are deductible if and to the extent that they are caused by the business.[21] Further, pursuant to general transfer pricing provisions, expenses charged by an affiliate are deductible only up to the arm's length amount.[22]

In the Czech Republic, under the general tax deductibility rule, all costs and expenses incurred in order to generate, assure and maintain taxable income are tax deductible, unless

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[16] Section 81(2)(a) of the Taxes Consolidation Act 1997, providing that "in computing the amount of the profit or gains to be charged to tax [...] no sum shall be deducted in respect of [...] any disbursement or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade."

[17] In particular, according to Art. 109(5) of the Italian Income Tax Act, "expenses and other charges other than interest expenses, excluding fiscal, social-welfare and social-utility charges, shall be deductible if and to the extent to which they relate to activities or assets that generate earnings included in the taxable income or not included in taxable income in that they are excluded."

[18] In particular, according to Art. 110(7) of the Italian Income Tax Act, "the items of income deriving from transactions with companies non-resident in Italian territory and which directly or indirectly control the enterprise, are controlled by it, or are controlled by the same company as that which controls the enterprise, shall be evaluated on the basis of the normal value of goods transferred, services rendered, and goods and services received, determined in accordance with paragraph (2), if the income is thereby increased; […]."

[19] Article 39-1-1° of the French Tax Code, providing that, "The net profit is determined by deducting all charges, these latter include, subject to the provisions set forth in paragraph 5: 1° The general expenses of every nature, personnel and labor expenditures, rents for immovable property of whom the enterprise is the tenant. However, remunerations are deductible to the extent they correspond to actual work and they are not excessive in view of the importance of the service rendered. […]."

[20] Article 57 of the French Tax Code, providing that, "For the purposes of assessing the income tax due by enterprises that depend on or control enterprises established outside France, income that is indirectly transferred to the latter, either by increasing or lowering purchase or sale prices, or in any other way, shall be recaptured in the results shown in the accounts. The same is applicable to enterprises that are dependent on an enterprise or group controlling other enterprises established outside France."

[21] Section 4(4) of the German Income Tax Act provides: "Business expenses are expenses which are caused by the business."

[22] Section 8(3) of the German Corporate Tax Act provides: "Also, hidden profit distributions do not reduce the taxable income." Furthermore, Sec. 1(1) of the German Foreign Tax Act provides: "In case that the taxable income of a taxpayer derived from cross-border business transactions with an affiliate is reduced due to the reason that the taxpayer has employed in determining its taxable income terms, in particular prices (transfer prices) which differ form those terms which parties independent form each other had agreed to under the same or comparable circumstances (arm's length principle), the taxable income must be assessed in the amount arising in case that terms agreed between independent parties had been employed."

they are specifically excluded by law.[23] In addition, specific transfer pricing provisions requiring normal arm's length price charged for transactions between related parties should be observed.[24] Tax legislation explicitly treats expenses related to the holding of shares in a subsidiary[25] and costs of performance of functions of a statutory body and management board as non-tax deductible.

3.1.2. CONCLUSION

In general, the lack of specific provisions dealing with the deduction of shareholder costs, or the existence of very generic rules, is an element of flexibility that should allow most of the Member States to implement recommendations of the JTPF without changing their internal tax legislation.

3.2. TAX AUTHORITIES' GUIDANCE FOR IDENTIFICATION OF SHAREHOLDER COSTS

3.2.1. IN GENERAL

Tax authorities have issued guidelines on the deduction of shareholder costs in Denmark, Germany, Italy, the Netherlands, Sweden and the United Kingdom (see Annex 2).

Guidance provided by the Danish,[26] Swedish[27] and UK[28] tax authorities is very limited however. Indeed, such guidelines merely state that shareholder costs cannot be charged to the subsidiaries and only provide limited examples of shareholder costs drawn from the 1995 OECD Guidelines.

Statements of practice issued by the German, Dutch and Italian tax authorities list certain criteria for the identification of shareholder costs and add some examples to those provided by the 1995 Guidelines.

[23] In particular, according to Art. 24(1) of the Czech Income Tax Act, "The expenses spent on generation, assurance and maintenance of taxable incomes are, for the purpose of statement of tax base, deducted in the amount approved by taxpayer and in the amount determined by this Act or specific regulations. […]"

[24] According to the Czech Income Tax Act Art. 23(7), if the prices concluded between related parties differ from prices which would be agreed between independent entities under the same or similar conditions, the tax authorities should adjust the taxpayer's tax base for the difference ascertained. In addition, potential adjustment in transfer prices between related parties is considered as dividend according to Czech tax legislation.

[25] In accordance to the Czech Income Tax Act Art. 25(1)(zk), "As expenses spent on generation, assurance and maintenance of taxable incomes are not considered over all […] expenses of parent company related to the holding of share of its subsidiary. […] indirect costs related to the holding of share of subsidiary are, for purposes of this provision, limited up to 5% of divided income and other shares in profit paid by subsidiary […]."

[26] In Denmark, the relevant description can be found in Secs. 5.2.5 and 5.2.7 of the Government Order on Documentation on price setting dated 26 February 2006.

[27] Tax Agency's Guidelines for International Taxation 2008 (*Handledning för internationell beskattning 2008*), p. 276 et seq.

[28] HMRC's Internal Manual INTM464050.

For instance, the German guidelines[29] express the view that no charge may be made for the administration, management, control, advisory or similar functions insofar as they arise from shareholding relationships or from other connections establishing a relationship of the parties. A charge can be made only if such entities carry out services for the direct benefit of the related party. The guidelines specify that:

- a charge could be considered outside the context of shareholder relationship if third party would have agreed to it;
- the paying enterprise must have agreed to the charge in advance and must be able to justify for it;
- a charge is not possible if the cost have already been borne by the recipient company in some other way; and
- the service must be actually performed. In case of averaged charges for a fluctuating supply of services the average must correspond to the actual services used over a period of years.

The following examples of chargeable services are provided:

- bookkeeping and similar activities, such as specific business and legal advice for a related party;
- the supply of staff for limited periods including managerial employees of related parties;
- training and social security costs of persons working for a related party in that party's own interest;
- services of parent company in obtaining goods and services delivered to the subsidiary; and
- the making available of services on demand insofar as this is customary in the business, and insofar as the subsidiary needs these services and has actually used them to a meaningful extent.

By contrast, the following examples of costs that cannot be charged by the parent company to the subsidiary are provided:

- mere membership in a group of companies including the right to use the group name, and including the advantages enjoyed by subsidiaries solely as a result of their legal, financial and organizational links to the group;
- the activities of its own directors as such and for its shareholder meetings;
- the legal organization of the group as a whole and for its overall production and investment planning;

[29] Administrative guidelines of 1983, Secs. 6.1, 6.2.3 and 6.3.

- activities that result from its position as shareholder including those related to general management and internal auditing and other checks serving the needs of top management;
- protection and administration of investments in the subsidiaries; and
- group management, including managerial functions of subsidiaries that the holding company management has assumed in order to improve its own ability to prepare, implement and control its management policies, including planning, business decisions and coordination.

The Italian guidelines[30] explain that for determining if a service is a shareholder activity, a benefit test over the subsidiary must be applied. Nevertheless, it could happen that, even if there is a benefit for a subsidiary, this could be only occasional and therefore a charge by the parent company cannot be made. The following example is provided: In exercising its control function a parent company finds and eliminates a flaw in the production of the subsidiary, avoiding damage for the latter company. Nevertheless, since the benefit for the subsidiary is only a by-product of the parent's own activity, a charge cannot be made by the parent company.

Another example concerns an audit of the accounts carried on by the parent company over the subsidiary. To determine if there is a benefit for the latter company, the following elements should be considered:

- whether the subsidiary already has personnel performing the same functions;
- whether the parent company does not share with the subsidiary the results of the auditing;
- whether the audit is focused on compliance with the guidelines provided by the head office more than the accuracy and functionality of the accounting system; and
- no changes in the accounting system of the subsidiary are implemented as a consequence of the audit.

In such cases, according to the Italian tax authorities, there is no benefit for the subsidiary.

The Dutch guidelines[31] identify the following non-exhaustive list of shareholder activities that cannot be charged by the parent company to the subsidiaries:

1. Activities that are related to the legal structure of the company itself[32] as:

1.1 Compliance with the requirements of the Book of the Civil Code, as

[30] Circular letter no. 32 of 22 September 1980.
[31] Decree no. 2004/680M.
[32] The decree covers the situation were the "company" is the parent company in the meaning of this Report.

- organizing, preparing and holding shareholders meetings,
- the activities related to the preparation and approval of the annual accounts and the deposit thereof with the Chamber of Commerce,
- the activities of the board of directors to the extent this regards the performance of the legal review activities,
- the activities of the Works Council;

1.2 Compliance with the General Tax Act, to the extent of the tax obligations of the company itself, as:
- having an administration,
- complying with the obligation to maintain materials, fiscal reporting, complying with the information obligation.

2. Activities that are related to the issuance, placement or splitting of shares of the parent company itself, or comparable notes on the bond market and activities with respect to the request of maintaining a (foreign) stock listing of the company itself as:
- the compliance with registration requirements of a stock exchange,
- the activities that are related with the stock exchange listing – like the preparation of forma that need to be submitted to the US SEC related to the listing, (free) submission of the annual report etc.;
- membership of associations and other institutions that represent the stock exchanges.

3. Activities that are related with the introduction and maintenance of legal requirements regarding the review of share transactions as the implementation and maintenance of a registration system on the basis of the Dutch law regarding security exchange and the reporting of share transactions by personnel of the company subject to this legislation.

4. Activities that are related with the implementation and compliance with legal rules in codes of conduct regarding "corporate governance" of the company itself or the group as a whole as for example the implementation of review prescribed by laws and rules regarding "corporate governance" including the inclusion paragraph on this topic in the annual report and reporting of the existing or expected policy regarding the environment social policies and policy with respect to long term enterprises.

5. Activities that are related to reporting to several interested parties regarding the company itself or the group as a whole as for example press conferences and other communication costs with shareholders and other interested parties, such as a financial analyst, to the extent that communication is related to external reporting, financial results and future expectations of the company itself or the group as a whole.

The Dutch tax authorities acknowledge that "mixed activities" could exist – e.g. qualifying part as group service and part as shareholder activity – and also provide some examples: one concerning the costs for the management of an information system used both by the subsidiaries for the local report and by the parent company for the consolidation report; only

the costs for the latter are shareholders' costs. The second set of examples concerns merger and acquisition activities and shows that cases could exist in which the activity is carried out in the interest of the local subsidiary or in the interest of the shareholder.

Austria, Czech Republic, Greece, Lithuania, Poland and Spain have issued no guidance on the tax treatment of shareholder costs; however, some rulings have specifically dealt with the subject matter or related issues. Certain cases are not addressed by the OECD Guidelines; for example, the Austrian tax authorities stated that costs for the legal organization of the group are incurred in the ownership interest of the parent company and therefore cannot be charged to the subsidiaries.[33] This opinion is questionable; indeed, a subsidiary can obtain a reduction of its costs from an optimized organization of the group. Similarly, the Lithuanian tax authorities expressed the view that costs incurred in relation to the issuance of new shares of the subsidiary (increase of share capital) are not deductible because they not directly related to the economic activities of the subsidiaries.[34] This view is also questionable: an increase of share capital aims at providing the financial means for carrying on the activity and could enhance the position of the subsidiary when negotiating loans with independent parties. Guidance by the JTPF on these issues would be helpful for both tax authorities and companies (see below at 5. – Conclusion and recommendation).

A circular letter issued by the Belgian tax authorities makes the 1995 Guidelines applicable in the absence of specific guidance from the tax administration.[35] The same principle is laid down by the Romanian legislation.[36]

In other countries, such as Bulgaria, Cyprus, Estonia, Finland, France, Hungary, Ireland, Latvia, Luxembourg, Malta, Portugal, Slovak Republic and Slovenia, no guidance has been issued by the tax authorities.

[33] EAS 2153 of 28 October 2002.
[34] Official Commentary of the Law on Profit Tax of the Republic of Lithuania (No IX-675 of 20 December 2001).
[35] Circular letter dated June 28, 1999 No. AFZ/98-003.
[36] Point 41 of the Fiscal Norms (Government Decision 44/2004) under Article 11 of the Romanian Fiscal Code (law 571/2003).

3.2.2. CONCLUSION

i) Tax authority guidance on shareholder costs is very limited in most of the Member States and only a few describe the criteria for the identification of shareholder costs and provide examples other than those illustrated by the 1995 Guidelines.

ii) Most Member States that have issued guidance agree with the first part of the classification made by the 1995 Guidelines whereby shareholder costs include i) costs of activities relating to the juridical structure of the parent company itself, such as meetings of shareholders of the parent, issuing of shares in the parent company and costs of the supervisory board, ii) costs relating to reporting requirements of the parent company including the consolidation of reports, and iii) costs of raising funds for the acquisition of its participations.

iii) Member States that have issued guidance on shareholder costs provide little or no guidance on the identification of "costs of managerial and control (monitoring) activities related to the management and protection of the investment as such in participations". It is acknowledged by the tax authorities of some Member States (e.g. Italy and the Netherlands) that a specific activity carried out by the parent – e.g. in the field of M&A or marketing – could qualify as group services or shareholder activity depending on the actual circumstances of the case.

iv) It would be helpful for the JTPF to issue guidance on certain intragroup services that are recurrent within multinational groups for which either countries' tax authorities or the OECD recommendations have remained silent.

