

## Appendix 2: Questionnaires filled in for the 14 Member States

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## Introduction

The questionnaires sent to the PwC Member Firms<sup>1</sup> of the various territories involved in this Study were introduced as follows:

### Introduction to the Questionnaire

Goal of the Study	<p>The Study consists in a <i>data collection service</i> combined with a <i>comparative analysis</i> based on a review of the current income tax legislation (and the related legislative work) and information available in the public domain on existing and proposed tax measures of 14 EU Member States in relation to the so-called concepts of “Aggressive Tax Planning” (hereafter “<b>ATP</b>”) and “Non-Cooperative Jurisdiction” (hereafter “<b>NCJ</b>”). The Study is focussed on direct taxation – income and corporate tax – (primarily business taxation plus any necessary bridge to personal taxation such as the use of NCJs to avoid taxation of savings in particular).</p> <p>Note that ATP and NCJ are concepts which have no EU-wide definitions. Therefore, in order to circumvent this issue in the framework of this assignment, it has been decided that:</p> <ul style="list-style-type: none"> <li>• Only Third Countries could be considered as NCJs (to the exclusion of any EU Member State); and</li> <li>• Only operations/arrangements with Third Countries could be considered as ATPs (solely intra-EU operations/arrangements are out of scope).</li> </ul>
Goal of the Questionnaire	<p>This Questionnaire aims at collecting information on the current income tax legislation (and related legislative work or publicly available documents) on existing and proposed tax measures in your country in relation to Third Countries.</p>
Assumptions	<p>Please take into account the following assumptions when completing the Questionnaire:</p> <ul style="list-style-type: none"> <li>• Only income/direct taxation (including capital gains and withholding tax, where relevant) is considered in the scope of this Questionnaire. As mentioned above (if relevant) also comments on personal taxation might need to be included in the below Questionnaire plus quantitative information if available;</li> <li>• The input provided should only be based on the review of the income tax legislation (including double tax treaties and other international agreements), related official legislative work and official administrative doctrine (parliamentary works, parliamentary questions, practice notes, rulings, etc. – provided these documents are available in the public domain) and case law where required. It does not need to include any review of the available literature (doctrine) or of any other document which is not to be seen as official in your local territory.</li> </ul>

<sup>1</sup> “PwC” is the brand under which member firms of PricewaterhouseCoopers International Limited (PwCIL) operate and provide services. Together, these member firms form the PwC network. Each member firm in the network is a separate and independent legal entity and does not act as an agent for PwCIL or any other member firm. PwCIL does not provide any services to clients. PwCIL is not responsible or liable for the acts or omissions of any of its member firms, nor can it control the exercise of their professional judgment or bind them in any way.

## Introduction to the Questionnaire

### In Scope Measures

- **New Specific Measures:** The main purpose of the Questionnaire is to collect information on so called "New Specific Measures" comprising anti-abuse measures specifically relating to Third Countries when such measures:
  - Have been enacted after 1 January 2007 (new measures);
  - Have been substantially amended after 1 January 2007 (amended measures); or
  - Are currently discussed in bill of laws (possible future measures).
- **Other Measures:** Nevertheless, it should also comprise a high-level description of other measures comprising:
  - **Other Specific Measures:** Measures specifically relating to Third Countries that have been enacted before 1 January 2007 (and not substantially amended since 1 January 2007); as well as
  - **General Anti-Abuse Provisions:** Anti-abuse provisions which are not only applicable in relation to Third Countries (regardless whether enacted before or after 1 January 2007).

Such high-level description should include a summary of the measure (including also the purpose of the measure), the legal grounds, an impact assessment (when available), evaluation of the measure (when available) and also a high-level listing of the most relevant and recent case law (final or pending) in relation to the measure. As regards the case law, the main purpose is to provide a non-exhaustive overview of the main tendencies in relation to this measure. The overview is limited to listing the fixed case law since 1 January 2007 in relation to the measure, which can be considered as useful for a full understanding of the measure and its application in a certain Member State. Also, in case of so-called "landmark" decisions prior to 1 January 2007, these should also be mentioned in a summarised manner.

- **NCJ v. ATP Measures:** Besides, the Questionnaire intends to differentiate between Specific Measures targeting in particular NCJs or ATPs (regardless such measures are New or not). In broad terms, those measures could be defined as follows:
  - **NCJ Measures:** the focus is more on the country (almost irrespective of the transaction); whereas
  - **ATP Measures:** the focus is more on the operations/arrangements potentially concerned.

Of course, the difference between these two types of measures can sometimes appear difficult (e.g. a measure only applicable to selected Third Countries and only relating to a specific type of transactions). In such a case the measure can be considered as both an NCJ Measure and an ATP Measure.

## Introduction to the Questionnaire

### Structure of the Questionnaire

Based on these criteria, the Questionnaire is divided in three parts which should be completed depending on the level of information required for the in scope measures:

- **Part 1: Introduction:** It includes some general introductory questions which summarize the overall situation in your country as regards the existing legislation on NCJs and ATPs. This part of the Questionnaire should only be completed once.
- **Part 2: General Information:** It includes a general description of each anti-abuse measure reported in the Questionnaire (regardless of whether the measures in question have to be considered as New Specific Measures, Other Specific Measures or General Anti-Abuse Provisions). Part 2 should comprise a comprehensive overview of the anti-abuse measures existing (or currently discussed) in your local territory.
- **Part 3: Detailed Information:** It concerns detailed information on New Specific Measures only. This part should be completed for each and every New Specific Measure reported in Part 2.

Examples (Part 2 v. Part 3):

- An anti-abuse measure concerning any national or international transactions would be considered as a General Anti-Abuse Provision. Only Part 2 should be completed;
- A reporting obligation of payments made to selected Third Countries enacted in 2009 should be considered as a New Specific Measure. Part 2 and Part 3 of the Questionnaire should be completed;
- A reporting obligation of payments made to selected Third Countries enacted in 2005 should be considered as an Other Specific Measure. Only Part 2 should be completed.

## Belgium

### Part 1: Introduction

#### 1. Definition of NCJ

1.1. Is there any formal definition of “NCJ” in your country (or any other concept similar to “NCJ”)? [Yes/No]

1.1. No.

As such NCJ is not defined in the Belgian tax law (nor in public legislative work and administrative doctrine). However, in the Belgian tax law several notions or terms occur that could be linked to the notion of NCJ. Please find hereunder a listing of different articles of the Belgian tax law that refer to a notion that can be considered referring to NCJ:

- Articles 54, 198, 11° and 344, §2 of the BITC refers to the terms “[...]not subject to income tax or who is subject, as regards the income produced by goods or rights sold, to a system of taxation notably more advantageous than that to which similar income is subject in Belgium[...]”.
- In article 203 of the BITC reference is made to amongst others : “[...] a tax regime which is different than the common tax regime[...]” but also to companies “not subject to Belgian resident corporate income tax nor to a foreign tax similar to the Belgian corporate income tax” or to companies which has its residence “in a country where the common tax regime is substantially more advantageous than in Belgium”; For the purposes of this measure, the tax regime is considered as substantially more advantageous in case the applicable nominal or effective tax rate is lower than 15%;
- Article 307 of the BITC refers to countries which “For the whole taxable period during which the payment was made, is considered by the OECD Global Forum on Transparency and Exchange of Information as a State that has not substantially and effectively applied the OECD exchange of information standard” and also “[...] States with no or a low tax burden [...]”. For the purposes of this measure, the Belgian tax law defines that States are considered to have a low tax burden in case

## Part 1: Introduction

	the nominal corporate income tax rate is lower than 10%.
1.2. If the answer under 1.1. is Yes, can you please provide the definition and the explanation how it operates? [Definition]	1.2. N/A
1.3. If the answer under 1.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]	1.3. N/A
1.4. If there is no formal definition, are you aware of any problems caused by this?	1.4.

## 2. Definition of ATP

2.1. Is there any formal definition of “ATP” in your country (or any other concept similar to “ATP”)? [Yes/No]	<p>2.1. No.</p> <p>As such ATP is not defined in the Belgian tax law (nor in public legislative work and administrative doctrine). As you will notice from our below comments, there is a general anti-abuse provision in Belgium which refers to the notion of “tax abuse” and which is equally applicable to all taxpayers irrespective of the country of residence of the counterparty (thus not specifically targeted to transactions with NCJs).</p> <p>For the purposes of the anti-abuse rule, ‘tax abuse’ is defined as:</p> <ul style="list-style-type: none"> <li>• A transaction in which the taxpayer places himself – in violation with the purposes of a provision of the income tax code (or royal decrees adopted in execution of the income tax code) - outside the scope of this provision of the income tax code</li> <li>• A transaction that gives rise to a tax advantage provided by a provision of the income tax code (or royal decree adopted in execution of the income tax code) whereby getting this tax advantage would be in violation with the purposes of this provision of the income tax code and whereby getting the tax advantage is the essential goal of the transaction.</li> </ul>
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## Part 1: Introduction

2.2. If the answer under 2.1. is Yes, can you please provide the definition and the explanation how it operates? [Definition]	2.2. N/A
2.3. If the answer under 2.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]	2.3. N/A
2.4. If there is no formal definition, are you aware of any problems caused by this?	2.4.
<b>3. New Specific Measures</b>	
3.1. Are there any New Specific Measures in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2 <u>and</u> Part 3)</i>	3.1. Yes
3.2. If the answer under 2.1. is Yes, are there any NCJ Measures amongst those New Specific Measures? [Yes/No]	3.2. Yes
3.3. If the answer under 2.1. is Yes, are there any ATP Measures amongst those New Specific Measures? [Yes/No]	3.3. No
<b>4. Other Measures</b>	
4.1. Are there any Other Specific Measures in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2)</i>	4.1. Yes
4.2. Are there any General Anti-abuse Provisions in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2)</i>	4.1. Yes
4.3. If the answer under 4.2. is Yes, are those measures generally equally applicable to EU Member States (including purely domestic situations) and Third Countries?	4.3.1. Not exclusively
<p>4.3.1. [Yes/No/Not exclusively]</p> <p>4.3.2. [Please explain]</p>	4.3.2. For the relevant articles, a specific reference is not always made to given countries but generally to the tax regime applicable in the country of establishment of the counterparty to a transaction (see above 2.1.).

## Part 1: Introduction

### 5. Legislative or administrative proposals

5.1. Are there currently any proposals aimed at introducing new measures in your country which could fall in scope of the current study?

5.1.1. [Yes/No]

5.1.2. [If Yes, please briefly explain]

5.1.1. Yes (thin capitalization rules, see below).

5.1.2. Moreover, a report has been drafted in 2009 by a Specific Group within the Parliament on the most important tax fraud cases identified by the tax authorities (“*Commission d’enquête parlementaire sur les grands dossiers de fraude fiscale*”). A number of recommendations have been issued, some of them concerning tax havens.