3.3. CASE LAW

3.3.1. IN GENERAL

Specific case law dealing with the deductibility of shareholder costs may be found in Austria, France, Greece, Italy, the Netherlands, Spain and Sweden (see Annex 3). In any event, the number of decisions issued in such States is quite limited and most of which express very generic principles.

In Belgium, Denmark, Germany and Luxembourg decisions are reported that, even though not dealing expressly with shareholder costs, provide some indications that are also useful for the deduction of such expenses.

All in all, the case law also demonstrates that it could be extremely complex to apply the general principles set forth by the 1995 Guidelines to specific – but quite common – cases. For example, in Denmark, the Supreme Court maintained that only part of the costs connected

with an initial public offering could be charged to a subsidiary because both the company and the shareholder directly benefit from such expenses.[37]

In a similar case, the Dutch Supreme Court held that investor relations and all the other costs connected to the listing of the company's shares on the stock exchange are deductible for the company if related to "new" shares issued by the subsidiary at the moment of the listing.[38] With respect to the "existing" shares, the Court ruled that these services do not benefit the company and therefore they are not deductible at the company level.

Another example is a Swedish case where the Supreme Administrative Court (*Regeringsrätten*) held that a limited liability company can deduct costs related to the convening of general meetings because they are mandatory under Swedish company law.[39]

3.3.2 CONCLUSION

It is therefore possible to conclude that case law on shareholder costs is limited and consequently does not provide sufficient guidance. Administrative guidelines issued by tax authorities are also scarce and where available they lack practical examples. For these reasons, it is submitted that a list of examples shared by all the EU Member States could be extremely useful for both taxpayers and tax administrations.

4. SHAREHOLDER COSTS IN THE 2006 US REGULATIONS ON TREATMENT OF CONTROLLED SERVICES TRANSACTIONS

4.1. GENERAL PRINCIPLES

In August 2006, the US Treasury issued temporary regulations[40] regarding the provisions of intragroup services, in force for the tax years starting from 31 December 2006 (hereinafter the "Temporary Regulations").

The Temporary Regulations deal extensively with the conditions to determine whether there should be a charge for the provision of an intragroup service and with the qualification of shareholder activities. The new provisions substantially follow the 1995 OECD Guidelines approach:

[37] TfS 1998, 325.
[38] Case LJN AZ2716 (Court of Justice Amsterdam, 25-10-2006, No 03/01987 and 04/02598).
[39] RÅ 82 1:8.
[40] Temporary Reg. § 1.482-9T.

- the *benefit test* is substantially the same as set forth by the 1995 Guidelines (namely an activity is considered to provide a "benefit to the recipient if the activity directly results in a reasonably identifiable increment of economic or commercial value that enhances the recipient's commercial position" and this condition is met if the recipient would be willing to pay an uncontrolled party to perform the same or similar activity or would have performed for itself the same activity or a similar activity);
- the *definition of shareholder activity* makes reference – as the "sole effect" of the activity itself – to:
    - the protection of the renderer's capital investment in the recipient; or
    - the facilitation of the compliance by the renderer with reporting, legal or regulatory requirements
- *an indirect or remote benefit* does not justify a charge to a subsidiary;
- *duplicate activities* are generally not considered to provide benefits to the recipients unless the duplicated activity itself provides an additional benefit to the subsidiary; and
- *passive association*: a controlled taxpayer generally will not be considered to obtain a benefit where the benefit results from the controlled taxpayer's status as a member of a controlled group.

The principles set forth by the Temporary Regulations are therefore in line with the 1995 OECD Guidelines. It is worth mentioning that the Temporary Regulations point out in addition that, "activities of a day by day management generally do not relate to protection of the renderer's capital investment."

The main difference between the 1995 OECD Guidelines and the US Temporary Regulations is that the latter provides a significant number of examples to illustrate how the general principles should be applied in practice. In general, the examples set forth by the Temporary Regulations put in light that if there is a direct benefit for a subsidiary, stemming from a specific activity of the parent company, a charge for the provision of the service is necessary. This is also true when the activity gives rise to a benefit for the parent company to the extent that such benefit is not exclusively for the latter company.

The examples described by the Temporary Regulations are shown in Annex 4. The following paragraph illustrates that the interpretation provided by the US Treasury through such examples is not always shared in all EU Member States, even where such States adopt the 1995 Guidelines. This is an additional confirmation of the necessity of a greater number of examples shared at the EU level for illustrating how the OECD principles for the identification of shareholder costs should be applied in practice.

4.2. INTERPRETATION OF THE EXAMPLES SET FORTH BY THE US TEMPORARY REGULATIONS

As noted above, the US Temporary Regulations – which substantially follow the principles set forth by the 1995 OECD Guidelines – apply the general principles on the deductibility of general costs to 19 specific situations (see Annex 4) and distinguish intragroup services (chargeable to the subsidiaries) from shareholder activities (not chargeable to the subsidiaries).

These examples have been examined by the contributors to this report to identify the tax regime applicable in their respective Member States.

The outcome of the survey is summarized in Annex 5. With the exception of Sweden and Hungary, all other Member States covered by the survey partly depart from the conclusion indicated in the Temporary Regulations. For some contributors, this is so because the information contained in the examples was insufficient to provide a comprehensive reply.

5. CONCLUSIONS AND RECOMMENDATIONS

5.1. Definition of shareholders' costs

1.1 [OECD definition of shareholder activities] Under the OECD Guidelines, shareholders' costs include the expenses for the activities conducted by the parent company "solely" because of its ownership interest in the subsidiaries.

5.1.2 [Consensus on the OECD definition of shareholders' costs] Member States have not departed from the OECD definition of shareholders' costs although a few Member States have only expressly mentioned this principle in their statements of practices.

5.1.3 [JTPF to recommend express acknowledgment of OECD definition of shareholders' costs] For this reason, it would first be desirable that the JTPF recommend that Member States expressly endorse the above-mentioned OECD principle in a statement of practice.

5.1.4 [JTPF to clarify that guidance on shareholders' costs is to provide cost-allocation criteria among parent companies and subsidiary companies, and does not restrict application of domestic rules on deductibility] The work done by the OECD on shareholders' costs falls within the scope of application of Art. 9 of the OECD Model Convention for the avoidance of double taxation on income and capital (hereinafter the "OECD MC"), which confirms the proper allocation of the income between companies of two contracting States. In no way is Art. 9 OECD MC intended to restrict or amend the domestic tax rules that in the two contracting States govern the deduction of

costs. Equally, the work undertaken by the JTPF on the subject matter purports the allocation of income between the Member States of residence of the parent company and subsidiary companies. For instance, expenses incurred by the parent company for the consolidation of reports[41] are regarded as shareholders' costs and as such cannot be charged to the subsidiary companies. The expense is therefore allocated exclusively to the country of residence of the parent company. This does not automatically result into such expenses being deductible from the taxable base of the parent company. Indeed, the deduction of a cost that is allocated to the country of residence of the parent company shall be deductible to the extent that the domestic tax rules of the country of residence of the parent company so permit. For instance, countries that exempt dividends from domestic and foreign subsidiaries may provide for the non-deductibility of costs associated with such income as these costs are related to assets producing exempt income; under such rule, the shareholder cost incurred by the parent company would not be deductible from its taxable base.

5.1.5 [JTPF to clarify scope of application of its recommendation to extend to relations with either parent or subsidiaries group companies that are not residents of an EU Member State] The task of the JTPF is to formulate recommendations that the Council may include in a recommendation to the Member States. The work of the JTPF constitutes the efforts of members from the several Member States and reflects the practice of such States. In principle, the work done by the JTPF regards transfer pricing issues relating to transactions entered into by companies that are resident in two or more Member States of the European Union and this report also draws from the rules, practice and case law of the Member States to formulate possible solutions and propose recommendations. It is understood, however, that the principles and guidance that are formulated with regard to the subject matter are equally applicable when either the parent company or the subsidiary companies are residents of non-EU countries.

5. 2. No special domestic tax law rules on shareholders' costs

5.2.1 [Deduction for intragroup services relies on general domestic law rules on business income] The review of domestic tax rules that are in force in the Member States indicates that, generally, the deduction of intragroup services relies on general rules governing deduction of costs for the purpose of determining business income and that no specific statutory rules on shareholder costs have been enacted.

5.2.2 [JTPF to recommend Member States not to enact special rules on intragroup services or shareholders' costs] It is desirable that the JTPF recommend that Member States do not introduce special legislative rules on shareholders' costs because:

[41] See below at. 5.5.2.

i. domestic-based legislative would be likely to create inconsistencies among Member States and create double taxation;
ii. the subject is to a very large extent based on factual circumstances so that a legislative provision would be unlikely to provide a satisfactory and comprehensive result;
iii. the lack of legislative constraints on the subject would enable tax authorities to adapt their practice to the continuous changes in the conduct of the business by groups of companies; and
iv. as a corollary, the lack of legislative provisions makes it possible for Member States to develop and agree through the JTPF guidelines that may give guidance on the subject and which – unlike legislative provisions that require parliamentary approval – may be immediately applied consistently within the Member States by tax authorities and taxpayers.

5.3. Identification of shareholders' costs

5.3.1 [No guidance on shareholders' costs available in the Member States] The survey indicates that most of the tax authorities have provided very limited guidance on how to identify shareholder costs and they have neither laid down criteria nor displayed examples other than those mentioned in the several OECD recommendations that have been made in the reports published in 1979, 1984 and 1995.

5.3.2 [JTPF to recommend criteria and draw up a list of commonly shared shareholders' costs] It is desirable that the JTPF recommend Member States to issue guidance on shareholders' costs and provide examples that may then be used in the practices of both tax authorities and taxpayers.

5.3.3 [JTPF to recommend list of commonly provided services that are in principle allocable to subsidiaries] It is equally desirable for the JTPF to recommend and provide guidance on commonly provided intragroup services that are in principle allocable to the subsidiaries.

5.4. The criteria to be used to identify shareholders' costs

5.4.1 [The exclusive benefit principle, the legal obligation concept and the passive association concept] The general definition of shareholder costs developed by the OECD does express an economic functional criterion to be used and applied in individual cases. Particularly, the definition makes reference to the exclusive interest of the parent company and requires an expected benefit test (to the subsidiary) to be done to establish if such condition is met. As shareholders' costs require the underlying activities to be to the exclusive benefit of the parent company, the expected benefit test applied to the subsidiary is met to the extent that some benefit may be expected even if such benefit also accrues to the parent company. Difficulty to identify or quantify the service should

not make a service become a shareholder activity. It is imperative that Member States share and expressly endorse this principle. In determining if a cost is a shareholder cost, other principles may also apply in addition to those mentioned above. There are activities, for instance, that are to the benefit of the parent company which the subsidiary company is due to provide to its parent company under the company laws of its (the subsidiary's) country of organization. This is, for instance, the case of costs relating to the shareholders' meeting of the subsidiary. Expenses that are incurred on the basis of obligations laid down by statutory provisions in the country of residence of the subsidiary have therefore to be allocated to the subsidiary company (as for example, the costs for the shareholder meeting of the subsidiary or for the statutory auditors if the appointment is compulsory under the law of the State of the Subsidiary). This rule is thus also applied in paragraph 5.5. below, which provides an itemized list of shareholders' costs. Finally, the OECD Guidelines as well as the US Temporary Regulations further require the service provided by the parent company not to be the obvious effect of the passive association of the subsidiary, except the case in which the benefit reflects the use of intangibles (this conclusion is taken expressly by the US Temporary Regulations). Also, this criterion of passive association is used in drawing the list of shareholders' cost below.

5.4.2 [The development of the itemized list of shareholders' activities] The lists of shareholders' activities provided below at paragraphs 5.5. and 5.6. are structured as follows. Firstly, all activities that are expressly mentioned in the OECD reports and guidelines as shareholders' costs have been included; clarifications are made with respect to activities which are either ambiguous or present controversial issues. Secondly, other activities drawn from case law or practice of Member States have been added.

5.5. The list of services regarded as shareholders' activities in the line of OECD Recommendations and Guidelines

5.5.1 [List of shareholders' activities dispersed through the OECD Reports and Guidelines] The several Reports and Guidelines enacted by the OECD in 1979, 1984 and 1995 include a list of shareholders' costs but none of such documents includes them altogether. Furthermore, the language used by these Reports and Guidelines is not consistent, which also makes the OECD recommendation less clear and less effective in its function to clarify the subject matter. However, it is not self-evident that the 1995 Guidelines entirely replace prior work of the OECD on the subject matter; they are intended to be "a revision and compilation of previous reports by the OECD Committee […] addressing transfer pricing […]." (1995 Guidelines, Preface, Para. 13).

5.5.2 [Reconciliation, collection and clarification of examples included in OECD material] The OECD material contains a list of categories of costs that are regarded to be shareholders costs. However, many of such categories are very generic and as such create ambiguities and do not

provide guidance. This is the case of the "costs of managerial and control (monitoring) activities related to the management and protection of the investments as such in participations". It is submitted that these generic, ambiguous and broad expressions should be eliminated and more specific guidance should be given. The scrutiny of the OECD Reports and Guidelines permits the drawing up of the following list (costs shown in italics are reported verbatim from the OECD Reports and Guidelines while the other costs have been added by the authors of this report):

a. *Costs of activities relating to the juridical structure of the parent company itself, such as*:[42]
   a.1. costs for *the meeting of shareholders of the parent*[43] company including advertising costs;[44]
   a.2. costs for *the issuing of shares of the parent*[45] company;
   a.3. *costs of the supervisory board*[46] of the parent company;
   a.4. cost of the board of directors of the parent company that is associated with the statutory duties of a director as a member of the board of directors. The 1984 Report admits that board members may perform activities that are to the benefit of the subsidiaries so that only part of the cost relating to the board of directors may be regarded as shareholders' costs. This may be the case when one or more director(s) have qualifications and skills that go beyond the mere holding function and include know-how and skills which are pertinent to the business of the subsidiaries. It is current practice that board members of a parent company have performed duties in the managing of the business of subsidiaries companies for several years and thus gained experience that also continues to be used by the subsidiaries when the manager has moved to the headquarters and attained the position of a member of the board of the parent company. This could be also the case of the groups with a divisional organization: the directors of the parent company are often responsible of the entire division and therefore their activities have a direct benefit also for the subsidiaries.
   a.5. costs for the compliance of the parent company with the tax law (tax returns, bookkeeping, etc.)
b. *Costs relating to reporting requirements of the parent company including the consolidation of reports*:[47]
   b.1. costs for the financial reports of the parent company;
   b.2. costs for the consolidated financial statements of the group;
   b.3. costs for the application and compliance with cross-border tax consolidation. Tax legislations of some Member States provide for cross-border tax consolidation that

[42] 1995 Guidelines, para. 7.10, lett. a.
[43] 1995 Guidelines, para. 7.10, lett. a.
[44] For example, some legislation requires the publication of the notice of the meeting in the official journal or national newspapers.
[45] 1995 Guidelines, para. 7.10, lett. a.
[46] 1995 Guidelines, para. 7.10, lett. a.
[47] 1995 Guidelines, para. 7.10, lett. b.

requires the parent company to collect information from the subsidiaries and comply with formal requirements such as making tax adjustments of the accounts of the foreign subsidiaries to compute the consolidated income for company tax purposes. These costs are incurred to the exclusive benefit of the parent company (although under rare circumstances the subsidiary company may receive a benefit from the consolidation, such as the elimination of withholding taxes that would otherwise apply in the country of the parent company on payments made by the parent company);

b.4. costs for the audit of the accounts of the parent company.

c. *Costs of raising funds for the acquisition of its* [the parent company's] *participations;*[48]

d. *Costs of managerial and control (monitoring) activities related to the management and protection of the investments as such in participations* unless an independent party would have been willing to buy for or to perform for itself:[49]

d.1. Costs of the parent company's audit of the accounts of the subsidiary if it is carried out exclusively in the interest of the parent company; by contrast, if the audit is also in the interest of the subsidiary the activity is an intragroup service: this is the case when the audit is compulsory under the law of the State of incorporation of the subsidiary, when the audit report is published with the financial statement of the subsidiary or published on the website of the subsidiary or, in general, is used by the subsidiary (e.g. provided to a bank when the subsidiary applies for a loan or used by the management of the subsidiary itself).

d.2. Costs for the drafting and auditing of the financial statements of the subsidiary in accordance with the accounting principles of the States of the parent company (e.g. US GAAP), unless such activity has a positive effect for the activity of the subsidiary on its own and not simply because it is part of the group. This may be the case where the financial statement drafted by applying the accounting principles of the parent company is used by the parent company itself to render specific services to the subsidiary, as market analysis, budgeting, etc.

d.3. Costs of information technology incurred exclusively for the monitoring activity of the parent company over the subsidiary; these costs are shareholders' costs only if such costs are not related to the provision of services from the parent company to the subsidiary; e.g. software that allows the parent company to monitor the sales of the subsidiary is in principle a shareholder cost. If the monitoring is for providing services (as marketing or production planning or stock and inventory management), the cost is an intragroup service.

[48] 1995 Guidelines, para. 7.10, lett. c. In the opinion of the authors of this Report, where the funds are raised by the parent company on behalf of another group member that uses them to acquire a new company, the parent company provides a service to the group member.
[49] 1995 Guidelines, para. 7.10, lett. d.

d.4. Cost for the general review of the affiliates' performance if not connected to the provisions of consulting services to the subsidiaries

e. *Costs to reorganize the group, to acquire new members or to terminate a division*[50] unless they produce economic benefit for the subsidiary that is not incidental. For examples such activities could constitute intragroup services to the particular group member involved; e.g. those members who will make the acquisition or terminate one of their divisions.

5.6. List of additional services regarded as shareholders' activities on the basis of the principles set forth by the OECD Guidelines

[List of additional shareholders' costs identified by applying the principles set forth by the OECD Guidelines] Other services are clearly identifiable as shareholder activity by applying the principles set forth by the OECD Guidelines. The following list has been drafted taking into account the indication provided by the tax authorities and of the courts of some Member States – described in the country survey – and the experience of the authors of this Report:

a. Costs for initial listing on a stock exchange of the parent company and costs for the activities related to stock market listing of the parent company, in the years after the initial listing (e.g. preparation of documents required by the stock market supervisory body).

b. Investor relations' costs of the parent company: costs for press conferences and other communications with (i) shareholders of the parent company, (ii) financial analysts, (iii) funds and (iv) other stakeholders of the parent company.

5.7 Services that cannot be regarded as shareholders' activities for which clarification is sought

5.7.1 [List of services for which clarification is sought] On the basis of the principles set forth by the 1995 Guidelines, in the view of the authors of this report the following expenses should be regarded as service costs and not as shareholders' costs:

a. Study and implementation of the capitalization structure of the subsidiaries ⇒ The capitalization structure of the subsidiary has a direct impact on its capacity to find the financial resources for carrying on its business activity. It is therefore recommended to consider such activity a value added service, attributable to the subsidiary.

b. Costs for the increase of the share capital of the subsidiary ⇒ The issuance of new shares aims at collecting new financial resources for the subsidiary itself. For this reason it is recommended to consider such expenses as a service cost attributable to the subsidiary.

[50] 1995 Guidelines, para. 7.12.

c. Activities and costs for the initial listing on stock exchange of the subsidiary. ⇒ As noted above, expenses for the issuance of new shares should not be considered shareholder costs because they are aimed at collecting new financial resources. For this reason it is recommended to consider such expenses as a service cost attributable to the subsidiary.

d. Costs for the activity related to stock market quotation of the subsidiary in the years after the initial listing. ⇒ Considering that the listing is an opportunity for the subsidiary to collect – when necessary – new financial resources, these expenses should not be considered shareholder costs.

e. Costs for the credit rating of the parent company or of the group as a whole. ⇒ Considering that the credit rating of the parent company or of the group as a whole have a direct effect on the cost of financing of the subsidiary, these expenses should not be considered shareholder costs, unless only the parent borrows externally.

5.8. List of commonly provided services

[The services listed below are drawn from the experience of the contributors and reflect the practice of several multinational companies that usually provide them to their subsidiaries. It would be desirable for the JTPF to provide for each of them: (i) a description; (ii) one example; (iii) a revision, if applicable, to the title of the service to avoid ambiguities; (iv) a deletion, if applicable, of the services to avoid duplications or overlapping with other services; and (v) a recommendation as to the inclusion in the class of commonly provided services that shall be allocated to the subsidiaries. For these reasons, the list is provisional and should be used as a basis for further study.]

a. Information technology services, for example:
    a.1. building, development and management of the information system;
    a.2. study, development, installation and periodic/extraordinary maintenance of software;
    a.3. study, development, installation and periodic/extraordinary maintenance of hardware system;
    a.4. supply and transmission of data; and
    a.5. backup services.
b. Human resource services, for example:
    b.1. legislative, contractual, administrative, social security and fiscal activities connected to the ordinary and extraordinary management of personnel;
    b.2. selection and hiring of personnel;

b.3. assistance in defining career paths;
b.4. assistance in defining compensations and benefit schemes (including stock option plans);
b.5. definition of personnel evaluation process;
b.6. training of personnel;
b.7. supply of staff for limited period;
b.8. coordination of the sharing of personnel on a temporary o permanent basis; and
b.9. management of redundancies.

c. Marketing services, for example:
c.1. study, development and coordination of the marketing activities:
c.2. study, development and coordination of the sale promotions;
c.3. study, development and coordination of the advertising campaigns;
c.4. market research;
c.5. development and management of Internet website;
c.6. publication of magazines handed out to clients of the subsidiary (even if concerning the whole group);

d. Financial services, for example:
d.1. treasury services;
d.2. financial planning and analysis;
d.3. planning and budgetary control;
d.4. negotiation of loan and credit lines on behalf of the subsidiary;
d.5. provision of guarantees or of letters of patronage;
d.6. management of interest rate risks;
d.7. factoring;
d.8. foreign exchange hedging services; and
d.9. cash pooling management.

e. Legal services, for example:
e.1. assistance drafting and reviewing of contracts and agreements;
e.2. ongoing legal consultation;
e.3. drafting and commissioning legal and tax opinions;
e.4. assistance in the fulfilment of legislative obligations;
e.5. assistance in the judicial litigation;
e.6. centralized management of relationship with insurance companies and brokers;
e.7. tax advice;
e.8. transfer pricing studies; and
e.9. protection of intangible property.

f. Accounting and administration services, for example:
f.1. assistance in the drawing up of the accounting procedures;
f.2. assistance in the preparation of the budget and operating plans;

f.3. keeping of the mandatory books and accounts;

f.4. assistance in the preparation of periodical financial statements, annual and extraordinary balance sheets or statements of account (different from the consolidate financial statement);

f.5. assistance in compliance with fiscal obligations, such as filing tax returns, computing and paying taxes, etc.;

f.6. data processing;

f.7. audit of the account of the subsidiary[51]; and

f.8. management of the invoicing process.

g. Technical services, for example:

g.1. assistance regarding plants, machineries, equipments, processes, etc.;

g.2. planning and executing ordinary and extraordinary maintenance activities on premises and plants;

g.3. planning and executing ordinary and extraordinary restructuring activities on premises and plants;

g.4. transfer of technical know-how;

g.5. providing guidelines for the products' innovation;

g.6. production planning to minimize excess capacity and meet demand efficiently;

g.7. assistance in planning and implementing capital expenditure;

g.8. efficiency monitoring; and

g.9. engineering services.

h. Quality control services, for example:

h.1. providing quality policies and standards of the production and provisions of services;

h.2. assistance in obtaining quality certifications (e.g. ISO 9000); and

h.3. development and implementation of client satisfaction programmes;

i. Other services:

i.1. strategy and business development services in case there is a connection with an existing or to be established subsidiary;

i.2. corporate security;

i.3. research and development;

i.4. real estate and facility management;

i.5. logistic services;

i.6. inventory management;

i.7. advice on transport and distribution strategy;

i.8. warehousing services;

i.9. purchasing services and sourcing raw materials;

i.10 cost reduction management;

i.11. packaging services; and

[51] See above at 5.5.1, lett. d.

i.12. customer services.