A comparative study called “*Utilisation abusive et à des fins frauduleuses de paradis fiscaux*” has been released and presented to the College for the fight against tax fraud in February 2010. Some rules have been adopted or amended based on the recommendations made in this report (e.g. the amendment of the general anti-abuse provisions, reporting of payments to tax havens, etc.).

In a more recent document prepared by the State secretary responsible for the fight against tax and social fraud, some new measures are envisaged, but these have not (yet) been included in the legislation, even not in a draft Bill of law. It concerns amongst others a measure to fight against tax transparent structures (such as e.g. trusts, Partnerships, etc.), the setting-up of a specific task-force “Tax havens”, a better cooperation within the tax administration to detect tax fraud, etc. Note that not all these measures are specifically dedicated to fight against Third Countries.

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### Measure n°1: Reporting obligation for payments to tax havens

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. New Specific Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. NCJ Measure

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Since January 1, 2010, companies subject to Belgian corporate income tax or Belgian non-resident corporate income tax have been obliged to declare direct or indirect payments to recipients established in so-called tax havens.

For the purposes of this measure, a tax haven is defined as a country which:

- For the whole taxable period during which the payment was made, is considered by the OECD Global Forum on Transparency and Exchange of Information as a State that has not substantially and effectively applied the OECD exchange of information standard;
- Or which is included on a specific list of States with no or a low tax burden. For the purposes of this measure, the Belgian tax law defines that States are considered to have a low tax burden in case the nominal corporate income tax rate is lower than 10 percent.

The list enumerating the States which are considered to have a nil or low tax burden has been introduced by Royal Decree and details 30 different jurisdictions.

This reporting obligation is applicable in case the sum of such payments exceeds EUR 100.000 during the taxable period. In order to comply with this reporting obligation, a specific form should be completed and added as an enclosure to the annual (non-resident) corporate income tax return.

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	<p>In case the companies do not comply with this reporting obligation, payments made directly or indirectly to tax haven countries will not be accepted as tax-deductible expenses.</p> <p>Also, for payments which have been duly reported, it is still possible that these payments are questioned by the Belgian tax authorities. In case the taxpayer is not able to demonstrate that the payments are performed in the framework of real and sincere transactions and to persons other than artificial constructions, the deductibility of these payments can still be denied.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. In the following articles:</p> <ul style="list-style-type: none"> <li>• Article 198, paragraph 1, 10° of the Belgian Income Tax Code (hereafter “BITC”)</li> <li>• Article 307 of the BITC</li> <li>• The Royal Decree of 6 May 2010 providing the list of tax havens</li> <li>• The Royal Decree of 7 May 2010 providing the official reporting form</li> </ul>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A</p>
<p><b>Measure n°2: Granted abnormal or benevolent advantages</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General</p>	<p>1. General Anti-abuse Measure</p>

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Anti-abuse Measure]	(considering this is a measure which is not only applicable in relation to NCJs)
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. According to this measure – which is a general transfer pricing measure -, any <i>abnormal or benevolent advantage</i> granted by an enterprise established in Belgium should be added back to its taxable basis, unless such advantage is taken into account in determining the taxable basis of the beneficiary.</p> <p>In addition, the advantages should always be added back to the taxable basis of the Belgian grantor (i.e. even if such advantage is taken into account in determining the taxable basis of the beneficiary) if the beneficiary can be considered as a:</p> <ul style="list-style-type: none"> <li>• a foreign tax resident with the regard of which the enterprise established in Belgium is directly or indirectly in any kind of link of interdependence; or</li> <li>• a foreign tax resident or a foreign establishment, which, under the terms of the provisions of the legislation of the country where it is established, is not subject to an income tax or is subject to a tax regime notably more advantageous than the tax regime of the company established in Belgium; or</li> <li>• a foreign taxpayer who has common interests with the taxpayer or the establishment aimed above under circumstances.</li> </ul> <p>In a reply to a Parliamentary Question, the Belgian Minister of Finance has confirmed that this provision should in principle not be applied in case of a Belgian beneficiary (since, in such a case, the advantage is necessarily taken into account in the hands of the Belgian beneficiary).</p> <p>Abnormal or benevolent advantages comprise all the non-arm's-length transactions. The difference between the fair market price and the price charged is considered as an abnormal or benevolent advantage and is to be added to the taxable basis of the Belgian</p>

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	<p>grantor.</p> <p>An <i>advantage</i> is an enrichment in the hands of the beneficiary without the provider receiving any real compensation equivalent to the advantage provided. Such advantage could be regarded as <i>abnormal</i> if it conflicts with the normal course of business, the rules and established practices or conflicts with what is customary in a similar case. Generally, an advantage is not deemed to be abnormal where there economic grounds are available to justify it. An advantage is <i>benevolent</i> if it is provided outside the scope of the performance of an obligation or without any consideration given in return.</p> <p>The burden of proof rests in principle with the administration. Nevertheless, in case of a tax audit, the Belgian tax authorities generally request for information and underlying documentation with respect to the transaction in order to opine on the abnormal or benevolent nature of the transaction concerned.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 26 of the BITC</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. There are many cases with respect to the application of this anti-abuse provision. Each case law is specific only for the respective particular case so that it would not be relevant for the present Study to provide with a summary of the case law.</p> <p>Note that in the Société de Gestion Industrielle SA (SGI) Case (C-311/08), the Court of Justice of the European Union has decided, in its decision dated 21 January 2010, that <i>"article 43 EC, read in conjunction with Article 48 EC, must be interpreted as not precluding, in principle, a legislation of a Member State ... under which a resident company is taxed in respect of an unusual or gratuitous advantage [what we call generally "abnormal or benevolent advantage"] where the advantage has been granted</i></p>

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	<p><i>to a company established in another Member State with which it has, directly or indirectly, a relationship of interdependence, whereas a resident company cannot be taxed on such an advantage where the advantage has been granted to another resident company with which it has such a relationship. However, it is for the referring court to verify whether the legislation at issue in the main proceedings goes beyond what is necessary to attain the objectives pursued by the legislation, taken together".</i></p>
<p><b>Measure n°3: Received abnormal or benevolent advantages</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure  (considering this is a measure which is not only applicable in relation to NCJs)</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Following this measure – which is a general transfer pricing measure -, in case a Belgian resident company receives abnormal or benevolent advantages, it cannot offset the taxable basis resulting from these abnormal or benevolent advantages received using current year tax losses, carried-forward tax losses, investment deduction, dividend received deduction, notional interest deduction or tax deductible gifts.</p> <p>In reply to a Parliamentary Question, the Minister of Finance provided a broad interpretation of this measure. The Minister stated that abnormal or benevolent advantages received by a Belgian company should be considered as the “minimum” taxable basis of the beneficiary company. Thus, if the taxable basis as reported in the tax return is lower than the minimum taxable basis (i.e. the advantage received), the taxable basis should be increased to this minimum. At the same time, tax losses carried forward may be created for the same amount (those could then be used in deduction of future taxable income). This results in a negative timing difference (i.e. pre-financing of tax) to the extent the Belgian company will be profit making in a future year. Please note that</p>

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	<p>this position is currently being debated and subject to criticism within the Belgian tax doctrine. Indeed, such interpretation would allow the taxation of a profit that is higher than the accounting profit. This appears to be conflicting with the commonly accepted principle that the tax rules follow the accounting rules except if an explicit exception has been provided for. Also, according to the Minister of Finance, this provision is also applicable when profits are shifted from abroad (i.e. when the advantage received by the Belgian company comes from a company established outside of Belgium), which is strange in the absence of any tax erosion in this case in Belgium.</p> <p>Abnormal or benevolent advantages comprise all the non-arm's-length transactions. The difference between the fair market price and the price charged is considered as an abnormal or benevolent advantage and is added to the taxable basis of the Belgian company receiving this advantage. An advantage is an enrichment in the hands of the beneficiary without the provider receiving any real compensation equivalent to the advantage provided. Such advantage could be regarded as abnormal if it conflicts with the normal course of business, the rules and established practices or conflicts with what is customary in a similar case. Generally, an advantage is not deemed to be abnormal where there economic grounds are available to justify it. An advantage is benevolent if it is provided outside the scope of the performance of an obligation or without any consideration given in return.</p> <p>The burden of proof rests in principle with the administration. In case of a tax audit, the Belgian tax authorities generally request for underlying documentation with respect to the transaction in order to opine on the abnormal or benevolent nature of the transaction concerned.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Articles 79 and 207, al. 2 of the BITC</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the</p>	<p>5. N/A</p>



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concerned MS of the effectiveness and sufficiency of the measures.

6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

6. There are some cases with respect to the application of this anti-abuse provision. Each case law is specific only for the respective particular case so that it would not be relevant for the present Study to provide with a summary of the case law.

Note however that according to settled case law established by the Supreme Court, which started with the “*Craft*” arrest, and was extended by the cases “*Au Vieux Saint-Martin*” and especially “*ABM International*”, a contribution to a company in a loss situation may constitute an abnormal or benevolent advantage, which leads to the prohibition for the company benefitting from said contribution to apply tax deductions – and, in particular, deduction of tax losses and the notional interest deduction – on profits arising after the contribution. According to the Supreme Court, it is sufficient that the judge notes that the operation was carried out “*in economically abnormal conditions*” (i.e. for tax purposes only) to have an abnormal or benevolent advantage in the sense of article 207 of the BITC. In other words, according to the Supreme Court, in order to apply article 207 of the BITC, one should analyse whether an operation as such is abnormal, which could be the case even if the conditions of the operation are at arm’s length. In its argumentation to come to a conclusion in the *ABM International* case, the Supreme Court referred to the legislative history of article 79 BITC thereby stating that the latter article was introduced to stop the tax evasion as a result of transferring profitable activities to a company which would offset these profits against its accumulated tax losses carried forward.

### Measure n°4: General anti-abuse provision

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure

(Although this is a recent measure, considering the measure is not only applicable to NCJs it is not considered as a “Specific Measure” in the framework of this questionnaire)

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure /

2. N/A

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Both]	
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Due to the difficulties for the Belgian tax authorities in applying the old version of the anti-abuse provision laid down in article 344 §1 BITC (see below), the Belgian government recently decided in the framework of the 2012 Budget Agreement to adopt a new wording of the general anti-abuse measure. According to the revised article: <i>“Against the administration cannot be upheld the legal deed or series of legal deeds carrying out the same transaction when the tax authorities establish, by means of presumptions or by other means of proof provided by section 340 BITC and on the basis of objective circumstances, that tax abuse occurs”</i>. A similar provision exists for registration duties and inheritance tax purposes.</p> <p>For the purposes of the anti-abuse rule, ‘tax abuse’ is defined as:</p> <ul style="list-style-type: none"> <li>• A transaction in which the taxpayer places himself – in violation with the purposes of a provision of the income tax code (or royal decrees adopted in execution of the income tax code) - outside the scope of this provision of the income tax code</li> <li>• A transaction that gives rise to a tax advantage provided by a provision of the income tax code (or royal decree adopted in execution of the income tax code) whereby getting this tax advantage would be in violation with the purposes of this provision of the income tax code and whereby getting the tax advantage is the essential goal of the transaction.</li> </ul> <p>In first instance the tax authorities should demonstrate that a legal deed or a whole of legal deeds can be considered as tax abuse. The tax authorities may apply all legal means of evidence to provide this evidence. Subsequently, it is up to the taxpayer to prove that the choice for the legal deed or the whole of legal deeds is motivated by other reasons than tax avoidance (reversal of burden of proof). In case the taxpayer could not prove this, the transaction will be subject to a taxation in line with the purposes of the income tax law, as if the tax abuse did not take place.</p> <p>The new rule is applicable as from tax year 2013, and on legal deeds performed during a</p>

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taxable period closing on or after 6 April 2012.