ANNEX 1 - INTERNAL LEGISLATION		
Country	**Are there specific provisions dealing with the deduction of shareholder costs?**	**Is there a definition of shareholder costs and/or specific rules for their identification?**
Austria	**No.** General rules concerning the deduction of business expenses are applicable. According to Sec 4(4) of the Income Tax Act, costs or expenses are regarded as deductible business expenses if they are caused by the business.	**No.**
Belgium	**No.** The general provisions regarding the deductibility of costs and transfer pricing are applicable. In particular, according to Art. 49 ITC to be tax deductible costs have to be: – related with the professional/business activity; – incurred or born during the taxable period; – incurred to acquire or maintain taxable income; and – their authenticity and amount has to be justified by the taxpayer. Applied to the field of transfer pricing and shareholder costs these conditions boil down to the requirement that the expense must be borne for the benefit of the subsidiary and must be connected with that subsidiary's business activity. Furthermore, Art. 26 ITC allows the tax authorities to add to the income of Belgian companies' profits which were transferred to another taxpayer under conditions that are considered to be "abnormal or benevolent". Finally, in 2004, Art. 185(2) ITC introduced the arm's length standard in the Belgian legislation.	**No.**
Bulgaria	**No,** there are no specific provisions dealing with the deduction of shareholder costs but two specific provisions set forth by Arts.	**No.**

ANNEX 1 - INTERNAL LEGISLATION		
Country	**Are there specific provisions dealing with the deduction of shareholder costs?**	**Is there a definition of shareholder costs and/or specific rules for their identification?**
	32 and 33 of Law on Corporate Income Taxation could affect the deductibility of some specific shareholder costs. Pursuant to the first of the above-mentioned provisions, any cost associated with the incorporation of a commercial company, such as registration fees, legal fees, translation costs, etc., would be recognized at the level of the newly incorporated entity only and could not be recognized at the level of the shareholder that incurred them. Only in case the incorporation of the new entity is cancelled for some reason and does not take place could said costs be recognized as deductible in the books of the respective shareholder. The second statutory provision deals with travel and per diem/accommodation expenses of members of the managing bodies of the commercial company and its employees, to the extent related to the business operations of the company. From this category of deductible expenses the law explicitly carves out as non-deductible the travel and accommodation expenses for shareholders when incurred in relation to their capacity of shareholders (e.g. the travel and accommodation costs of shareholders related to their participation at the shareholders meeting are non-deductible). The general provisions regarding the deductibility of costs and transfer pricing are applicable. In general, according to Article 26 of the Law on Corporate Income Taxation, expenses are deductible if booked in compliance with accounting legislation and related to the business operations of the taxpayer, which do not qualify as "hidden distribution of profit". The latter definition could cover any expense booked by a taxpayer in	

ANNEX 1 - INTERNAL LEGISLATION		
Country	**Are there specific provisions dealing with the deduction of shareholder costs?**	**Is there a definition of shareholder costs and/or specific rules for their identification?**
	favour of a shareholder or related thereto party, which is not connected with business operations or exceeds normal market levels, as well as interest expenses under a loan facility meeting specific criteria. The transfer pricing legislation, set forth by Articles 15 and 16 of the Law on Corporate Income Taxation, provides that transactions between related parties should be executed at arm's length.	
Cyprus	**No.** General rules concerning the deduction of business expenses are applicable. Subject to Sec. 9(1) of Cyprus Income Tax Law 118(I)/2002 (as amended), expenses wholly and exclusively incurred in the production of taxable income are deductible. In addition, the arm's length principle, set forth by Art. 33 of the Cyprus Income Tax Law is applicable.	**No.**
Czech Republic	**No.** General rules concerning the deductibility of expenses and transfer pricing rules are applicable. In particular: (i) according to Art. 24(1) of the Czech Income Tax Act, "the expenses spent on generation, assurance and maintenance of taxable incomes are, for the purpose of statement of tax base, deducted in the amount approved by taxpayer and in the amount determined by this Act or specific regulations" and (ii) according to Art. 23(7) of the Czech Income Tax Act, if the prices concluded between related parties differ from prices which would be agreed between independent entities under the same or similar conditions, the tax authorities should adjust the tax payer's tax base for the difference ascertained. Related entities are defined as entities related through capital (at least 40% direct or indirect control) or entities having at least one person participating in the management of both.	**No,** but there is a classification of the expenses related to the holding of shares in subsidiary in "direct" or "indirect". Tax non-deductibility of indirect expenses related to the holding of shares in subsidiary can be deemed to be 5% of dividends received.

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Country	**Are there specific provisions dealing with the deduction of shareholder costs?**	**Is there a definition of shareholder costs and/or specific rules for their identification?**
	In addition, Art. 25(1)(zk) of the Czech Income Tax Act contains a provision limiting the deductibility of the costs that a parent company incurs in connection to the holding of shares in subsidiaries.	
Denmark	**No.** General rules concerning the deduction of business expenses are applicable. According to Sec. 6(a) of the State Income and Net Worth Tax Act, expenses related to current income are deductible. The general transfer pricing provision is stipulated in Sec. 2 of the Tax assessment Act.	**No.**
Estonia	**No.** General rules concerning taxable non business expenses and transfer pricing are applicable. In particular, under the Estonian corporate income tax system only profit distributions are taxable, which also include non-business expenses. According to the general rule, expenses are considered related to business if they have been incurred for the purposes of deriving income from business or are necessary or appropriate for maintaining or developing such business, and the relationship of the expenses with business is clearly justified. The taxation of non-business expenses is provided in Sec. 51(1) of the Income Tax Act (adopted on 15.12.1999, in force as from 01.01.2000, last amended on 23.10.2008). The criteria of whether or not the expenses are related to business are indirectly derived from Sec. 32(2) of the Income Tax Act, although the latter provision applies only to individuals. Pursuant to such provision "Expenses are related to business if they have been incurred for the purposes of deriving income from taxable business or are necessary or appropriate for maintaining or developing such	**No.**

ANNEX 1 - INTERNAL LEGISLATION		
Country	**Are there specific provisions dealing with the deduction of shareholder costs?**	**Is there a definition of shareholder costs and/or specific rules for their identification?**
	business and the relationship of the expenses with business is clearly justified, or if the expenses arise from subsection 13 (1) of the Occupational Health and Safety Act.“ The arm’s length standard is set forth by Sec. 50(4) and (5) of the Income Tax Act. In addition it worth mentioning the Decree of the Minister of Finance (decree no. 53, in force as of 01.01.2007), “Methods of Calculation Values of Controlled Transactions”, which contains a separate section on Intra-Group Services (Sec. 6). The general rule described in Sec. 6 is that the intragroup service is considered provided if the respective group member is provided or may be provided in the future with an economic benefit due to such service, and if a non-related party in comparable circumstances would have been willing to pay for such a service or to provide such a service. The Decree – which follows closely the wording of the OECD Transfer Pricing Guidelines and refers to the latter as a suggested reference material – also contains provisions regarding the “duplication of services” and “incidental benefits”, which are very similar to the wording of the OECD TP Guidelines.	
Finland	**No.** General rules concerning the deduction of business expenses and transfer pricing are applicable. According to the Finnish Business Income Tax Act (“BITA”) (*laki elinkeinotulon verottamisesta*) (24.6.1968/360), Sec. 7, expenses incurred for the purpose of acquiring or maintaining business income are deductible. In Sec.8 of BITA the aforementioned Sec. 7 is further defined by listing examples of expenses that would, inter alia, constitute deductible expenses within the meaning of Sec. 7.	**No.**

ANNEX 1 - INTERNAL LEGISLATION		
Country	**Are there specific provisions dealing with the deduction of shareholder costs?**	**Is there a definition of shareholder costs and/or specific rules for their identification?**
	Accordingly, as a principal rule, an expense is tax deductible for a Finnish company belonging to an international group of companies only if that expense promotes that company's business operations either directly or indirectly and only to the extent the expense is at arm's length. The Finnish Act on Assessment Procedure ("AAP") (*laki verotusmenettelystä*) (18.12.1995/1558) contains Sec. 31 based on which an adjustment on transfer pricing established between related parties can be assessed, i.e. any profits that would have accrued to a Finnish company but due to the non-arm's length conditions have not so accrued may be included in/added to the taxable income of that company.	
France	**No.** The general provision regarding the deductibility of costs (Art. 39-1-1° of the French Tax Code), and specific provision regarding transfer prices (Art. 57 of the French Tax Code) apply to shareholder costs. Under these provisions, costs are deductible to the extent they are incurred in the interest of the paying company, i.e. if (i) they relate to a service effectively rendered to the paying company and (ii) the price for such service is normal / arm's length.	**No.**
Germany	**No.** The general provision regarding the deductibility of business expenses (Sec. 8(1) of the Corporate Tax Act in conjunction with Sec. 4(4) of the Income Tax Act), and specific provisions regarding transfer pricing (Sec. 8(3) of the Corporate Tax Act and Sec. 1 of the Foreign Tax Act) apply to shareholder costs. Under these provisions, expenses are deductible to the extent	**No.**

ANNEX 1 - INTERNAL LEGISLATION		
Country	**Are there specific provisions dealing with the deduction of shareholder costs?**	**Is there a definition of shareholder costs and/or specific rules for their identification?**
	that (i) they are caused by the business and (ii) do not exceed an arm's length amount.	
Greece	**Yes.** According to Art. 31 § 1(ih) of the Greek Income Tax Code (Law 2238/1994), the costs for administrative and other services that are allocated to a local subsidiary from affiliated entities or third parties related to the general interests of a group can be deducted to the extent that they contribute to the production of income in Greece. If the above costs are due to non-resident companies, and to the extent that the respective amounts exceed either 5% of the resident company's own costs of the same nature or the amount of EUR 100,000, the deduction of such costs is subject to audit by a special committee established in the tax audit centres. The percentage of costs allowed for deduction for Greek income tax purposes may not be higher than the average of respective percentages of costs that are allocated by the group in question to affiliates in other countries. By a special anti-avoidance provision, amounts charged by companies located in offshore jurisdictions (i.e. tax havens) are not allowed for deduction.	**No.**
Hungary	**No.** General rules concerning the deductibility of expenses and transfer pricing rules are applicable. Section 8(1)(d) of the Hungarian Corporate Income Tax Act (CIT Act) explicitly states that those costs that do not serve the profit generating activity of the enterprise are not recognized for tax purposes. In this respect, Annex 3 of the CIT Act provides a number of examples that must be regarded as deductible or non-deductible without the necessity or possibility to evidence the profit-generating nature of the given cost. These lists are not exhaustive and none of the	**No.**

ANNEX 1 - INTERNAL LEGISLATION		
Country	**Are there specific provisions dealing with the deduction of shareholder costs?**	**Is there a definition of shareholder costs and/or specific rules for their identification?**
	items included relate to shareholder costs or allocation of costs between a parent company and its subsidiary. Therefore, the deductibility of costs must be examined on a case-by-case basis, in which respect the below transfer pricing considerations are also to be taken into account. According to Sec. 18 of the CIT Act, any contract concluded between a Hungarian company and its related entity is subject to the Hungarian transfer pricing legislation. The Hungarian transfer pricing rules do not prescribe that transactions between related parties must be concluded at arm's-length conditions. Instead, the objective of the Hungarian transfer pricing legislation is that the interested parties reflect the effect of their related party contracts in their corporate tax return as if the contract were signed with arm's-length conditions. Accordingly, if the contract price applied between a parent company and its Hungarian subsidiary were not stipulated at arm's length, and, as a result, the Hungarian company's pre-tax profit were lower than it would be at the arm's length consideration, the Hungarian company should adjust its pre-tax profits in its corporate tax return by the difference between the arm's length contract price and the actual contract price. If the Hungarian company failed to make such adjustment, the Hungarian tax authority is authorized by the law to modify its pre-tax profit by the said difference, to establish a corporate tax shortfall and to apply penalties.	
Ireland	**No.** General rules concerning the deduction of business expenses are applicable. Generally, in order to be deductible, expenses	**No.**

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	must be "wholly and exclusively" incurred for the purpose of the company's trade. Section 81(2)(a) of the Taxes Consolidation Act 1997 provides that, "in computing the amount of the profit or gains to be charged to tax (…) no sum shall be deducted in respect of (…) any disbursement or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade". The strict legal position is that a payment by a subsidiary to a parent for a service that is partly for the benefit of the parent would not be deductible at all in the computation of the subsidiary's trading profits. Nevertheless, where an analysis was capable of being done, such a payment would probably be apportioned between the allowable and disallowable part, and it is likely that this treatment would not be questioned if the subsidiary was chosen for tax audit, but this would depend on the facts and circumstances involved.	
Italy	**No.** General rules concerning the deduction of business expenses and transfer pricing are applicable. According to Art. 109(5) of the Income Tax Act, "expenses and other charges […] shall be deductible if and to the extent to which they relate to activities or assets that generate earnings included in the taxable income […]." In addition, according to the Italian transfer pricing legislation, set forth by Art. 110(7) of the Income Tax Act, components of income deriving from transactions with not resident companies belonging to the same group shall be valued on the basis of the normal value (at arm's length) of the services received.	**No.**
Latvia	**No.** General rules concerning the deduction of business expenses and transfer pricing are applicable. Section 5, Paras. 1 and 2 of	**No.**

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Country	**Are there specific provisions dealing with the deduction of shareholder costs?**	**Is there a definition of shareholder costs and/or specific rules for their identification?**
	the Law on Corporate income tax identifies the expenses not directly related to economic activity that are not deductible. In particular, according to such provision, expenses not directly related to economic activity include "all expenses incurred (…) for relaxation, pleasure trips and recreational events for owners or employees, and travel not associated with economic activity of owners or employees with the motor vehicles of the taxpayer, and benefits, gifts, credits and loans turned into gifts, as well as other disbursements in cash or other form (in kind) to owners or employees that are not set out as remuneration for work performed or that are not related to the economic activity of the inland undertaking and permanent representation. The amount of costs relating to the development of social infrastructure facilities belonging to a [tax]payer shall not be deducted from taxable income." In addition, according to the Latvian transfer pricing legislation, set forth by Sec. 12 of the Law on Corporate income tax, if services are purchased at prices that are higher than the market price from an affiliated foreign undertaking, profit shall be increased of such difference.	
Lithuania	**No.** General rules concerning the deduction of business expenses are applicable. Under Lithuanian laws, allowable deductions include all the usual costs that an entity actually incurs for the purpose of earning income or receiving economic benefit. [Art. 17 of the Law on Profit Tax of the Republic of Lithuania (No IX-675 of 20 December 2001)].	**No.**
Luxembourg	**No.** General rules concerning the deduction of business expenses	**No.**