The most remarkable change in this new provision is the introduction of a legal definition of tax abuse. Tax abuse occurs when the taxpayer carries out a transaction whereby he either avoid tax or claims a tax benefit and such would be contrary to the legislative intent of the tax provision. Key in this distinction will be the aim of the law, which of course is not always clear. Unfortunately, nor the Explanatory Notes to the law, nor the administrative guidance which was published in the meantime, do provide for examples of transactions to be reclassified under the new article 344, § 1 of the BITC. Note however that, according to the Explanatory Notes, the aim of the new anti-abuse measure is not meant to preclude legal certainty for the taxpayer and/or its free choice of the lowest-taxed route (i.e. the so-called “*Brepols*” doctrine).

According to the Explanatory notes to the law, the new general anti-abuse measure laid down in article 344, §1 of the BITC is intended to prevent:

- legal deeds by which a taxpayer aims at achieving a pure tax benefit (this is, without any legitimate economic or financial reason) ;
- legal deeds for which non-tax reasons are in no way specific to the transaction but rather so general that they are necessarily present for each similar transaction ;
- legal deeds for which non-tax reasons are inherent to the transaction but so immaterial that no reasonable person would perform such transaction exclusively for these non-tax objective (in such case, it can therefore be assumed that the non-fiscal reason underpinning the transaction is not the real motivation of the taxpayer).

It is up to the taxpayer to bring the counter proof that the chosen structure/realised transaction(s) was made for other sound reasons than tax reasons and this, taking into account the principle of proportionality (i.e. “subjective element”).

Note: Related concept: Simulation (“sham”):

Simulation (“sham”) is a notion derived from Belgian civil law, and is not explicitly

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	<p>defined in Belgian tax law.</p> <p>In general, simulation occurs where parties perform an ostensible act whose effects both parties agree to modify or reverse by signing a secret agreement. Sham implies two agreements existing simultaneously, of which one is concluded with the sole intention to deceive. There is only one real agreement, i.e. the secret agreement.</p> <p>The decisive criterion to identify a sham is whether or not the ostensible act is genuine, i.e. corresponds to reality. If this is not the case, it has to be determined which agreement was really signed by the parties. An act is deemed genuine when both parties have accepted its - legal - consequences.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 344, §1 of the BITC</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A</p> <p>According to the former wording of the general anti-abuse measure provided by article 344, §1 of the BITC, the Belgian tax authorities could, under certain conditions, reclassify a legal deed (transaction) into a different transaction (with generally a higher tax burden) provided both transactions have the same or similar legal consequences. Based on this provision, the Belgian tax authorities were not bound by the legal qualification given by the parties to a specific transaction if the qualification was given only in order to avoid taxes. It gave the tax authorities the capacity to analyze a structure set up by the taxpayer and its legal classification and, even if the classification was not a sham, to set it aside nonetheless and reclassify it, provided they could demonstrate that the transaction was only tax-driven and ultimately intended to avoid tax.</p>

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The Belgian Supreme Court repeatedly stipulated that a qualification could only be replaced by another if the legal consequences of this new qualification were similar to those of the initial qualification<sup>1</sup>. The former wording of article 344, § 1 BITC did not empower the tax authorities to simply deny the legal consequences of the deeds and/or transactions carried out by the taxpayer. The classification upheld by the tax authorities had hence to be compatible with the legal consequences of the deed(s) or transaction(s) and thus, had to take into account all legal effects of those deed(s). Therefore, if no other legal classification for the transaction could be found, reclassification was impossible and the legal form attributed by the parties was binding on the tax authorities. Note however that, for reclassification purposes, a series of separate deeds could be taken into consideration (the step-by-step doctrine), providing that it was shown that the series of transactions were entered into initially with the aim of obtaining a tax advantage. The anti-abuse measure as laid down in the former version of article 344, §1 of the BITC was hence clearly difficult to apply in practice as it implied in principle that the reclassification (nearly) respects all legal aspects of the transaction(s) entered into by the parties, so that the legal deeds concerned had to be able to suffer different legal qualifications, to allow the tax authorities to apply this anti-abuse provision.

Note however that this strict interpretation of article 344 §1 of the BITC was already reviewed in a decision of the Belgian Supreme Court dated 10 June 2010. In its decision, the Court considered that the Belgian tax authorities can reclassify the transaction if the new qualification has similar legal (non fiscal) consequences to those of the **final result** of the legal deeds of the parties. The Court also referred to the economic reality of the transactions, in stating a.o. that the Belgian tax authorities can reclassify successive deeds between different parties in one single deed between parties, which have not directly contracted with each other, provided that the transaction is the same from an economic point of view.

There is of course not yet any case law regarding to new version of article 344 §1 of the BITC since it has just entered into force.

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### Measure n°5: Foreign tax credit – Anti-channelling measure

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure

(considering this is a measure which is not only applicable in relation to NCJs)

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. In case a Belgian resident company receives foreign movable income (such as interests or royalties), a foreign tax credit is available provided certain conditions are complied with.

A foreign tax credit is available in case:

- The received foreign income has been effectively subject to tax abroad;
- The beneficiary uses the underlying asset, i.e. the asset generating the interest income, for professional purposes in Belgium;
- The Belgian entity is the “beneficial owner” of the income for Belgian and DTT tax purposes.

In order to compute the foreign tax credit, a specific calculation is provided by the Belgian tax law.

In order to avoid abuse of this foreign tax credit, the Belgian tax law provides that the *foreign tax credit* will not be creditable in case of channelling. A credit operation qualifies as channelling if the lender, although he has carried out the operation in his own name, has in reality acted on behalf of a third party who has supplied to the lender the necessary funds for financing the operation and who assumes partly or fully the credit risk of the operation.

*Channelling* involves the following three parties: (i) a foreign borrower, (ii) a lender

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	<p>established in Belgium acting as the undisclosed agent of a third party and (iii) a third party acting as the true lender. The notion "third party" refers to both foreign and Belgian parties. In the case of channelling where the true lender is a Belgian third party, the latter will be entitled to the foreign tax credit instead of the Belgian intermediary lender. If the true lender is a foreign third party, no one will be entitled to the foreign tax credit. For channelling to exist it is necessary that both the funding of the operation and the partial or full assumption of its credit risk be done by the same third party or by related third parties.</p> <p>The Minister has declared that it is not the intention to prejudice when the financing is granted by one third party, whilst another third party assumes the credit risk unless links exist between the true lender and the person assuming the credit risk. Unfortunately, the meaning of the notion "links" has not been defined.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. In the following articles:</p> <ul style="list-style-type: none"> <li>• Article 37 of the BITC</li> <li>• Articles 285 till 289 of the BITC</li> </ul>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A</p> <p>There are many cases with respect to the application of the foreign tax credit. However, we are not aware of case law relating to the anti-channelling measure.</p>

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### Measure n°6: Dividend-Received Deduction – Anti-abuse rules

<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. Other Specific Measure</p> <p>(Considering this is a measure which has been introduced prior to 1 January 2007 and has also not been amended importantly since this date; this measure applies in practice essentially to Third Countries)</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. NCJ Measure</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. In order to avoid double taxation (i.e. both at the level of the company distributing a dividend and at the level of the Belgian company/shareholder), and provided certain conditions are met, a Belgian company can benefit from a “Dividend-Received Deduction” (hereafter “<b>DRD</b>”, being the so-called Belgian “participation exemption regime”) on the dividends it receives. As a result hereof, 95% of the dividend received can be deducted from its taxable income. In order to benefit from this DRD-regime, certain conditions need to be complied with. Apart from the quantitative conditions (which generally relate to the relationship/shareholding between the Belgian beneficiary company and the distributing company), certain qualitative or “subject-to-tax” conditions need to be complied with in the hands of the distributing companies.</p> <p>The qualitative conditions actually consist of 5 exclusion rules:</p> <ul style="list-style-type: none"> <li>• The DRD is disallowed if the company distributing the dividend is not subject to Belgian corporate income tax nor to a foreign tax similar to the Belgian corporate income tax or has its residence in a country where the common tax regime is substantially more advantageous than in Belgium.</li> </ul> <p>For the purposes of this exclusion rule, the tax regime is considered as substantially more advantageous in case the applicable nominal or effective tax rate is lower than 15%. Also in case the distributing company is established in a Member State of the</p>



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European Union, it is considered that the applicable tax regime is not substantially more advantageous than in Belgium. Also a Royal Decree has been issued in this respect, containing a blacklist of jurisdictions in this respect:

Afghanistan	Aldernay	Belize
Bosnie - Herzegovina	Burundi	Cap Green
Central African Republic	Comores	Cook Islands
Cuba	Dominican Republic	Equatorial Guinea
Gibraltar	Grenade	Guernesey
Guinee - Bissau	Haiti	Herm Island
Iran	Irak	Jersey
Kiribati	North Korea	Laos
Liberia	Liechtenstein	Macao
Maldives	Man Island	Marshall Island
Mayotte	Federation of Micronesia	Monaco
Montserrat	Namibia	Niue
Oman	Panama	Saint Christopher and Nevis
Sainte - Lucie	Saint-Pierre-et-Miquelon	Saint - Vincent and the Grenadines
Samoa	US Samoa	Sao Tome and Principe
Seychelles	Somalie	Tuvalu
Ouzbekistan	British Virgin Islands	Virgin Islands

- The DRD is disallowed for dividends distributed by a financial company, a treasury company or an investment company (as defined for Belgian tax purposes) which, although resident in a country where it is subject to tax equivalent to the Belgian corporate tax, benefits from a tax regime which is different than the common tax regime;
- The DRD is disallowed if dividends are distributed by a company to the extent that the income that it receives, other than dividends, has been generated outside its country of residence and it benefits in that country from a tax regime that is different from the common tax regime;
- The DRD is disallowed if the dividends is distributed by a company to the extent the

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	<p>latter generates profits through one or several foreign branch offices which, considered globally, are subject to a tax regime that is substantially more advantageous than the Belgian tax regime;</p> <ul style="list-style-type: none"> <li>• In case of a dividend distribution by an "intermediary" company, the DRD will be disallowed on the dividend re-distributed by the intermediary company if this re-distributed dividend is composed of at least out of 10% of "tainted dividends", i.e. that cannot benefit from the DRD based on the first four exclusion rules.</li> </ul>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Articles 202 and 203 of the BITC</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. There are no real landmark decisions regarding these anti-abuse rules, except some concerning Hong-Kong (see e.g. judgment dated 23 April 2004 by the Brussels tribunal of first instance) or other countries. On the other hand, there are many ruling decisions confirming, based on the facts and circumstances of each case, that these anti-abuse rules cannot apply to dividends distributed to a Belgian corporate shareholder, for instance in case of dividends paid by foreign companies, whether within the EU or not, benefitting from a tax holiday (as examples: Ruling decision n°500.032 dated 24 November 2005 concerning a Polish company or Ruling decision 400.193 dated 17 April 2007 concerning a company from Tunisia).</p>
<p><b>Measure n°7: Capital gains on shares – Anti-abuse rules</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. Other Specific Measure</p> <p>(Considering this is a measure which has been introduced prior to 1 January 2007 and has also not been amended importantly since this date; this measure applies in practice</p>

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	essentially to Third Countries)
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. NCJ Measure
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. As it is the case for dividends received by a Belgian resident company, in case the Belgian resident company realises a capital gain on shares, this capital gain can be (100%) exempt from the corporate income taxation provided certain conditions are met. In this respect, also the qualitative conditions which are applicable with respect to the “<b>DRD</b>” regime need to be complied with.</p> <p>The qualitative conditions actually consist of 5 exclusion rules:</p> <ul style="list-style-type: none"> <li>• No capital gain exemption is available in case the company to which the shares relate is not subject to Belgian corporate income tax nor to a foreign tax similar to the Belgian corporate income tax or has its residence in a country where the common tax regime is substantially more advantageous than in Belgium. For the purposes of this exclusion rule, the tax regime is considered as substantially more advantageous in case the applicable nominal or effective tax rate is lower than 15%. Also in case the company is established in a Member State of the European Union, it is considered that the applicable tax regime is not substantially more advantageous than in Belgium. Also a Royal Decree has been issued in this respect, containing a blacklist of jurisdictions in this respect;</li> <li>• No capital gain exemption is available in case the company to which the shares relate is a financial company, a treasury company or an investment company (as defined for Belgian tax purposes) which, although resident in a country where it is subject to tax equivalent to the Belgian corporate tax, benefits from a tax regime which is different than the common tax regime;</li> <li>• No capital gain exemption is available in case the company to which the shares relate is a company of which the income that it receives, other than dividends, has been</li> </ul>

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	<p>generated outside its country of residence and it benefits in that country from a tax regime that is different from the common tax regime;</p> <ul style="list-style-type: none"> <li>No capital gain exemption is available in case the company to which the shares relate generates profits through one or several foreign branch offices which, considered globally, are subject to a tax regime that is substantially more advantageous than the Belgian tax regime;</li> </ul> <p>No capital gain exemption is available in case the company to which the shares relate can be considered as an "intermediary" company for which the DRD will be disallowed on the dividend re-distributed if this re-distributed dividend is composed of at least out of 10% of "tainted dividends", i.e. that cannot benefit from the DRD based on the first four exclusion rules.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 192 of the BITC</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A</p>
<p><b>Measure n°8: Deductibility of business expenses</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General</p>	<p>1. General Anti-abuse Measure</p>

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Anti-abuse Measure]	(considering this is a measure which is not only applicable in relation to NCJs)
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. According to this measure – which is a kind of transfer pricing measure -, certain types of business expenses (such as interest expenses, license retributions for the use of invention patents, etc) are not deductible when paid to non-residents who, by virtue of the provisions of the legislation of the country where they are established, are not subject to a taxation on the income or are subject to a taxation for such income which is substantially more favourable than that to which such income is subject in Belgium. This provision applies unless the taxpayer justifies that amount paid corresponds to real and sincere transactions and does not exceed normal limits.</p> <p>Real and sincere transactions are business transactions in response to an industrial, commercial or financial necessity whose consideration is normally to be found in the business of the entity as a whole.</p>
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Article 54 of the BITC
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level	6. There is not much case law in which article 54 of the BITC has been applied. In a decision dated November 10, 1964, the Belgian Court of Cassation ruled that ‘a real and sincere loan’ is one that is actually entered into and that corresponds to real financial needs of the borrower company. In that case, a Belgian company distributed a dividend of BEF9, 590, 000 to its Luxembourg parent, a Luxembourg holding company subject to a tax system that was significantly more advantageous than that in Belgium. In a second

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<p>summary of the given case law.</p>	<p>step, the Luxembourg company granted a loan of BEF6, 500, 000 to the Belgian company, for which it had to pay interest at a rate of 6 percent. According to the tax authorities, there was in reality no need to lend money to the Belgian company since this need had been created artificially by the dividend distribution, which was out of all proportion. The Belgian company was convinced that the transaction was real and sincere because the loan was necessary to remedy a lack of cash, even if it was caused by a decision by the shareholders to distribute a dividend greatly in excess of the company's liquid assets. The Court of Cassation agreed with the tax authorities that the Belgian company had not succeeded in proving the reality and cogency of the transaction.</p> <p>In a more recent case, Antwerp Court of Appeal found for the taxpayer and rejected application of article 54 of the BITC. In that case, a Belgian company had paid management fees to a service provider in Liechtenstein. The court found that the Belgian tax authorities had failed to prove that the fees were subject to a substantially more advantageous tax system in Liechtenstein. This decision shows that the tax authorities must first prove that article 54 of the BITC is applicable before the taxpayer has to evidence that the amount paid corresponds to real and sincere transactions and does not exceed normal limits.</p>
<p><b>Measure n°9: Thin-capitalization rule (7/1 &amp; 5/1)</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure  (considering this is a measure which is not only applicable in relation to NCJs)</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. The Belgian tax law provides for a 7/1 thin capitalisation rule following which interest on loans paid or attributed by a Belgian entity to a beneficiary, who is not subject to an ordinary income tax system or who, as far as the interest income is concerned, benefits</p>

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from a taxation system which is significantly more advantageous than the Belgian income tax system, is considered as a disallowed expense in the hands of the Belgian entity to the extent that the outstanding total amount of the loans (on which the interest is calculated) exceeds seven times the taxable reserves (at the start of the financial year) plus seven times the fiscal capital (at the end of the financial year) of the Belgian entity.

Only interest relating to the excess part will be considered a disallowed expense (i.e. a non deductible expense).

Please note that the above rule has been amended by the Program Act of 2012, the new Program Act replaces the above 7/1 rule by introducing a new rule introducing a (general) 5/1 debt-equity ratio. Following the new thin capitalization rule interest on loans paid or attributed by a Belgian entity are considered as a disallowed expense in the hands of the Belgian entity to the extent that the outstanding total amount of the loans (on which the interest is calculated) exceeds five times the taxable reserves (at the start of the financial year) plus seven times the fiscal capital (at the end of the financial year) of the Belgian entity, and provided they are paid out to a beneficiary who:

- Is not subject to an ordinary income tax system or who, as far as the interest income is concerned, benefits from a taxation system which is significantly more advantageous than the Belgian income tax system. *This condition was already available under the previous version of the thin capitalization article. However the applicable ratio in this respect is set at 5/1 (instead of 7/1); or*
- Is part of a group to which the Belgian debtor of the interest income also belongs (whereby “group” should be interpreted in accordance with section 11 of the Companies Code). *This condition is a new and additional condition as a result of which the thin capitalization rule has a more general application.*

Bonds and other publicly issued securities are excluded, as well as loans granted by financial institutions. An anti-abuse rule is introduced stating that in case the loans are guaranteed by a third party or in case loans are funded by a third party which partly or wholly bears the risk related to the loans, the third party is deemed to be the beneficial

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	<p>owner of the interest, if the guarantee or the funding has tax avoidance as main purpose.</p> <p>Please note however that this new thin capitalization rule has not yet entered into force. Indeed the new Program Act states that the entry into force would be determined by a Royal Decree, which has not yet been published, and in any case on 1 July 2012 at the latest.</p>
4. In which legal/regulatory/ administrative provision(s) is the measure provided? [Reference]	4. Article 198,11° of the BITC
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A
<b>Measure n°10: Deductibility of interest</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure  (considering this is a measure which is not only applicable in relation to NCJs)
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose	3. As far as financing arrangements are concerned, the arm's length principle is also



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<p>of the measure (approx. 15 lines)</p>	<p>expressly embodied in a specific measure. In fixing interest rates for inter-company loans, this measure stipulates that the interest on loans are only regarded as tax deductible business costs to the extent that they do not exceed an amount corresponding to the rate charged on the market, bearing in mind the particular factors inherent in assessing the risk linked to the transaction, and especially the financial situation of the debtor and the duration of the loan.</p> <p>This rule does however not apply in case of interest payments made by Belgian banks and to some financial institutions mentioned in the text of the law (including Belgian and EU banks), nor in case of interest paid on bonds publicly issued or similar types of financial instruments (article 56 of the BITC).</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 55 of the BITC</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A</p>
<p><b>Measure n°11: General anti-abuse provision (Opposability of the legal act)</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure  (considering this is a measure which is not only applicable in relation to NCJs)</p>

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<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. This measure provides that the sale, transfer or contribution of shares, obligations, debts or other instruments constituting borrowings, patents, manufacturing processes, trademarks, or other similar rights or sums of money, to a foreign entity (company or individual), who, by virtue of the provisions of the legislation of the country in which such foreign entity is established, is not subject to income tax or who is subject, as regards the income produced by goods or rights sold, to a system of taxation notably more advantageous than that to which similar income is subject in Belgium, is no longer opposable to the Belgian tax administration unless the taxpayer proves either:</p> <ul style="list-style-type: none"> <li>• that the transaction meets legitimate financial or economic needs; or</li> <li>• that it has received for the transaction a real exchange value producing an amount of income effectively subject in Belgium to a normal tax charge in comparison to that which would have existed if the transaction had not taken place.</li> </ul> <p>If the transmission is considered as in-opposable, the Belgian tax administration would act as if the transaction has never taken place.</p> <p>Whether legitimate financial or economic needs are present depends on a factual analysis.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 344, §2 of the BITC</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the</p>	<p>6. N/A</p>

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main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

### Measure n°12: Anti-abuse provisions in case of stock lending transactions

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Apart from the above general anti-abuse provisions, which may also apply in case of stock lending transactions, Belgian domestic law also includes certain specific anti-abuse provisions with respect e.g. to repos and stock lending transactions. You will find below a summary of the most relevant ones :

- In this respect, and in order to prevent so-called coupon stripping mechanisms, in case of dividends received by a Belgian corporate borrower on Belgian shares, in principle the Belgian corporate borrower is not entitled to a tax credit for the Belgian withholding tax remitted at source in case the Belgian corporate has borrowed the underlying shares from a counterparty/lender which is resident in a country with which Belgium has concluded a Double Tax Treaty. Nevertheless, in case the Belgian borrower can demonstrate that the non-resident lender would have been able to benefit from an exemption or reduction of the Belgian withholding tax, the Belgian corporate borrower is entitled to a tax credit for the positive difference between the Belgian withholding tax applied to the dividend received by the borrower and the Belgian withholding tax that would have been applied had the non-resident lender