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	are applicable. According to Art. 45(1) of the Income Tax Act, "deductible business expenses are expenses that are provoked exclusively by the enterprise." Furthermore, according to Art. 45(2), business expenses that are economically connected to exempt income are not deductible. For participations qualifying under the Luxembourg participation exemption, Art. 166(5) stipulates that business expenses directly economically connected to exempt income from a participation.	
Malta	**No.** In the absence of specific rules, questions on the deductibility of shareholders' costs would be decided by reference to the general rule of Maltese law according to which a company may claim expenses to the extent that they are proved to have been wholly and exclusively incurred by it in the production of its income [Art. 14 of the Income Tax Act (Chapter 123 of the laws of Malta)]. This is a very restrictive test and the tax authorities acknowledge the need for some flexibility. Nonetheless, deductions are only allowed if there is a demonstrable connection between the expense incurred and the income produced. On this basis, expenses incurred by a parent company for its own benefit and charged to its subsidiaries would probably not be allowable as a deduction against the income of the subsidiaries. Furthermore, the arms' length principle, set forth by Art. 5 of the Income Tax Management Act (Chapter 372 of the laws of Malta), is applicable.	**No.**
Netherlands	**No.** It is worth noting that in the Netherlands there is no specific provision indicating which costs are deductible. According to	**No.**

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	Art. 3.8 of the Dutch Income Tax Act 2001, "Profit from an enterprise (profit) is the amount of the total benefits, under any name or form, which are acquired from an enterprise." Case law ruled that the term "benefits" includes both positive and negative components of an enterprise's profit or loss (Lower Court of the Hague followed by the Dutch Supreme Court in its case of 9 January 1980). In further court cases, the Supreme Court has ruled that deduction of expenses made by companies is not allowed if these expenses have no business character. For instance, Supreme Court 21 September 1994, BNB 1995/15, in which deduction of travel costs was denied as the company could not prove that these costs had a business character. In another case, Supreme Court 14 June 2002, BNB 2002/290, ruled that expenses made by an entity only lack a business character if these expenses were made to satisfy the personal needs of the shareholder of the entity. In addition, Art. 9 of Dutch Corporate Income Tax Act mentions a non-exhaustive list of costs that are in principle deductible, that includes: "a) shares in the profit granted to managers and other personnel with regard to employment performed in the enterprise; b) shares in the profit which constitute the compensation for the provision of a concession or a license on a patent or of another similar service, such as transfers or purchases, provided that these shares in the profit are not due to incorporators, shareholders, members or participants as such; c) shares in the profit of an insurance enterprise due to the insured according to their insurance;	

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	d) costs of incorporation, as well as costs of changing the equity; e) the share in the profit of a taxable limited partnership that is due to the fully liable partners as such; f) for the enterprises of public legal persons meant in Article 2, first paragraph, letter f: a reasonable interest rate to be determined by our Minister, calculated over the equity at the beginning of the year; and g) distributions by a co-operative or a society on co-operative basis from the annual profits available therefore on the basis of the services rendered to or by members in that year – not including the provision of equity by members as such - up to the amount of that part of the profit of that year determined under the second paragraph, to the extent that these distributions are made to members who are individuals [...].” Finally, the deduction of shareholder costs is subject to the application of the arm’s length principle, set forth by Art. 8b, paragraph 1 of the Dutch Corporate Income Tax Act.	
Poland	**No.** General rules concerning the deduction of business expenses and transfer pricing are applicable. According to Art. 15 of the Corporate Income Tax Act of 15 February 1992, an expense is deductible if incurred in order to earn income and if not expressly excluded. In addition, according to the Polish transfer pricing legislation, set forth by Art. 9a of the Corporate Income Tax Act, components of income deriving from transactions with	**No.**

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Country	**Are there specific provisions dealing with the deduction of shareholder costs?**	**Is there a definition of shareholder costs and/or specific rules for their identification?**
	non-resident companies belonging to the same group shall be valued at arms' length.	
Portugal	**No.** General rules concerning the deduction of business expenses and transfer pricing are applicable. Basically, business expenses are deductible to the extent they are indispensable for the purpose of gaining or producing taxable income, or for the maintenance of its source. This main rule is stipulated in Art. 23º no. 1 of the Corporate Income Tax Code. Furthermore, the arm's length principle, set forth by Art. 53 of the Corporate Income Tax Code, is applicable.	**No.**
Romania	**Yes** – even if there is no express reference to the concept of "shareholder costs". In particular, according to Point 41 of the Fiscal Norms under Art. 11 of the Fiscal Code, costs for administration, management, consulting and other similar services shall be deducted at central or regional level by the parent company, for the group as a whole. This type of activity would not justify a charge to the recipient companies as long as it results from the legal organisation of the group or other legal relationships established between members of the group. Such expenses could be deducted only if the parent company provides additional services to its subsidiaries. Moreover, one would not be entitled to deduct management and other monitoring fees if such fees are incurred only for the group interest and if the same kind of services would not have been accepted between independent enterprises.	**No.** There is no specific definition of shareholder costs in the Fiscal Code.
Slovak Republic	**No**. There are only provisions governing (i) the general tax deductibility (expense incurred in order to generate, ensure or maintain the taxable income in accordance with Sec. 2(i) of the	**No.**

ANNEX 1 - INTERNAL LEGISLATION		
Country	**Are there specific provisions dealing with the deduction of shareholder costs?**	**Is there a definition of shareholder costs and/or specific rules for their identification?**
	Income Tax Act as amended); and (ii) the tax deductibility of service costs between related parties. In particular such costs are deductible if (i) documented as being related to the business of the taxpayer, (ii) the taxpayer would be willing to buy the same service by an unrelated party (or perform it in house), (iii) the price is arm's length, and (iv) there is evidence of the aggregate amount of the expenses and their distribution among the beneficiaries (Sec. 17 Subsec. (5) Income Tax Act as amended).	
Slovenia	**Yes.** The Slovenian Transfer Pricing Regulation (Art. 22 Para. 3) deals expressly – within the general intragroup services rule – with identification and deductibility of shareholder activities that cannot be regarded as intragroup services and therefore cannot be charged to the associated entities.	**Yes.** There is the following definition: "Activity costs are not justified to be charged as services if such costs are charged by the associated entity to other entity because of its own share in the capital, management, control or voting rights, and the associated persons would not be willing to pay for such an activity in the same or comparable circumstances. "Comparably, such activity costs are: – activity costs regarding legal regulation of 'parent/head entity' (costs in relation to the shareholder meetings of 'parent/head entity', share capital issuing in 'parent/head entity' and supervisory board), – costs regarding requirements of 'parent/head entity' for reports, including consolidated reports, – costs of asset collection for takeover of shares." (Art. 22 Para. 3 Slovenian Transfer Pricing

ANNEX 1 - INTERNAL LEGISLATION		
Country	**Are there specific provisions dealing with the deduction of shareholder costs?**	**Is there a definition of shareholder costs and/or specific rules for their identification?**
		Regulation)
Spain	**No.** However, there is a general provision according to which all intragroup services must generate value added or a potential value added to the recipient company(ies) as a condition for their deductibility (Art. 16.5 of the Spanish Corporate Income Tax Act). In relation to the deductibility of the management costs attributable to permanent establishments located in Spain, however, the Spanish legislation requires in addition to the general requirements that the costs are supported through a report, which must be filed annually along with the tax return, containing information on the amount of the costs as well as the criteria by which the costs are apportioned. [Art. 18.1.b) of the Spanish Non-Resident Income Tax Act (*Real Decreto Legislativo 5/2004*)]	**No.**
Sweden	**No.** General rules concerning the deduction of business expenses and transfer pricing are applicable. According to Chap. 16, Sec. 5 of the Income Tax Act (*Inkomstskattelagen*) (1999:1229), all costs incurred to generate or maintain income are deductible. In addition, according to the Swedish transfer pricing legislation, set forth by Chap. 14, Sec. 19 Income Tax Act, components of income deriving from transactions with non-resident companies belonging to the same group shall be valued at arm's length.	**No.**
United Kingdom	**No.** However, the UK transfer pricing legislation (Schedule 28AA ICTA 1988) expressly defers to the OECD Guidelines.	**No.**

ANNEX 2 - TAX AUTHORITY GUIDANCE	
Country	**Is there tax authority guidance regarding the deductibility of shareholder costs and their identification?** **Is there tax authority guidance regarding the identification of shareholder costs?**
Austria	**No** specific tax authority guidance on shareholder costs but some indications are provided by two rulings. The first concerns the charge of group reorganization costs (EAS 2153 – 28/10/2002): Costs for the management and organization of a group, for the corporate policy and for the financial budgeting cannot be charged to subsidiaries. More in general, the legal organization of the group is in the ownership interest of the parent. The second ruling (EAS 2913 – 23/11/2007) concerns the control function of the parent company that may represent a chargeable service if required by the subsidiary. In particular, only if the subsidiary can take a measurable and identifiable advantage of the newly established control functions beyond casually arising advantages, can the payment of the subsidiary be considered a business expense. Furthermore, from the Austrian Corporate Income Tax Guidelines (rec. 1144) a distinction between shareholders' activities and intragroup services may be derived, since the Guidelines provide that, "the charge of expenses of the parent company for the management of the group and for not quantifiable advantages attributable solely to the affiliation to the group (market benefits resulting from the name of the group, organisational costs, budgeting and controlling of the group) has its cause in the ownership interest of the parent company and is therefore seen as hidden dividend." However, if the parent company performs services for the whole group (in particular, "advertising, research and development, data processing, education of employees, accounting, consulting, supply of goods and services"), the refund of these costs (plus mark-up) is a deductible business expense.
Belgium	**No** specific tax authority guidance on shareholder costs but the Circular letter dated 28 June 1999 (Circular no. AFZ/98-003) contains a summary and translation of the OECD Guidelines on transfer pricing and indicates that, in the absence of specific guidance from the tax administration, the OECD Guidelines can function as a guideline in Belgium.
Bulgaria	**No.**
Cyprus	**No** specific tax authority guidance on shareholder costs. Cyprus tax legislation does not include detailed or sophisticated transfer pricing rules. This inevitably entails a rather wide discretion being vested with the tax authorities while inspecting cases potentially involving a breach of applicable transfer pricing rules. The Cypriot tax authorities will generally follow OECD guidelines as well as widely and internationally accepted transfer pricing principles. Situations that involve intragroup services or charges are assessed on a case-by-case basis predominantly based on, inter alia, the application of

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	Art. 33 of the Cyprus Income Tax law.
Czech Republic	**No.** In the Czech Republic there is no specific tax authority guidance on identification of shareholder costs. The Ministry of Finance, however, in interpreting the provision set forth by Art. 25(1)(zk) of Czech Income Tax Act, provided the following examples of costs related to the holding of shares in subsidiaries (non-deductible for the parent due to the participation exemption regime): – costs born by the parent company where the ultimate beneficiary is the subsidiary and the costs are not recharged to the subsidiary; – costs of the parent company on direct management of a subsidiary that are not recharged to the subsidiary; and – interest costs on loans granted to the subsidiary for the purpose of settlement of liabilities with respect to the decrease of equity (distribution of dividends to parent company).
Denmark	**Yes,** but very limited. The Danish tax authority guidelines on transfer pricing (the Government Order on Documentation on price setting dated 26 February 2006) only provide that shareholder costs cannot be considered as service expenses for the subsidiary as these costs are not incurred in the interest of the subsidiary. The following examples of what are considered to be shareholder costs are provided: – costs of activities relating to the juridical structure of the parent company itself, issuing of shares in the parent company and costs of the supervisory board; – costs relating to reporting requirements of the parent company including the consolidation of reports; and – costs of raising funds for the acquisition of its participations.
Estonia	**No.**
Finland	**No.**
France	**No.**
Germany	**Yes.** The administrative guidelines of 1983 (Secs. 6.1, 6.2.3 and 6.3) provide that no charge may be made for the administration, management, control, advisory or similar functions insofar as they arise from shareholding relationships or from other connections establishing a relationship of the parties. A charge can be made only if such entities carry out services for the direct benefit of the related party. The guidelines specify that: – a charge could be considered outside the context of shareholder relationship if third party would have

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Country	**Is there tax authority guidance regarding the deductibility of shareholder costs and their identification?** **Is there tax authority guidance regarding the identification of shareholder costs?**
	agreed to it; – the paying enterprise must have agreed to the charge in advance and must be able to justify for it; – a charge is not possible if the cost have already been borne by the recipient company in some other way; and – the service must be actually performed. In case of averaged charges for a fluctuating supply of service the average must correspond to the actual services used over a period of years. The following examples of chargeable services are provided: – bookkeeping and similar activities such as specific business and legal advice for a related party; – the supply of staff for limited periods including managerial employees of related parties; – training and social security costs of persons working for a related party in that party's own interest; – services of parent in obtaining goods and services delivered to the subsidiary; and – the making available of services on demand insofar as this is customary in the business, and insofar as the subsidiary needs these services and has actually used them to a meaningful extent. By contrast, the following examples of costs that cannot be charged by the parent to the subsidiary are provided: – mere membership in a group of companies including the right to use the group name, and including the advantages enjoyed by subsidiaries solely as a result of their legal, financial and organizational links to the group; – the activities of its own directors as such and for its shareholder meetings; – the legal organization of the group as a whole and for its overall production and investment planning; – activities which result from its position as shareholder including those related to general management and internal auditing and other checks serving the needs of top management; – protection and administration of investments in the subsidiaries; and – group management, including managerial functions of subsidiaries that the holding company management has assumed in order to improve its own ability to prepare, implement and to control its management policies, including planning, business decisions and coordination.
Greece	**No** specific transfer pricing guidance on shareholder costs; however, certain indications are provided by a ruling. In particular, in a Ministerial Decision initially issued in 2005 (Pol. 1005/2005), which intends to codify all the deductible