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	<p>still had the ownership of the shares at the moment of dividend distribution (article 283 of the BITC)</p> <ul style="list-style-type: none"> <li>• In case of dividends received in relation to shares which have been obtained by a Belgian borrower within the framework of a stock lending transaction, these dividends are explicitly excluded from the Belgian Dividend-Received Deduction Regime (see above, the so-called Belgian participation exemption regime). Consequently such dividend income will be part of the taxable basis of the Belgian borrower and thus subject to the standard corporate income tax rate of 33,99% (article 202, §2 of the BITC)</li> <li>• In case a manufactured dividend is paid by a Belgian borrower as a result of a securities or stock lending transaction, the deductibility of the compensation payment is also limited to a certain extent and in certain circumstances in the hands of the Belgian borrower (article 198, 13° of the BITC)</li> <li>• According to article 111bis, §2 of the Royal Decree implementing the BITC, a WHT exemption exist for manufactured dividends paid to a non-resident taxpayer which is treaty entitled. <i>A contrario</i>, if the beneficiary of such manufactured dividend may not benefit from the advantages of a double tax treaty, he will not enjoy the WHT exemption mentioned above. This way, the Belgian legislator want to avoid making stock lending transactions for tax motives by using lenders located in tax haven countries.</li> </ul>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. In the following articles:</p> <ul style="list-style-type: none"> <li>• Article 283 of the BITC</li> <li>• Article 202, §2 , paragraph 5 of the BITC</li> <li>• Article 198, 13° of the BITC</li> <li>• Article 111bis of the Royal Decree implementing the BITC</li> </ul>

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5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.

5. N/A

6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

6. N/A

### Measure n°13: Anti-abuse measure concerning restructuring of companies

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure

(considering this is a measure which is not only applicable in relation to NCJs)

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3.

A merger is a taxable transaction in Belgium as it is assimilated to a liquidation of the absorbed company for tax purposes. This would imply the following tax consequences: (i) in the hands of the absorbed Belgian company, the tax-free reserves and the latent capital gains will become taxable at the standard corporate income tax rate of 33,99%; and (ii) the positive difference between the market value of the net assets and the paid-up capital is deemed to be distributed as a dividend, which is in principle subject to a withholding tax of 10%, unless withholding tax exemptions should apply.

However, a merger can benefit from a tax-neutral regime provided a number of

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	<p>conditions are cumulatively met. Amongst others, the merger cannot have tax evasion or tax avoidance as its principal objective or as one of its principal objectives. The fact that the operation is not carried out for valid economic reasons such as the restructuring or rationalisation of the activities of the companies participating in the operation constitutes a refutable presumption that the operation has tax evasion or tax avoidance as its principal or as one of its principal objectives.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>Art. 183bis of the BITC</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. Some Case law exists in this respect, amongst others regarding the concept of "legitimate economic or financial needs", but each case law is specific only to the respective case so that it would not be relevant for the present Study to provide with a summary of the case law.</p>
<p><b>Measure n°14: Change of control rule</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure  (considering this is a measure which is not only applicable in relation to NCJs)</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>

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<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. According to article 207(3) of the BITC, in the case of a change of control of a Belgian company, the tax losses carried forward (as well as the investment deduction and the excess notional interest deduction, if any) available in that company (before the change of control) only remain available for future utilisation if the change of control meets legitimate financial or economic needs.</p> <p>In case no legitimate economic or financial needs can be established for the change of control (i.e. the latter is purely tax driven), the tax losses carried forward (but also excess notional interest deduction and excess investment deductions), at that time, are not only lost for the financial year in which a change of control in the company takes place but also for all future financial years.</p> <p>The tax law does not define the term "change of control", but the Report to the King with respect to this tax provision refers to the Royal Decree of 8 October 1976 on the annual accounts (as incorporated in the Royal Decree of 31 January 2001 implementing the new Companies Code, entered in force on 6 February 2001) for the definition of control of the company. The Report to the King (which does not have the force of the law) states that legitimate economic or financial needs can be deemed to be met if: (i) the change of control occurs within a group of companies whose results are consolidated for accounting purposes or (ii) it concerns a "company in difficulties" that is able to continue, entirely or partially, its economic activities, and is able to maintain, entirely or partially, its employment level.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>Art. 207(3) of the BITC</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this</p>	<p>6. Some Case law exists in this respect, amongst others regarding the concept of "legitimate economic or financial needs", but each case law is specific only to the</p>

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measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

respective case so that it would not be relevant for the present Study to provide with a summary of the case law.

According to the Ruling Commission of the Belgian tax authorities, the legitimate economic or financial needs must be established at the level of the company undergoing the change of control.

### Measure n°15: WHT on outbound movable income payments to non-resident taxpayers

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Belgian tax law provides, under certain conditions, for some WHT exemption in case of payment of Belgian source movable income (interest and dividends) paid to non-resident taxpayers.

As an example, according to article 107, §2, 10° of the Royal Decree implementing the BITC, a WHT exemption exist for interest payments from registered bonds issued by Belgian (non financial) companies and made to non-resident taxpayers. The same kind of exemption does not apply for Belgian private individuals, who have to pay the Belgian WHT of 21% (as from 2012) on this income. In order to avoid said WHT cost, Belgian private individuals could be tempted to set-up companies established abroad. However, said article 107, §2, 10° provides for a specific anti-abuse provision. Indeed, the WHT exemption does only apply if the foreign company receiving the Belgian source interest income is either in its country of residence subject to an income tax regime of which the common provisions are not substantially more advantageous than in Belgium, or if the



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	<p>foreign company's shares are not held by Belgian private individuals for more than 50%.</p> <p>With respect to dividends, a WHT exemption exists, under certain conditions (amongst which the compliance with a “subject-to-tax clause” and a holding threshold of 10%) in case of payment made to a parent company within the EU (implementation of the Parent Subsidiary Directive) or to a company established in a country with which Belgium has concluded a double tax treaty, and provided that said treaty provides for an exchange of information clause. Otherwise, dividend payments are generally subject to a 25% withholding tax retained at source.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>In the following provisions:</p> <ul style="list-style-type: none"> <li>• Art. 107, §2, 1<sup>o</sup>, RD/BITC;</li> <li>• Art. 106, §5, RD/BITC</li> <li>• Art. 118, §1, 1<sup>o</sup>, RD/BITC;</li> </ul>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A</p>
<p><b>Measure n°16: Repeal of the Bank Secrecy</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General</p>	<p>1. General Anti-abuse Measure</p>

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Anti-abuse Measure]	
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3.</p> <p><b>Banking secrecy in Belgium:</b> Under Belgian tax law, inquiries into banking documents or records for the purpose of taxing the bank’s customers are prohibited. Nor may information obtained from such documents and records be used for taxation purposes. This general banking secrecy rule is nonetheless subject to certain specific exemptions under tax law, for instance where the tax authorities discover clear evidence of tax fraud further to an inspection.</p> <p><b>Act of 14 April 2011:</b> The Act of 14 April 2011, while not fundamentally dispensing with banking secrecy, does lay down additional exceptions, thus further “eroding” the mantle, even though tax authority information requests to banks are still subject to certain conditions: there must be at least one indications of tax fraud, or the information must be needed to fix the taxpayer’s tax base under section 341 of the Income Tax Code (taxation based on evidence of wealth).</p> <p>If the conditions are met, it is clear from the legislative history to the new rules that the procedure is intended to be a fair one. The tax office must try and get the information from the taxpayer. If he fails to come up with it by a certain deadline, officials can demand the details needed to fix his tax liability from his bank (the taxpayer is copied in this correspondence).</p> <p><u>The Act also provides an exception where information is requested by a foreign State (subject to conditions). Then, the request is deemed to constitute an indication of tax fraud and the taxpayer need not be approached for the details first.</u></p>

## Part 2: General Information

	<p>The changes mean that all banks will also have to disclose certain information (their clients' identities, account numbers, etc.) to a central contact point at the Belgian National Bank regardless of whether questions are raised or inquiries are commenced by the tax authorities.</p> <p><b>Effective date:</b> The Act was published in the Official Gazette of 6 May 2011 and will come into force on 1 July 2011.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>In the following provisions:</p> <ul style="list-style-type: none"> <li>• Art. 322 of the BITC</li> <li>• Practice note n° 7.2011 (AAF.2011-0419) and n° 6.2011 (AAF.2011-0355)</li> </ul>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A</p>

## Part 3: Detailed Information

### New Specific Measure n°1: Reporting obligation for payments to tax havens

1. Is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

*(Same answer as in Part 2 for the New Specific Measure at stake)*

1. NCJ Measure

2. Legal grounds governing this measure.

2.1. Legal provision(s)? [Reference] *(Same answer as in Part 2 for this measure)*

2.2. Practice notes? [Reference]

2.3. Parliamentary works? [Reference]

2.4. Other source? [Reference]

2.1. In the following articles:

- Article 198, paragraph 1, 10° of the Belgian Income Tax Code (hereafter “BITC”)
- Article 307 of the BITC
- The Royal Decree of 6 May 2010 providing the list of tax havens
- The Royal Decree of 7 May 2010 providing the official reporting form

2.2. Practice note n° AAF 13/2010 - Ci.RH.421/607.890 (AGFisc 64/2010) of 8 December 2010

2.3. Parliamentary works No. 52K2278

2.4. Advance tax decisions n° 2010.495 and n° 2010.537 of 8 February 2011, and n° 2011.227 of 14 June 2011

3. Can you please provide a detailed description of the measure? This description should include in particular the following elements:

3.1. Main mechanisms? [Description]

3.2. Purpose (i.e. the problem and the countries which are supposed to be tackled by the measure)? [Description]

3.3. Scope Rationae Personae? [Description]

3.4. Scope Rationae Materiae? [Description]

3.5. Effects (sanctions, incentives linked to complying with the measure, etc.)? [Description]

3.1. Since January 1, 2010, companies subject to Belgian corporate income tax or Belgian non-resident corporate income tax have been obliged to declare direct or indirect payments to recipients established in so-called tax havens.

3.2. According to the Parliamentary works, the purpose of this mandatory reporting obligation is to make tax audits more efficient by allowing the Belgian tax authorities to focus on verifying the legitimacy of payments made directly or indirectly to tax haven countries, rather than having to detect them.

3.3. The reporting obligation applies to companies subject to Belgian corporate income

## Part 3: Detailed Information

3.6. Burden of proof? [Description]  
 3.7. Other relevant point? [Comments]  
 3.8. Is it a new measure / an amended measure or a possible future measure?  
 [new measure / amended measure / possible future measure]  
 3.9. Are there any intentions or proposals to change the measure?  
 [Comments]

tax or Belgian non-resident income tax.