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	expenses and is subject to regular update, it is stated that, "the remuneration paid to a third party for an internal audit is deductible provided that the audit is not carried out for the account of the local or foreign parent company." Such example shows that the administration fully endorses the principle that costs made for the benefit of the shareholder are not deductible at the level of the company. There is no guidance for the identification of shareholders costs by the tax authorities. However, the Ministry of Finance has accepted a consultative document issued by the competent body on the accounting standards as regards the qualification of certain expenses as reference for deduction of head-office administrative expenses at the level of a local branch for the purposes of Art. 100 § 2 of the Greek Income Tax Code mentioned above (Pol. 1191/1997).
Hungary	**No.**
Ireland	**No.**
Italy	**Yes.** Circular letter no. 32 of 22 September 1980 explains that parent companies usually perform controlling functions over their subsidiaries typical of the shareholders. To determine if a service is a shareholder activity a benefit test over the subsidiary must be applied. Nevertheless, it could happen that, even if there is a benefit for a subsidiary, this could be only occasional and therefore a charge by the parent cannot be made. The following example is provided: In exercising its control function a parent company finds and eliminates a flaw in the production of the subsidiary, avoiding damage for the latter company. Nevertheless, since the benefit for the subsidiary is only a by-product of the parent own activity, a charge cannot be made by the parent. Another example concerns the audit of the accounts carried on by the parent over the subsidiary. To determine if there is a benefit for the latter company the following elements should be considered: – whether the subsidiary already has personnel performing the same functions; – whether the parent does not share with the subsidiary the results of the auditing; – whether audit is focused on the compliance with the guidelines provided by the head office more than the accuracy and functionality of the accounting system; and – no changes in the accounting system of the subsidiary are implemented as consequence of the audit. In such cases, according to the Italian tax authorities, there is not a benefit for the subsidiary.

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Country	**Is there tax authority guidance regarding the deductibility of shareholder costs and their identification?** **Is there tax authority guidance regarding the identification of shareholder costs?**
Latvia	**No.**
Lithuania	**No** specific transfer pricing guidance on shareholder costs. However, official commentary of the Law on Corporate Income Tax (No IX-675 of 20 December 2001) contains some examples with respect to the treatment of costs that should be deducted by the shareholder rather than by the subsidiary. For example, expenses incurred and directly related to the process of establishment of the subsidiary or costs incurred with relation to the issue of new shares of the subsidiary (increase of the share capital), are considered to be non-allowable deductions of the subsidiary for corporate income tax purposes as such costs are not directly related with the economic activities carried out by the subsidiary. Rather, such costs should be accounted as the acquisition expenses of financial instrument by the shareholder. Moreover, recently, the official commentary of the Law on Corporate Income Tax was supplemented by the provision that costs incurred by the holding company related to the management of its subsidiaries are considered as the allowable deductions of such holding company for corporate income tax purposes. However, there are no explanations provided by Lithuanian tax authorities as to what is considered to be "management of subsidiaries by the holding company" for corporate income tax purposes.
Luxembourg	**No.**
Malta	**No.**
Netherlands	**Yes.** Decree no. 2004/680M identifies the following non-exhaustive list of shareholder activities that cannot be charged to the subsidiaries: 1. Activities that are related with the legal structure of the corporation itself [1.1 compliance with the requirements of Book of the Civil Code, as organizing, preparing and holding shareholders meetings, the activities related to the preparation and approval of the annual accounts and the deposit thereof with the Chamber of Commerce, the activities of the board of directors to the extent this regards the performance of the legal review activities, the activities of the Works Council; 1.2 compliance with the General Tax Act, to the extent of the tax obligations of the company itself, as having an administration, complying with the obligation to maintain materials, fiscal reporting, complying with the information obligation]. 2. Activities that are related to the issuance, placement or splitting of shares of the company itself, or comparable notes on

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	the bond market and activities with respect to the request of maintaining a (foreign) stock listing of the company itself [for examples, the compliance with registration requirements of a stock exchange, the activities that are related with the stock exchange listing – like the preparation of forma that need to be submitted to the US SEC related to the listing, (free) submission of the annual report etc. – membership of associations and other Institutions that represent the stock exchanges]. 3. Activities that are related with the introduction and maintenance of legal requirements regarding the review of share transactions [for example, the implementation and maintenance of a registration system on the basis of the Dutch law regarding security exchange and the reporting of share transactions by personnel of the company subject to this legislation]. 4. Activities that are related to the implementation and compliance with legal rules in codes of conduct regarding "corporate governance" of the company itself or the group as a whole (for example, the implementation of review prescribed by laws and rules regarding "corporate governance" including the inclusion paragraph on this topic in the annual report and reporting of the existing or expected policy regarding the environment social policies and policy with respect to long term enterprises). 5. Activities that are related to reporting to several interested parties regarding the company itself or the group as a whole as for examples press conferences and other communication costs with shareholders and other interested parties such as financial analyst, to the extent that communication is related to external reporting, financial results and future expectations of the company itself or the group as a whole. The decree acknowledges that "mixed activities" – qualifying part as group service and part as shareholder activity – could also exist. Some examples are provided: one concerning the costs for the management of an information system used both by the subsidiaries for the local report and by the parent for the consolidation report. Only the costs for the latter are shareholders' costs. The second set of examples concern merger and acquisition activities and shows that cases could exist in which the activity is carried out in the interest of the local subsidiary or in the interest of the shareholder.
Poland	**No** specific tax authority guidance on shareholder costs; however, certain indications are provided by some rulings. The first is an interpretation issued by the Director of the Tax Chamber in Bydgoszcz an 20 August 2008 at the request of an

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	individual taxpayer (Ref N0 IT PB3/423-301/08/DK). Such case concerned the payment made by a subsidiary to the parent company for "supporting services" that include public relations activity and providing procurement policy advice. The tax authority maintained that an expense is deductible if the following conditions are jointly met: – the expense must be incurred with a view of earning revenues or maintaining/securing a source of revenues, and must be connected with the taxpayer's business activity; – the expense should not be in the list of expenses which are not considered tax-deductible costs provided in Art. 16, Sec. l of the Corporate Income Tax Act (the "CIT Act"); – the expense must be incurred directly by the taxpayer; – the expense must be incurred in a definitive manner; and – the expense must be appropriately (sufficiently) documented. In the light of the above, costs directly and indirectly related to the revenues earned by the taxpayer are tax deductible; however, whether or not certain expenses qualify as tax-deductible costs depends on the type of the activity pursued by the taxpayer. The tax authority concluded that in the case at stake the expenses for the supporting services were tax deductible for the subsidiary, because such company has demonstrated the services improved the efficiency and that such expenses may contribute to generating or increasing the taxpayer's revenues. The second case is an interpretation issued by the Director of the Tax Chamber in Poznan on 8 September2008 at the request of an individual taxpayer (Ref No ILPB3/423-3.53/08-2/LM). The tax authorities maintained that expenses representing remuneration paid by a company to its parent company in return for supporting services provided by the latter company are tax-deductible costs. According to the taxpayer that submitted the request for an interpretation, the services in question give rise to a specific benefits for the taxpayer by increasing its profitability, reducing operational and financial costs, boosting its competitiveness and efficiency, and thus contributing to the growth in the value of the entire group. For such reason the costs in question are costs related to the taxpayer's business in general, connected with its operation.
Portugal	**No.**
Romania	**No** but internal legislation provides that the tax authorities should apply the OECD Guidelines on transfer pricing (Point 41 of the Fiscal Norms under Art. 11 of the Romanian Fiscal Code).

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Slovak Republic	**No,** only the OECD 1995 Guidelines have been published in the Financial Reporter (*Finančný Spravodajca*) issued by the Ministry of Finance, which is not legally binding. However, the methods for determining the arm's length price are determined in Sec. 18 of the Income Tax Act as amended and are identical with the OECD Transfer Pricing guidelines.
Slovenia	**No.**
Spain	**No** specific transfer pricing guidance on shareholder costs; however, according to a number of judgments the 1995 OECD Guidelines are an authoritative source of interpretation in this field. [Inter alia, Judgments of the National Court (*Audiencia Nacional*) dated 24-09-2007 (Rec. nº 447/2006); 03-10-2007 (Rec. nº 569/2004) and 04-12-2007 (Rec. nº 623/2004). Judgment of the High Court of Catalunya (*Tribunal Superior de Justicia de Cataluña*) dated 30-11-2007 (Rec. nº 105/2003).]
Sweden	**Yes,** but very limited. In the guidance for international taxation published by the Swedish Tax Agency [Tax Agency's Guidelines for International Taxation 2008 (*Handledning för internationell beskattning* 2008), p. 276 et seq.] it is stated that shareholder costs are deductible for the parent and should not be charged to other group companies. The definition is almost identical to the definition provided by the 1995 OECD guidelines, as they are defined as: "Activities performed by the parent in its capacity as shareholder causes costs for managing and protecting its investments. Such activities must be distinguished from activities aiming at making the group more profitable than would be the case if the companies were not part of the same group. The scope of the parent's shareholder costs are often depending on the group structure. As an example, the following costs are shareholder costs: – costs of activities relating to the parent company itself, such as meetings of shareholders of the parent, issuing of shares in the parent company and costs of the supervisory board; – costs relating to the parent's internal audit of the subsidiaries and annual report including group financial statements; and – costs of raising funds for the acquisition of its participations."
United Kingdom	**Yes,** but limited. The relevant tax authority guidance is based on the 1995 OECD Guidelines and states that shareholder activities should not be charged to recipient subsidiaries. The examples of shareholder activities provided quote the 1995 OECD Guidelines and include: the cost of the juridical structure of the parent company (such as issuing shares and any supervisory board); costs relating to the reporting requirements of the parent (such as producing consolidated accounts or

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	other reports for shareholders); and raising funds to invest in its subsidiaries. The UK tax authority acknowledges that there may be some difficult borderline cases within which the 1995 OECD Guidelines refer to as "costs of managerial and control (monitoring) activities related to the management and protection of the investment as such in participations" (participations being, in this context, subsidiaries). Such systems might perform more than just the shareholder reporting function, although any other benefits may be just incidental. The test in such circumstances is whether the activity is one that an independent party, under comparable circumstances, would have paid for. This will always depend on the facts and circumstances of a specific case. (HMRC's Internal Manual INTM464050).

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Country	**Are there specific decisions dealing with the deductibility of shareholder costs?**
Austria	**Yes,** there is one judgement (VwGH 14.12.2000, 95/15/0129), where the Austrian Administrative Court ruled that charges to subsidiaries cannot be treated as deductible business expenses at the level of the subsidiary if they are not paid in return for measurable and identifiable services of the parent company. In particular, the case concerned the payment made by an Austrian subsidiary to its parent company resident in the Isle of Man, under the title "group charge/allocation fees". According to the subsidiary, the fees were paid for "verifiable services" [such as market research, market observation, know-how (especially regarding the purchasing area)] and provision of services regarding sources of supply (e.g. price comparison, granting of guarantees for supplier credits etc)) rendered by the parent company to the subsidiary. However, as there existed no detailed written agreements between the subsidiary and the parent company, and as the subsidiary was not able to provide any other documents proving that the listed services were actually rendered by the parent company, the Austrian Administrative Court held that the "group charge/allocation" were not paid in return for measurable and identifiable services of the parent company and the court further stated that the payment of the fees was based on the shareholder position of the parent company (therefore has to be qualified as hidden profit distribution).
Belgium	**No** specific cases dealing with the identification and deductibility of shareholder costs. Some case law exists on the matter of the internal audits [Cass. 22 October 1961, R.W. 1964-1965, p. 360; Antwerpen 10 May 1994, F.J.F. 1994, p. 373; Brussel 29 May 1964, Rev. Fisc. 1966, p. 198; Mons 1 March 1978, J.D.F. 1978, p. 227]. As a rule of thumb, one can say that the fees paid by a Belgian subsidiary for an internal audit by its foreign parent will likely be deductible if: – the control is requested by the board of directors of the subsidiary, and – the control is performed in the interest of the subsidiary. The fact that a copy of the report is sent to the parent is irrelevant. However, the fees will not be deductible if: – the subsidiary has a separate fully organized accounting department; and – the subsidiary does not receive any result with respect to the audit.
Bulgaria	**No.**

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Country	**Are there specific decisions dealing with the deductibility of shareholder costs?**
Cyprus	**No.**
Czech Republic	**No** but there are several cases and decisions (both Supreme Court and regional court) concerning fulfilment of general tax deductibility rule. It can be concluded from most of the cases that, rather than actual, expected benefit should be present and quite a close link between costs and related income must exist when considering costs as tax deductible.
Denmark	**No** specific cases dealing with the identification and deductibility of shareholder costs. Nevertheless, some principles could be found in cases not expressly dealing with shareholder cost, as for example a case (TfS 1997, 367 V) where part of the costs incurred by a subsidiary connected with a initial public offering was classified as a disguised dividend to the principal shareholder, who in connection with the initial public offering has sold part of it's shares. In this case, both the company and the principal shareholder had directly benefited from the incurred costs. Furthermore, in Tfs 1998, 325, the Supreme Court maintained that only part of the costs connected with an initial public offering could be charged to a subsidiary because both the company and the shareholder directly benefit from such expenses.
Estonia	**No.**
Finland	**Yes,** there are some cases dealing with such issue. The Supreme Administrative Court ("SAC") (*korkein hallinto-oikeus*) has ruled in its rather old decision of KHO 1970 II 531 that a Finnish company was entitled to deduct the costs incurred from the travelling costs of foreign investors in connection with an audit, which was carried out primarily in the interest of foreign shareholders of the said company. However, it is stated in the Finnish judicial literature that too far-reaching conclusions should not be made based on this decision in assessing the question of deductibility of shareholder costs. In a more recent ruling by SAC (KHO 31.3.1998/544) it has been concluded that, also in a group of companies, costs are deductible for the company the income of which they have directly accumulated.
France	**Yes.** There are some cases dealing with the issue even if the term "shareholder costs" was not used: – Tax Supreme Court (*Conseil d'Etat*), 19 October 1988 : In this case, the court ruled that the fact that a French parent company did not invoice costs incurred in relation with the control of its foreign subsidiary (these costs consisted in travel expenses of the manager) did not characterize an advantage granted to the foreign subsidiary (and thus were deductible at the level of the French parent company) to the extent the costs were necessary to

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	appropriately manage the capital invested in the subsidiary. It seems that the court considered that (i) to protect its investment, it was in the interest of the parent company to control the management of the subsidiary, and (ii) the costs borne by the French parent for this control were not excessive (the manager was on average travelling once per year to control the subsidiary). – Paris Court of Appeal, 11 February 1997, *SA Borsumij Whery France*: In this case, the court ruled that costs invoiced by a Dutch company to its French subsidiary for services consisting in monitoring the activity of the French subsidiary and controlling its management, and the accurateness of its accounts were not tax deductible. The judge considered that the French company did not demonstrate that the costs were incurred in its own interest.
Germany	**No** specific case law on shareholder costs. Nevertheless, in a decision of the Federal Tax Court (*Bundesfinanzhof*) of 20 July 1988 (*Federal Tax Gazette* 1989, II, pp. 140–143) dealing with the deductibility of general and administrative expenses of the head office in calculating the taxable income of a German permanent establishment of a Canadian head office. The Court stated that typical control expenses incurred by the head office for either the benefit of a permanent establishment or for the benefit of the enterprise as a whole are deductible in calculating the taxable income of the German permanent establishment. The court further expressly stated that this is in contrast to the case of a shareholder-corporation relationship where control expenses of the shareholder incurred with regard to the corporation are not deductible in computing the taxable income of the corporation.
Greece	**Yes.** In numerous court decisions (Council of State Nos 3664/1990, 3214/1995, 4116-7/1997) it has been held that remuneration for services of a consulting nature is deductible only to the extent that such services are provided to the benefit of the subsidiary (or PE) and not to the benefit of the parent (head office).
Hungary	**No.**
Ireland	**No**. Ireland does not have any general transfer pricing legislation. Moreover, it is generally felt that it is not open to the Irish courts to counter transfer pricing without statutory authority, which means that the only real transfer pricing aspect for Irish tax purposes is the "wholly and exclusively" deductibility test in the context of a computation of trading profits for Irish tax purposes (see Supreme Court decision, *McGrath L/C McDermott*, 1988, stating that, under the Constitution, it is not appropriate for the courts to alter facts or invent new meanings of statutory provisions or general law in order to

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	charge tax, because that is a matter exclusively for the legislature).
Italy	**Yes.** There are different decisions dealing with deductibility of intercompany services setting forth principles applicable for the identification of the shareholder costs that cannot be charged to the subsidiaries: – In decision 26/02/2007 no.1709 the Supreme Court held that the costs for services rendered by the parent company to the subsidiaries are deductible for the latter if it is possible to demonstrate that the service gives a benefit to the subsidiary itself. The burden of proof is on the taxpayer. – In the decision of 29/07/2005 no. 158 the Provincial tax Court of Milan recognized the deductibility of intragroup services (marketing, technical services, tax and legal assistance, human resource, management, etc.) even in the presence of duplication of services (legal services rendered by the headquarters and also by local lawyers for specific issues). – In a case concerning only Italian companies (and therefore where the Italian transfer pricing legislation was not applicable) the court held that the cost charged by an Italian holding company to the Italian subsidiaries for the unitary management and coordination activities (in particular planning, auditing, administration, human resource, organization, financing, public relations, legal and tax advice) are deductible for the subsidiaries. This principle is in theory also applicable to cross border transactions where, in addition, the tax authority can also challenge the amount of the service fee charged. There are also several decisions dealing with the deductibility of general and administrative expenses of the head office in calculating the taxable income of an Italian permanent establishment; however, the principles stated are not directly applicable to shareholder costs charged by a parent company to its subsidiaries.
Latvia	**No.**
Lithuania	**No.**
Luxembourg	**No** specific decision referred to the deductibility of shareholder costs for the subsidiary; only some decisions concerning the identification of business expenses connected to exempt income (dividend). [TA 28 June 2000, No. 11553 and CE 12 March 1985, No. 6969]

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Country	**Are there specific decisions dealing with the deductibility of shareholder costs?**
Malta	**No.**
Netherlands	**Yes.** There are several decisions concerning: – *the qualification of services as intercompany services for which services fees are justified*: For example, the case BNB 1999/167 (Supreme Court, 23-12-1998, No. 33 813) concerned a Dutch BV ("D") controlled by a Japanese parent ("J"). A few of J's employees where working at D from 1984 until 1989. Those employees received payments from J besides their salary from D. Although these payments where not charged on by J, D had deducted them from its taxable profit as informal capital contributions. The tax authorities took the position that these payments where based on the continued relationship of the Japanese employees with J and that there had not been a benefit for D. Consequently a fee was not justified. The Supreme Court of the Netherlands, however, has not accepted this point of view. The Court, in line with the decree, points out that the correct criterion on which to judge whether or not this should be treated as an informal capital contribution is whether J would also have made the same payments if it wasn't for their ownership interest. Another example is the case VN 1999/31.26 (Supreme Court, 30-06-1999, No. 33 99) concerning a Dutch advertising company X B.V. ("X") acquired by a UK group. The holding charged on service fees (for global marketing and administrative activities) to X in spite of strong objections from the management of X. In addition, the share purchase agreement stated that service fees had to be approved by the management of X. The Court ruled that it had not been made plausible in any way that the fees were in line with the arm's length principle and that they could be deducted. Notwithstanding the fact that these costs had been accepted by the tax authorities in previous years, and the fact that competing companies could deduct an even higher amount in terms of percentage, the fees were not justified. – *the qualification of guarantees as intercompany services*: It is worth mentioning the case BNB 2002/10 (Supreme Court, 09-10-2001 No. 36 926) where a Dutch BV ("X") had acquired a guarantee issued by its Swiss parent company ("P"). X paid an annual fee of 33% of the principal sum to P even if X had been obliged to make considerable distribution on shares as a result of which its solvency had decreased. In spite of this X, had made sufficiently plausible that the fee was justified and in line with the arm's length principle. The Supreme Court ruled that P should receive a fee that is in a reasonable proportion to the carried risk. – *the qualification of services as shareholder costs (BNB 2005/224, LJN AZ2716):*

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Country	**Are there specific decisions dealing with the deductibility of shareholder costs?**
	In the case BNB 2005/224 (Supreme Court, 01-04-2005 No. 37 032) the Court held that the investor relation costs, aimed at convincing the share market and the analysts to buy the stock of the company, were shareholder costs. The case LJN AZ2716 (Court of Justice Amsterdam, 25-10-2006, No 03/01987 and 04/02598) concerned the investor relation services and services for the listing of the company's shares on the stock exchange. The Court held that that part of the services that related to "new" shares issued by the company at the moment of the listing was deductible at the companies' level, while in respect of the "existing" shares, the court decided that these services did not benefit the company and, therefore, they were not deductible at the company level.
Poland	**No.**
Portugal	**No.**
Romania	**No.**
Slovak Republic	**No.**
Slovenia	**No.**
Spain	**Yes.** There is a decision from the Spanish High Administrative Court (*Tribunal Económico-Administrativo Central* or "TEAC") according to which certain costs incurred by the parent company of a multinational group are considered as shareholders costs. Such costs refer to: (a) training activities received by the accounting staff in Spain in order for the Spanish subsidiary to adapt its accounting statements to the US GAAP followed by the parent company; (b) the provision of accounting manuals and of the procedures according to which the accounting statements must be prepared in order for the Spanish subsidiary to adapt its accounting statements to the US GAAP followed by the parent company; and (c) the provision of centralized forms to the group members in order to maintain uniformity in their use and completion in all the regions (*Resolución del Tribunal Económico-Administrativo Central* of 25 July 2007). Apart from this decision, it is worth mentioning that case law regarding transfer pricing generically deals with proving the effectiveness of intragroup services, their value added for the recipient and their supporting documentation; [inter alia, judgments of the National Court (*Audiencia Nacional*) dated 24-09-2007 (Rec. nº 447/2006); 03-10-2007 (Rec. nº 569/2004) and 04-12-2007 (Rec. nº 623/2004) and judgment of the High Court of Catalunya (*Tribunal Superior de Justicia de Cataluña*) dated 30-11-2007 (Rec. nº 105/2003)].

ANNEX 3 - CASE LAW	
Country	**Are there specific decisions dealing with the deductibility of shareholder costs?**
Sweden	**Yes.** However, the case law regarding the identification of shareholder costs is both very limited and old. It is, however, worth mentioning a case (RÅ 82 1:8) where the Supreme Administrative Court (*Regeringsrätten*) held that a limited liability company could deduct costs related to the convening of a general meeting because the costs, even though indirect, are mandatory under Swedish company law.
United Kingdom	**No.** As most transfer pricing disputes are settled in practice, there are few cases on transfer pricing and none relating to shareholder activities.

ANNEX 4

EXAMPLES SET FORTH BY THE US TEMPORARY REGULATIONS

In all the examples Company X is a U.S. corporation and Company Y is a wholly-owned subsidiary of Company X in Country B.

In general:

Example 1. In developing a worldwide advertising and promotional campaign for a consumer product, Company X pays for and obtains designation as an official sponsor of the Olympics. This designation allows Company X and all its subsidiaries, including Company Y, to identify themselves as sponsors and to use the Olympic logo in advertising and promotional campaigns. The Olympic sponsorship campaign generates benefits to Company X, Company Y, and other subsidiaries of Company X.

Indirect or remote benefit:

Example 2. Based on recommendations contained in a study performed by its internal staff, Company X implements certain changes in its management structure and the compensation of managers of divisions located in the United States. No changes were recommended or considered for Company Y in Country B. The internal study and the resultant changes in its management may increase the competitiveness and overall efficiency of Company X. Any benefits to Company Y as a result of the study are, however, indirect or remote. Consequently, Company Y is not considered to obtain a benefit from the study.

Example 3. Based on recommendations contained in a study performed by its internal staff, Company X decides to make changes to the management structure and management compensation of its subsidiaries, in order to increase their profitability. As a result of the recommendations in the study, Company X implements substantial changes in the management structure and management compensation scheme of Company Y. The study and the changes implemented as a result of the recommendations are anticipated to increase the profitability of Company X and its subsidiaries. The increased management efficiency of Company Y that results from these changes is considered to be a specific and identifiable benefit, rather than remote or speculative.

Duplicative activities

Example 4. At its corporate headquarters in the United States, Company X performs certain treasury functions for Company X and for its subsidiaries, including Company Y. These treasury functions include raising capital, arranging medium and long-term financing for general corporate needs, including cash management. Under these circumstances, the treasury functions performed by

Company X do not duplicate the functions performed by Company Y's staff. Accordingly, Company Y is considered to obtain a benefit from the functions performed by Company X.

Example 5. The facts are the same as in Example 4, except that Company Y's functions include ensuring that the financing requirements of its own operations are met. Analysis of the facts and circumstances indicates that Company Y independently administers all financing and cash-management functions necessary to support its operations, and does not utilize financing obtained by Company X. Under the circumstances, the treasury functions performed by Company X are duplicative of similar functions performed by Company Y's staff, and the duplicative functions do not enhance Company Y's position. Accordingly, Company Y is not considered to obtain a benefit from the duplicative activities performed by Company X.