3.4. The reporting obligation should be complied with in case of indirect or direct payments to recipients established in so-called tax havens and which exceed EUR 100.000 during the taxable period.

In January 2010, the government decided the following countries can be considered as tax havens countries. It comprises the following 30 jurisdictions: Andorra, Guernsey, Jersey, Jethou, the Isle of Man, Moldavia, Monaco, Montenegro, Sark, Bahrain, Abu Dhabi, Ajman, Dubai, Fujairah, Ras al Khaimah, Sharjah, Umm al Qaiwain, Anguilla, the Bahamas, Bermuda, the British Virgin Islands, the Cayman Islands, Saint-Barthélemy, the Turks and Caicos Islands, the Maldives, the Federated States of Micronesia, Nauru, Palau, Vanuatu, and Wallis and Futuna. According to the legislative history, the list will in principle be updated every two years.

3.5. In case the payments have not been reported, the payments are not tax deductible. For payments which have been reported, the Belgian tax authorities are able to examine whether they correspond to real and sincere transactions, whether they are at arm's length and whether it has been made in the framework of transactions that are not artificial constructions set up to evade taxes in Belgium.

3.6. In case the tax authorities question certain payments, the taxpayer should provide the necessary proof that the payments have been performed in the framework of real and sincere transactions and with persons other than artificial constructions.

3.7. The notion of real and sincere transactions is to be found in article 54 of the BITC. Also, the legislative history refers to the official commentaries by the Belgian tax authorities on article 54 of the BITC to define the notion: *real and sincere transactions* are business transactions in response to an industrial, commercial or financial necessity whose consideration is normally to be found in the business of the entity as a whole. On the other hand, the legislative history reveals that the origin of the notion of artificial constructions – which is not defined under Belgian tax law - lies in a number of decisions

## Part 3: Detailed Information

	from the European Court of Justice (in particular Cadbury-Schweppes).
	3.8. These provisions constitute a new measure (2010) and form part of a number of measures to combat fraud which have been announced by the Belgian Minister of Finance in March 2009 following the London G20 summit.
	3.9. Not to the best of our knowledge
4. Impact assessment and evaluation	4.1.1. No
4.1. Before enactment: were there impact assessments made / issued / discussed during the preparation of the measure (including quantitative impact)?	4.1.2. N/A
4.1.1. [Yes/No]	4.1.3. N/A
4.1.2. [If Yes, please describe]	4.2.1. No
4.1.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]	4.2.2. N/A
4.2. After enactment: are there evaluations (including effectiveness and sufficiency) of the measure issued or discussed during any parliamentary works or in any other official administrative doctrine publicly available?	4.2.3. N/A
4.2.1. [Yes/No]	
4.2.2. [If Yes, please describe]	
4.2.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]	
5. Litigations	5.1. No

## Part 3: Detailed Information

<p>5.1. Is there any litigation (pending or decided) before local Courts (first instance, appeal, Supreme Court, etc.) or before EU/international Courts (prejudicial question, infringement procedure, etc.) which questions the measure itself (i.e. not cases where the measure is just involved)?</p> <p>5.2. If Yes, what is the reasoning used?</p> <p>5.3. Please provide a quantification of the outcome of the Court decision (e.g. penalties) if available.</p>	<p>5.2. N/A</p>
<p>6. Other points that you would consider relevant to mention regarding this measure?</p>	<p>5.3. N/A</p> <p>6. As mentioned above, for the purposes of this measure, the concept of “tax haven” has been defined in the Belgian tax law. In this respect, a tax haven country is amongst others a country with a nil or low tax burden. In addition, it is mentioned that for the purposes of this measure a low tax burden entails a nominal corporate income tax rate of less than 10 percent.</p> <p>In this respect, we would like to draw your attention to the fact that also other articles of the Belgian tax law refer to a similar notion. For instance in relation to the participation exemption regime, the Dividend-Received Deduction cannot be applied for dividends attributed by a company which has its residence in a country where the common tax regime is substantially more advantageous than in Belgium. However, for the purposes of this measure, the tax regime is considered as substantially more advantageous in case the applicable nominal or effective tax rate is lower than 15%.</p> <p>Although these notions are thus defined in the Belgian tax law, there is no uniform definition of a “tax haven country”.</p>

## Cyprus

### Part 1: Introduction

#### 1. Definition of NCJ

1.1. Is there any formal definition of “NCJ” in your country (or any other concept similar to “NCJ”)? [Yes/No]	1.1. No  (Although in the Cyprus Tax legislation there are reference which may be linked to the concept of NCJ, cf. Measure No. 5 below)
1.2. If the answer under 1.1. is Yes, can you please provide the definition and the explanation how it operates? [Definition]	1.2. N/A
1.3. If the answer under 1.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]	1.3. N/A
1.4. If there is no formal definition, are you aware of any problems caused by this?	1.4. No

#### 2. Definition of ATP

2.1. Is there any formal definition of “ATP” in your country (or any other concept similar to “ATP”)? [Yes/No]	2.1. No
2.2. If the answer under 2.1. is Yes, can you please provide the definition? [Definition]	2.2. N/A
2.3. If the answer under 2.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]	2.3. N/A



## Part 1: Introduction

2.4. If there is no formal definition, are you aware of any problems caused by this?

2.4. No

### 3. New Specific Measures

3.1. Are there any New Specific Measures in your country? [Yes/No]  
*(If Yes, those measures must be described in Part 2 and Part 3)*

3.1. No

3.2. If the answer under 2.1. is Yes, are there any NCJ Measures amongst those New Specific Measures? [Yes/No]

3.2. N/A

3.3. If the answer under 2.1. is Yes, are there any ATP Measures amongst those New Specific Measures? [Yes/No]

3.3. N/A

### 4. Other Measures

4.1. Are there any Other Specific Measures in your country? [Yes/No]  
*(If Yes, those measures must be described in Part 2)*

4.1. No

4.2. Are there any General Anti-abuse Provisions in your country? [Yes/No]  
*(If Yes, those measures must be described in Part 2)*

4.1. Yes

4.3. If the answer under 4.2. is Yes, are those measures generally equally applicable to EU Member States (including purely domestic situations) and Third Countries?

4.3.1. Yes

4.3.1. [Yes/No]

4.3.2. [Please explain]

4.3.2. see comments in Part 2

## Part 1: Introduction

### 5. Legislative or administrative proposals

5.1. Are there currently any proposals aimed at introducing new measures in your country which could fall in scope of the current study?

5.1.1. No

5.1.1. [Yes/No/Not exclusively]

5.1.2. [If Yes, please briefly explain]

5.1.2. N/A

## Part 2: General Information

### Measure n°1: General Anti-abuse provision (Artificial or Fictitious Transactions)

<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Certain transactions may be disregarded by the tax authorities.</p> <p>In cases that a Cyprus tax resident company or individual enters into any transaction which the Director of Inland Revenue considers to be “artificial” or “fictitious” this may be disregarded and taxable income may be adjusted accordingly.</p> <p>This measure does not apply specifically to third countries.</p> <p>Introduced many years ago (1978).</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Articles 33 of the Assessment and Collection of Taxes Law L.4/78 (as amended)</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level</p>	<p>6. N/A</p>

## Part 2: General Information

summary of the given case law.	
<b>Measure n°2: General Anti-abuse Provision (Arms' Length Provisions)</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. In accordance with the general arm's length provisions in the legislation, the terms and conditions of transactions between related parties are expected to be no different from those applicable between unrelated parties.</p> <p>The tax authorities may deem additional income to ratify a deviation from what would be considered to be an arm's length arrangement.</p> <p>This measure does not apply specifically to third countries.</p> <p>It provides a mechanism to ensure that when dealing with <u>related parties</u> which are based in favourable low/zero tax jurisdictions, Cypriot companies do not pay prices that are in excess of what have been paid to unrelated parties for good/services of similar characteristics.</p> <p>Introduced in 01.01.2003.</p>
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. b) Article 33 of the Income Tax Law L.118(I)2002 (as amended)
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the	5. N/A

## Part 2: General Information

concerned MS of the effectiveness and sufficiency of the measures.	
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A
<b>Measure n°3: Foreign tax credit – Anti Channelling measure</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3.</p> <ul style="list-style-type: none"> <li>• <b>Credit per nature of income:</b> In cases where credit is claimed for foreign tax on two or more incomes of different nature from abroad, then the foreign tax credit is computed separately for each income.</li> <li>• <b>Credit per country:</b> In cases where credit is claimed for foreign tax on the same type of income arising from different sources or from different countries, then the foreign tax credit is computed separately for each source of income and for each country.</li> </ul> <p>The measure ensures that Cypriot Companies are not used as vehicles through which foreign taxes on income from one (high-tax ) source are set-off against Cypriot taxes on income from another (low-tax) source. Credit for foreign taxes against Cypriot tax is</p>

## Part 2: General Information

	calculated on a source by source basis.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Articles 35 and 36 of the Income Tax Law L. 118(I)/2002 (as amended) and IRD Circular 2011/14.
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A
<b>Measure n° 4: Deductibility of Interest</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. a) In accordance to relevant legislative framework the principles which should govern the deductibility of interest include the following:</p> <p>Interest expense which relates or is deemed to relate to the acquisition of assets not used in the business is not deductible for tax purpose.</p> <p>More particularly, this restriction of interest deductibility applies on cost of assets "not</p>

## Part 2: General Information

	<p>used in the business” (as defined below) e.g. on amount which was incurred for their acquisition either by direct or indirect payment of cash/credit/by exchange,</p> <ul style="list-style-type: none"> <li>Irrespective of whether a specific loan/payable was drawn for the acquisition of such asset.</li> </ul> <p>The rule applies in cases where a loan exists but it cannot be specifically matched with the acquisition of a certain “bad” asset. Example: A company takes a loan in 2010. It has no bad assets in 2010 and 2011 so all interest is deductible. In 2012, while the loan is still outstanding and without obtaining a new loan, the company acquires a “bad” asset. Although the 2010 loan cannot be said to have been specifically used for acquiring this “bad” asset, some interest expense will be disallowed in 2012 to the extent that the loan is “deemed to relate” to the acquisition of the “bad” asset</p> <ul style="list-style-type: none"> <li>For the period up to sale of the asset or up to seven years from the date of acquisition of the asset used in the business</li> <li>Assets “not used in the business” are interpreted to be those which do not generate taxable income.</li> </ul> <p>b) No deduction is allowed for expenses which are not supported by invoices and receipts or other legal documents , thus the Income Tax commissioner is bound by law to disallow any expenses if no supporting evidence exists.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. a) Article 11 of the Income Tax Law and IRD Circular 2010/08 b) Article 9 of the Income Tax Law 118(I)/2002 (as amended)</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the</p>	<p>5. N/A</p>

## Part 2: General Information

concerned MS of the effectiveness and sufficiency of the measures.

6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

6. N/A – No case law that we are aware of.

### Measure n° 5: Participation Exemption Regime

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. In general, the Special Defence Contribution tax (“SDC”) is a form of tax on certain forms of passive income (dividend, interest, rental income) in the hands of individuals or legal entities who are tax resident in Cyprus.

Article 3(2)(a) of the Special Defence Contribution for the Defence Law N117(I)/2002 (as amended) does not apply to the participation exemption on dividends, from companies which engage more than 50% in activities leading to investment income when the tax burden of these companies in their jurisdiction of residence is substantially lower than Cyprus tax burden.

As a result, with specific regard to dividends, the general anti-abuse measure ensures that Cyprus resident companies can claim exemption for foreign dividends only if the active income condition or the sufficient tax condition is satisfied at the level of the foreign



## Part 2: General Information

	<p>company paying the dividends.</p> <p>Enacted 01.01.2003 and is applicable to any foreign country from which a dividend is paid to Cyprus.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 3(2)(a) of the Special Defence Contribution for the Defence Law N117(I)/2002 (as amended)</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A – No case law that we are aware of.</p>

## Denmark

### Part 1: Introduction

#### 1. Definition of NCJ

<p>1.1. Is there any formal definition of “NCJ” in your country (or any other concept similar to “NCJ”)? [Yes/No]</p>	<p>1.1. No, as such NCJ is not defined in Danish tax law (nor in public legislative work and administrative doctrine). However, as you will notice from our below comments, several of the anti-abuse measures only target jurisdictions outside the EU/EEA with which Denmark has not concluded a tax treaty.</p> <p>Denmark has concluded tax treaties with most OECD countries.</p>
<p>1.2. If the answer under 1.1. is Yes, can you please provide the definition and the explanation how it operates? [Definition]</p>	<p>1.2. N/A</p>
<p>1.3. If the answer under 1.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]</p>	<p>1.3. N/A</p>
<p>1.4. If there is no formal definition, are you aware of any problems caused by this?</p>	<p>1.4. No.</p>

#### 2. Definition of ATP

<p>2.1. Is there any formal definition of “ATP” in your country (or any other concept similar to “ATP”)? [Yes/No]</p>	<p>2.1. No.</p> <p>ATP is not defined in Danish tax law (nor in public legislative work and administrative doctrine) and no general anti-avoidance rules exist.</p> <p>A number of cases suggest a “substance over form” principle, where a transaction can be reclassified or set aside in certain circumstances. However, it is not backed by legislation</p>
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## Part 1: Introduction

	and is not a clear doctrine.
2.2. If the answer under 2.1. is Yes, can you please provide the definition? [Definition]	2.2. N/A
2.3. If the answer under 2.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]	2.3. N/A
2.4. If there is no formal definition, are you aware of any problems caused by this?	2.4. No.
<b>3. New Specific Measures</b>	
3.1. Are there any New Specific Measures in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2 <u>and</u> Part 3)</i>	3.1. No.
3.2. If the answer under 2.1. is Yes, are there any NCJ Measures amongst those New Specific Measures? [Yes/No]	3.2. N/A.
3.3. If the answer under 2.1. is Yes, are there any ATP Measures amongst those New Specific Measures? [Yes/No]	3.3. N/A.
<b>4. Other Measures</b>	
4.1. Are there any Other Specific Measures in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2)</i>	4.1. No.
4.2. Are there any General Anti-abuse Provisions in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2)</i>	4.1. Yes.
4.3. If the answer under 4.2. is Yes, are those measures generally equally applicable to EU Member States (including purely domestic situations) and Third	4.3.1. No.

## Part 1: Introduction

<p>Countries?</p> <p>4.3.1. [Yes/No]</p> <p>4.3.2. [Please explain]</p>	<p>4.3.2. As described below some of measures only apply to residents outside the European Union and outside any of the states with which Denmark has concluded a tax treaty.</p>
<p><b>5. Legislative or administrative proposals</b></p>	
<p>5.1. Are there currently any proposals aimed at introducing new measures in your country which could fall in scope of the current study?</p> <p>5.1.1. [Yes/No/Not exclusively]</p> <p>5.1.2. [If Yes, please briefly explain]</p>	<p>5.1.1. No.</p> <p>5.1.2. N/A.</p>

## Part 2: General Information

### Measure n°1: Multiple deduction of the same expense

<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse measure (as it does not only target third countries)</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>This is a rule specifically addressing hybrid mismatch arrangements.</p> <p>A Danish resident taxpayer is not entitled to claim a deduction for an expense if (i) that expense is deductible under foreign tax rules against income that is not included in the computation of Danish tax, or (ii) if under the foreign tax rules, the expense is deductible against income derived by affiliated companies which is not included in the computation of Danish tax.</p> <p>Similar rules exist in the case of permanent establishments (PE): losses of a PE cannot be set off against other group members' profits if the loss is included in the company' income in the country of residence. The losses can only be carried forward against future profits of the PE. (Source: OECD Hybrid Mismatch Arrangements, Tax Policy and Compliance issues, March 2012)</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4.</p> <ul style="list-style-type: none"> <li>• Section 5G of the Tax Assessment Act.</li> <li>• Section 31.2 of the Corporate Tax Act.</li> </ul>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>

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6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

6. There are many cases with respect to the application of the anti-abuse provisions. Each case should be analyzed on a case by case basis so it is difficult to provide a summary of the main case law.

### Measure n°2: Deduction of payments which are not included in the taxable income of the recipient

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse measure (as it does not only target third countries)

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. This is a rule specifically addressing hybrid mismatch arrangements.

A Danish company or a Danish permanent establishment (PE) of a foreign company is treated as transparent for all purposes of Danish tax law if (i) the company is disregarded for tax purposes in a foreign country, (ii) the income of the company is included in the foreign taxable income of one or more affiliated companies in the foreign country that disregards the company; (iii) the foreign affiliated companies control the company, and (iv) the foreign jurisdiction is an EU or EEA state, or has concluded a tax treaty with Denmark.

In these circumstances, the company will not be entitled to a deduction for payments made to the foreign parent company since the payments are considered to be within the same legal entity.

Additionally, targeting potential scenarios in which the main rule may be circumvented,

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	<p>the legislation provides that affiliated companies in other countries may also be treated as transparent for Danish tax purposes if they are treated as transparent for tax purposes in the residence country of the company that controls both the Danish company and the other affiliated companies. The consequence is that the Danish company will not be entitled to a deduction for payments made to these affiliated companies, as they would likewise be considered to be within the same legal entity. This rule does not apply if the affiliated entity is resident in an EU/EEA or a treaty state other than the residence state of the parent company. However, as from 2011, the rule applies if the affiliated entity in the EU/EEA or treaty state is not the beneficial owner of the payment.</p> <p>(Source: OECD Hybrid Mismatch Arrangements, Tax Policy and Compliance issues, March 2012)</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Section 2A to the Danish Corporate Tax Act.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. There are many cases with respect to the application of the anti-abuse provisions. Each case should be analyzed on a case by case basis so it is difficult to provide a summary of the main case law.</p>
<p><b>Measure n°3: Rules addressing the non-inclusion of income which is deductible at the level of the payer</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General</p>	<p>1. General Anti-abuse Measure</p>

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Anti-abuse Measure]	
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. This is a rule specifically addressing hybrid mismatch arrangements.</p> <p>Dividends received by a Danish parent company are no longer tax exempt if the subsidiary is able to claim a tax deduction for the dividends. The rule does not apply if the dividends are covered by the EC Parent-Subsidiary Directive. As from 2011, the rule also applies if the deduction has been made in a lower tier subsidiary and the dividend has not been taxed in a subsidiary inserted between the subsidiary claiming the deduction and the Danish parent company. (Source: OECD Hybrid Mismatch Arrangements, Tax Policy and Compliance issues, March 2012)</p>
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Section 13 of the Corporate Tax Act.
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. There are many cases with respect to the application of the anti-abuse provisions. Each case should be analyzed on a case by case basis so it is difficult to provide a summary of the main case law.



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### Measure n°4: Controlled foreign companies

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. The Danish Controlled foreign corporation (CFC) rules are designed to limit artificial deferral of tax by using offshore low taxed entities.

As a general rule, foreign-source income, such as interest, is included in taxable income. However, income from a PE or real estate outside Denmark is excluded from taxable income.

The income of a foreign subsidiary may be taxed in the hands of its Danish parent company if the subsidiary constitutes a controlled foreign company (CFC).

According to the Danish CFC rules, a Danish company has to include in its taxable income the total income of a subsidiary, foreign or Danish, if such subsidiary qualifies as a CFC. A subsidiary qualifies as a CFC if all of the following criteria are met:

- The Danish company, together with other group member companies, directly or indirectly owns more than 50% of the capital or controls more than 50% of the voting rights in the subsidiary.
- More than half of the subsidiary's taxable profits, as hypothetically assessed under Danish tax laws, are predefined CFC income types (mainly interest, royalty, capital gains, etc.).
- During the income year, the subsidiary's CFC assets (assets, where the return is characterised as a CFC income type) make up more than 10% of the subsidiary's

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	<p>total assets.</p> <p>There is no black or white list that exempts subsidiaries resident in certain countries.</p>
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Section 32 of the Corporate Tax Act.
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. There are many cases with respect to the application of the anti-abuse provisions. Each case should be analyzed on a case by case basis so it is difficult to provide a summary of the main case law.
<b>Measure n°5: Thin capitalisation and interest relief limitations</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	<p>1. General Anti-abuse Measure</p> <p>(Although this is a recent measure, considering the measure is not only applicable to Third countries only it is not considered as a "Specific Measure" in the framework of this questionnaire)</p> <p>This measure was enacted on June 6, 2007.</p>
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose	3. Danish resident companies and Danish branches of foreign companies are subject to

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of the measure (approx. 15 lines)

three sets of restrictions, each of which may seriously limit or disallow Danish tax relief for financing costs. There is no recharacterisation of interest as dividends.

Firstly, there is the thin capitalization rule. This rule works to disallow gross interest costs and capital losses on related party debt to the extent the overall debt to equity ratio exceeds 4:1. Related party debt is defined so as to include external bank debt if group member companies or shareholders have provided guarantees to the bank. This rule does not apply if the controlled debt is less than DKK 10 million. When calculating the 4:1 ratio, a special consolidation rules applies if two or more companies are considered affiliated (note that the definition of affiliated companies differs from the definition under the Danish rules on joint taxation).

Secondly, there is an asset-based rule. To the extent a Danish company on a stand-alone basis or, if part of a joint tax group, together with group companies has net financing costs in excess of DKK 21.3 million, tax relief may be obtained only within an amount equal to 4.5% (rate applicable for 2011) of the tax basis of certain assets of the group (rate applicable for 2012 is 3.5%). Net financing costs consist of, among other things, interest income/expenses, taxable gains/losses on debt, receivables and financial contracts, taxable gains/losses on shares, and taxable dividend.

Thirdly, there is an earnings before interest and tax (EBIT) based rule that works to limit interest relief to an amount equal to 80% of the Danish company's/tax group's taxable EBIT income. This rule applies the same definition of net financing costs as the asset-based rule, and it also allows for a minimum deduction of DKK 21.3 million in cases where EBIT is too low or negative.