Example 6. Company X's in-house legal staff has specialized expertise in several areas, including intellectual property law. Company Y is involved in negotiations with an unrelated party to enter into a complex joint venture that includes multiple licenses and cross-licenses of patents and copyrights. Company Y retains outside counsel that specializes in intellectual property law to review the transaction documents. Outside counsel advises that the terms for the proposed transaction are advantageous to Company Y and that the contracts are valid and fully enforceable. Before Company Y executes the contracts, the legal staff of Company X also reviews the transaction documents and concurs in the opinion provided by outside counsel. The activities performed by Company X substantially duplicate the legal services obtained by Company Y, but they also reduce the commercial risk associated with the transaction in a way that confers an additional benefit on Company Y.

Shareholder activities:

Example 7. Company X is a publicly held corporation. U.S. laws and regulations applicable to publicly held corporations such as Company X require the preparation and filing of periodic reports that show, among other things, profit and loss statements, balance sheets, and other material financial information concerning the company's operations. Company X, Company Y and each of the other subsidiaries maintain their own separate accounting departments that record individual transactions and prepare financial statements in accordance with their local accounting practices. Company Y, and the other subsidiaries, forward the results of their financial performance to Company X, which analyzes and compiles these data into periodic reports in accordance with U.S. laws and regulations. Because Company X's preparation and filing of the reports relate solely to its role as an investor of capital or shareholder in Company Y or to its compliance with reporting, legal, or regulatory requirements, or both, these activities constitute shareholder activities and therefore Company Y is not considered to obtain a benefit from the preparation and filing of the reports.

Example 8. The facts are the same as in Example 7, except that Company Y's accounting department maintains a general ledger recording individual transactions, but does not prepare any financial statements (such as profit and loss statements and balance sheets). Instead, Company Y forwards the general ledger data to Company X, and Company X analyzes and compiles financial statements for Company Y, as well as for Company X's overall operations, for purposes of complying with U.S. reporting requirements. Company Y is subject to reporting requirements in Country B similar to those applicable to Company X in the United States. Much of the data that Company X analyzes and compiles regarding Company Y's operations for purposes of complying with the U.S. reporting requirements are made available to Company Y for its use in preparing reports that must be filed in Country B. Company Y incorporates these data, after minor adjustments for differences in local accounting practices, into the reports that it files in Country B. Under these circumstances, because Company X's analysis and compilation of Company Y's financial data does not relate solely to its role as an investor of capital or shareholder in Company Y, or to its compliance with reporting, legal, or regulatory requirements, or both, these activities do not constitute shareholder activities.

Example 9. Members of Company X's internal audit staff visit Company Y on a semiannual basis in order to review the subsidiary's adherence to internal operating procedures issued by Company X and its compliance with U.S. anti-bribery laws, which apply to Company Y on account of its ownership by a U.S. corporation. Because the sole effect of the reviews by Company X's audit staff is to protect Company X's investment in Company Y, or to facilitate Company X's compliance with U.S. anti-bribery laws, or both, the visits are shareholder activities and therefore Company Y is not considered to obtain a benefit from the visits.

Example 10. Country B recently enacted legislation that changed the foreign currency exchange controls applicable to foreign shareholders of Country B corporations. Company X concludes that it may benefit from changing the capital structure of Company Y, thus taking advantage of the new foreign currency exchange control laws in Country B. Company X engages an investment banking firm and a law firm to review the Country B legislation and to propose possible changes to the capital structure of Company Y. Because Company X's retention of the firms facilitates Company Y's ability to pay dividends and other amounts and has the sole effect of protecting Company X's investment in Company Y, these activities constitute shareholder activities and Company Y is not considered to obtain a benefit from the activities.

Example 11. The facts are the same as in Example 10, except that Company Y bears the full cost of retaining the firms to evaluate the new foreign currency control laws in Country B and to make appropriate changes to its stock ownership by Company X. Company X is considered to obtain a benefit from the rendering by Company Y of these activities, which would be shareholder activities if conducted by Company X (see Example 10).

Example 12. The facts are the same as in Example 10, except that the new laws relate solely to corporate governance in Country B, and Company X retains the law firm and investment banking firm in order to evaluate whether restructuring would increase Company Y's profitability, reduce the number of legal entities in Country B, and increase Company Y's ability to introduce new products more quickly in Country B. Because Company X retained the law firm and the investment banking firm primarily to enhance Company Y's profitability and the efficiency of its operations, and not solely to protect Company X's investment in Company Y or to facilitate Company X's compliance with Country B's corporate laws, or to both, these activities do not constitute shareholder activities.

Example 13. Company X establishes detailed personnel policies for its subsidiaries, including Company Y. Company X also reviews and approves the performance appraisals of Company Y's executives, monitors levels of compensation paid to all Company Y personnel, and is involved in hiring and firing decisions regarding the senior executives of Company Y. Because this personnel-related activity by Company X involves day-to-day management of Company Y, this activity does not relate solely to Company X's role as an investor of capital or a shareholder of Company Y, and therefore does not constitute a shareholder activity.

Example 14. Each year, Company X conducts a two-day retreat for its senior executives. The purpose of the retreat is to refine the long-term business strategy of Company X and its subsidiaries, including Company Y, and to produce a confidential strategy statement. The strategy statement identifies several potential growth initiatives for Company X and its subsidiaries and lists general means of increasing the profitability of the company as a whole. The strategy statement is made available without charge to Company Y and the other subsidiaries of Company X. Company Y independently evaluates whether to implement some, all, or none of the initiatives contained in the strategy statement. Because the preparation of the strategy statement does not relate solely to Company X's role as an investor of capital or a shareholder of Company Y, the expense of preparing the document is not a shareholder expense.

Passive association/benefit.

Example 15. Company X is the parent corporation of a large controlled group that has been in operation in the information-technology sector for ten years. Company Y is a small corporation that was recently acquired by the Company X controlled group from local Country B owners. Several months after the acquisition of Company Y, Company Y obtained a contract to redesign and assemble the information-technology networks and systems of a large financial institution in Country B. The project was significantly larger and more complex than any other project undertaken to date by Company Y. Company Y did not use Company X's marketing intangibles to solicit the contract, and Company X had no involvement in the solicitation, negotiation, or anticipated execution of the contract. For purposes of this section, Company Y is not considered to

obtain a benefit from Company X or any other member of the controlled group because the ability of Company Y to obtain the contract, or to obtain the contract on more favorable terms than would have been possible prior to its acquisition by the Company X controlled group, was due to Company Y's status as a member of the Company X controlled group and not to any specific activity by Company X or any other member of the controlled group.

Example 16. The facts are the same as in Example 15, except that Company X executes a performance guarantee with respect to the contract, agreeing to assist in the project if Company Y fails to meet certain mileposts. This performance guarantee allowed Company Y to obtain the contract on materially more favorable terms than otherwise would have been possible. Company Y is considered to obtain a benefit from Company X's execution of the performance guarantee.

Example 17. The facts are the same as in Example 15, except that Company X began the process of negotiating the contract with the financial institution in Country B before acquiring Company Y. Once Company Y was acquired by Company X, the contract with the financial institution was entered into by Company Y. Company Y is considered to obtain a benefit from Company X's negotiation of the contract.

Example 18. The facts are the same as in Example 15, except that Company X sent a letter to the financial institution in Country B, which represented that Company X had a certain percentage ownership in Company Y and that Company X would maintain that same percentage ownership interest in Company Y until the contract was completed. This letter allowed Company Y to obtain the contract on more favorable terms than otherwise would have been possible. Since this letter from Company X to the financial institution simply affirmed Company Y's status as a member of the controlled group and represented that this status would be maintained until the contract was completed, Company Y is not considered to obtain a benefit from Company X's furnishing of the letter.

Example 19. (i) S is a company that supplies plastic containers to companies in various industries. S establishes the prices for its containers through a price list that offers customers discounts based solely on the volume of containers purchased. (ii) Company X is the parent corporation of a large controlled group in the information technology sector. Company Y is a wholly-owned subsidiary of Company X located in Country B. Company X and Company Y both purchase plastic containers from unrelated supplier S. In year 1, Company X purchases 1 million units and Company Y purchases 100,000 units. S, basing its prices on purchases by the entire group, completes the order for 1.1 million units at a price of $0.95 per unit, and separately bills and ships the orders to each company. Companies X and Y undertake no bargaining with supplier S with respect to the price charged, and purchase no other products from supplier S. (iii) R1 and its wholly-owned subsidiary R2 are a controlled group of taxpayers (unrelated to Company X or Company Y) each of which carries out functions comparable to those of Companies X and Y and undertakes purchases of

plastic containers from supplier S, identical to those purchased from S by Company X and Company Y, respectively. S, basing its prices on purchases by the entire group, charges R1 and R2 $0.95 per unit for the 1.1 million units ordered. R1 and R2 undertake no bargaining with supplier S with respect to the price charged, and purchase no other products from supplier S. (iv) U is an uncontrolled taxpayer that carries out comparable functions and undertakes purchases of plastic containers from supplier S identical to Company Y. U is not a member of a controlled group, undertakes no bargaining with supplier S with respect to the price charged, and purchases no other products from supplier S. U purchases 100,000 plastic containers from S at the price of $1.00 per unit. (v) Company X charges Company Y a fee of $5,000, or $0.05 per unit of plastic containers purchased by Company Y, reflecting the fact that Company Y receives the volume discount from supplier S. (vi) In evaluating the fee charged by Company X to Company Y, the Commissioner considers whether the transactions between R1, R2, and S or the transactions between U and S provide a more reliable measure of the transactions between Company X, Company Y and S. The Commissioner determines that Company Y's status as a member of a controlled group should be taken into account for purposes of evaluating comparability of the transactions, and concludes that the transactions between R1, R2, and S are more reliably comparable to the transactions between Company X, Company Y, and S. The comparable charge for the purchase was $0.95 per unit. Therefore, obtaining the plastic containers at a favorable rate (and the resulting $5,000 savings) is entirely due to Company Y's status as a member of the Company X controlled group and not to any specific activity by Company X or any other member of the controlled group. Consequently, Company Y is not considered to obtain a benefit from Company X or any other member of the controlled group.

In general, the examples set forth by the Temporary Regulations put in light that if there is a direct benefit for the subsidiary stemming from a specific activity of the parent company, a charge for the provision of the service is necessary. This is true also when the activity gives rise to a benefit for the parent to the extent that such benefit is not exclusively for the latter company.

ANNEX 5

QUESTIONNAIRE ON EXAMPLES SET FORTH BY THE US TEMPORARY REGULATIONS

Question submitted to the contributors: "Indicate for each example if you believe that the view expressed by the US tax authority would be shared by the tax authority of your country. In answering take into account the internal law, tax authority guidance and case law".

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
Austria	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y
Belgium	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	U	Y
Bulgaria	U	Y	U	U	Y	N	Y	U	Y	Y	U	U	U	U	Y	U	U	Y	U
Cyprus	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U
Czech Republic	Y	Y	Y	Y	Y	U	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Denmark	Y	Y	Y	Y	Y	Y	Y	Y	U	U	U	Y	Y	Y	U	Y	Y	U	Y
Estonia	Y	Y	Y	Y	Y	U	Y	U	Y	Y	Y	U	U	Y	Y	Y	Y	U	U
Finland	Y	Y	Y	Y	Y	Y	U	Y	U	U	Y	Y	Y	Y	Y	Y	Y	U	Y
France	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	U	Y	U	Y	Y	Y	N	U
Germany	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	U	Y	Y	Y	Y	Y	Y	N
Greece	Y	Y	Y	Y	Y	U	Y	Y	Y	Y	Y	U	U	N	Y	Y	Y	Y	Y
Hungary	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Ireland	Y	Y	Y	Y	Y	Y	Y	Y	Y	U	U	U	Y	U	Y	Y	Y	N	Y
Italy	Y	Y	Y	Y	Y	Y	Y	Y	Y	U	U	Y	Y	Y	Y	Y	Y	U	Y
Latvia	Y	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U
Lithuania	Y	Y	Y	Y	Y	U	Y	U	Y	Y	U	U	U	U	U	U	Y	U	U
Luxembourg	Y	Y	Y	Y	Y	U	Y	Y	Y	Y	Y	Y	Y	U	Y	Y	Y	U	U
Malta	Y	Y	U	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y
Netherlands	Y	Y	Y	Y	Y	U	Y	Y	U	U	U	Y	Y	Y	U	Y	U	U	U
Poland	Y	Y	Y	Y	U	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Portugal	U	Y	U	U	Y	U	Y	U	Y	U	U	U	Y	Y	Y	U	Y	U	Y
Romania	Y	Y	Y	U	Y	Y	Y	U	Y	Y	Y	U	U	U	Y	Y	Y	Y	Y
Slovak Republic	Y	Y	Y	Y	Y	U	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	U	Y
Slovenia	Y	Y	U	Y	Y	Y	Y	U	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Spain	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	U	Y
Sweden	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
United Kingdom	Y	Y	Y	Y	Y	Y	Y	Y	Y	U	U	U	Y	U	Y	Y	Y	N	U

Legend:

Y ⇒ Yes, the view would be shared.

N ⇒ No, the view would not be shared.

U ⇒ Not clear if the view would be shared.