4. In which legal/regulatory/administrative provision(s) is the measure provided?  
[Reference]

- 4.
- Section 11 of the Corporate Tax Act.
  - Section 11 B of the Corporate Tax Act.
  - Section 11 C of the Corporate Tax Act.

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5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.

5. N/A

6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

6. There are many cases with respect to the application of the anti-abuse provisions. Each case should be analyzed on a case by case basis so it is difficult to provide a summary of the main case law.

### Measure n°6: WHTs on payments to foreign corporations and non-resident aliens

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure

(As the measure is not only applicable to Third countries only it is not considered as a "Specific Measure" in the framework of this questionnaire)

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Dividends

Dividends paid to a parent company in another EU member state or a state with which Denmark has a DTT are exempt from WHT provided that the shares qualify as subsidiary shares. The same applies for dividends paid on group shares (that are not also subsidiary shares, i.e. holdings below 10%), provided that the recipient company is resident within the EU/EEA.

Dividends paid on portfolio shares to a foreign shareholder are levied WHT of 27% (28% prior to 2012). If the portfolio shareholder is situated in a country with which Denmark has a Tax Information Exchange Agreement (TIEA), the tax rate on the dividend is

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	<p>reduced to 15% and the difference between the higher WHT rate and the lower WHT rate may be reclaimed. However, the reduced rate does not apply if the shareholder is resident outside the European Union and together with related entities owns more than 10% of the capital in the Danish distributing company.</p> <p>Interest</p> <p>Interest generally is not subject to WHT unless paid to a foreign group member company that is tax resident outside the European Union and outside any of the states with which Denmark has concluded a tax treaty. In this situation, interest WHT is levied at 25%. Certain other exemptions apply, mainly relating to CFC taxation.</p> <p>Royalties</p> <p>Royalties are subject to a 25% WHT. In most cases, the payer may reduce its withholding in accordance with the tax treaty applicable to the payee. Also, the EU Interest/Royalty Directive may provide an exemption from WHT if the payee is an immediate parent, sister, or subsidiary company resident in the European Union.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4.</p> <ul style="list-style-type: none"> <li>• The Danish Tax at Source Act, Section 65</li> <li>• The Danish Tax at Source Act, Section 65 D</li> <li>• The Danish Tax at Source Act, Section 65 C</li> </ul>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of</p>	<p>6. There are many cases with respect to the application of the anti-abuse provisions. Each case should be analyzed on a case by case basis so it is difficult to provide a summary of the main case law.</p>

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"landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

### Measure n°7: Transfer pricing

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure

(As the measure is not only applicable to Third countries only it is not considered as a "Specific Measure" in the framework of this questionnaire)

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

Danish transfer pricing rules apply to transactions between related parties (e.g. intergroup transactions) whether the transactions are made between residents or non-residents. The rules apply when a company or person directly or indirectly owns at least 50% of the share capital or 50% of the voting rights in another company.

Companies are obliged to disclose in the annual tax return certain information regarding type and volume of intra-group transactions. Companies also are obliged to maintain detailed and extensive transfer pricing documentation to substantiate that intra-group transactions are conducted in accordance with arm's-length principles. A company is subject to fines for failure to comply with the documentation rules.

4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]

4.

- The Danish Tax at Source Act, Section 2
- The Danish Tax Control Act, Section 3 B

5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.

5. N/A

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6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

6. There are many cases with respect to the application of the anti-abuse provisions. Each case should be analyzed on a case by case basis so it is difficult to provide a summary of the main case law.

### Measure n°8: Deduction of payments which are not included in the taxable income of the recipient (1)

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse measure (as it does not only target third countries)

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. This is a rule specifically addressing hybrid mismatch arrangements.

Further, specific legislation has been introduced to deal with cases of deduction/no inclusion through entities which are treated as fiscally transparent for Danish tax purposes but as separate taxable entities for foreign tax purposes. The legislation applies to Danish registered branches of foreign entities and tax transparent entities that are organised in Denmark, have their registered seat in Denmark, or have their effective seat of management in Denmark where (i) more than 50% (votes or capital interests) of the direct partners/owners are residents in foreign states, and (ii) those states consider the entity to be a separate taxable entity or do not have a tax treaty with Denmark. In these circumstances, the entity will be subject to the same tax treatment as Danish resident companies and distributions from the entity will be treated as a dividend distribution for tax purposes and consequently could be subject to withholding tax. (Source: OECD Hybrid Mismatch Arrangements, Tax Policy and Compliance issues, March 2012)

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4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Section 2C to the Danish Corporate Tax Act.
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. There are many cases with respect to the application of the anti-abuse provisions. Each case should be analyzed on a case by case basis so it is difficult to provide a summary of the main case law.
<b>Measure n°9: Deduction of payments which are not included in the taxable income of the recipient (2)</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse measure (as it does not only target third countries)
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. This is a rule specifically addressing hybrid mismatch arrangements.  A Danish company or a Danish permanent establishment (PE) of a foreign company is treated as transparent for all purposes of Danish tax law if (i) the company is disregarded for tax purposes in a foreign country, (ii) the income of the company is included in the foreign taxable income of one or more affiliated companies in the foreign country that disregards the company; (iii) the foreign affiliated companies control the company, and (iv) the foreign jurisdiction is an EU or EEA state, or has concluded a tax treaty with



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	<p>Denmark.</p> <p>In these circumstances, the company will not be entitled to a deduction for payments made to the foreign parent company since the payments are considered to be within the same legal entity.</p> <p>Additionally, targeting potential scenarios in which the main rule may be circumvented, the legislation provides that affiliated companies in other countries may also be treated as transparent for Danish tax purposes if they are treated as transparent for tax purposes in the residence country of the company that controls both the Danish company and the other affiliated companies. The consequence is that the Danish company will not be entitled to a deduction for payments made to these affiliated companies, as they would likewise be considered to be within the same legal entity.</p> <p>This rule does not apply if the affiliated entity is resident in an EU/EEA or a treaty state other than the residence state of the parent company. However, as from 2011, the rule applies if the affiliated entity in the EU/EEA or treaty state is not the beneficial owner of the payment. (Source: OECD Hybrid Mismatch Arrangements, Tax Policy and Compliance issues, March 2012)</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Section 2C to the Danish Corporate Tax Act.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level</p>	<p>6. There are many cases with respect to the application of the anti-abuse provisions. Each case should be analyzed on a case by case basis so it is difficult to provide a summary of the main case law.</p>

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summary of the given case law.

## Estonia

### Part 1: Introduction

#### 1. Definition of NCJ

<p>1.1. Is there any formal definition of “NCJ” in your country (or any other concept similar to “NCJ”)? [Yes/No]</p>	<p>1.1. YES</p> <p>As such NCJ is not defined in Estonian tax law. However, there is a concept of “Low Tax Territory” (Art 10 of Income Tax Act) that could be linked to the notion of NCJ.</p>
<p>1.2. If the answer under 1.1. is Yes, can you please provide the definition and the explanation how it operates? [Definition]</p>	<p>1.2. The definition of low tax territory is provided in Art 10 of the Income Tax Act:</p> <p><i>“(1) A low tax rate territory is a foreign state or a territory with an independent tax jurisdiction in a foreign state, which does not impose a tax on the profits earned or distributed by a legal person or where such tax is less than one-third of the income tax which a natural person who is an Estonian resident would, pursuant to this Act, have to pay on a similar amount of business income, without taking into account the deductions allowed under Chapter 4<sup>2</sup>. If taxes imposed on the income earned or distributed by different types of legal persons differ, a territory is deemed to be a low tax rate territory only with regard to legal persons in the case of whom the tax meets the conditions for low tax rate territories specified in the first sentence of this subsection<sup>3</sup>.</i></p> <p><i>(2) A legal person is not deemed to be located in a low tax rate territory if more than 50 per cent of its annual income is derived from actual economic activity<sup>4</sup> or if the state or territory of location of the legal person provides the Estonian tax authority with information concerning the income of a person controlled by</i></p>

<sup>2</sup> The tax rate for personal income tax is flat 21%. Thus, low tax rate territory is the territory where the applicable rate is below 6.93%.

<sup>3</sup> It is thus possible that some countries be partially considered as “tax havens”.

<sup>4</sup> Until now there are no guidelines nor case law explaining what the “actual economic activity” means neither does the explanatory letter to the law explain this concept.

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	<p><i>Estonian residents.</i></p> <p><i>(3) Without prejudice to the provisions of subsections (1) and (2), the Government of the Republic shall establish a list of territories which are not regarded as low tax rate territories<sup>5</sup>.”</i></p> <p>As a general rule, all the EU Member States and countries that have concluded a tax treaty with Estonia are considered as cooperative and automatically included by the Government to the “white list” of countries that are not considered as low tax rate territories. Currently the white list includes 50 countries.</p> <p>The white list comprises the following countries: Albania, Armenia, Austria, Azerbaijan, Belgium, Belorussia, Bulgaria, Canada, China (except Hong Kong and Macau), Croatia, Czech Republic, Cyprus, Denmark, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Island, Isle of Man, Israel, Italy, Japan, Jersey, Kazakhstan, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Norway, Poland, Portugal, Republic of Korea, Romania, Serbia, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, The Netherlands (except Aruba and Dutch Antilles), Turkey, UK (except Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Channel Islands, Gibraltar, Montserrat, Turks and Caicos Islands), Ukraine and USA (except US Virgin Islands, Marshall Islands).</p>
<p>1.3. If the answer under 1.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]</p>	<p>1.3. Article 10 of the Estonian Income Tax Act (hereinafter TuMS).</p> <p>The text of the Estonian Income Tax Act is available at: <a href="https://www.riigiteataja.ee/akt/129032012028?leiaKehtiv">https://www.riigiteataja.ee/akt/129032012028?leiaKehtiv</a></p>
<p>1.4. If there is no formal definition, are you aware of any problems caused by this?</p>	<p>1.4. N/A</p>

<sup>5</sup> There is thus no “black list”, but well a “white list”.  
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### 2. Definition of ATP

<p>2.1. Is there any formal definition of “ATP” in your country (or any other concept similar to “ATP”)? [Yes/No]</p>	<p>2.1. No</p> <p>As such ATP is not defined as such in the Estonian tax law (nor in public legislative work and administrative doctrine). As you will notice from our below comments, there are two general anti-avoidance provision in Estonia which are equally applicable to all taxpayers irrespective of the country of residence of the counterparty (thus not specifically targeted to transactions with NCJs).</p> <p>First, the “abuse of law” principle provides that fictitious transactions shall not be taken into account for tax purposes, i.e. if a fictitious transaction is entered into in order to conceal another transaction, provisions concerning the concealed transaction apply to determine the tax liability (Article 83(4) of the Estonian Taxation Act).</p> <p>Secondly, there is a “substance-over-form” principle, meaning that if it is evident from the content of a transaction or act that it is performed for the purposes of tax evasion<sup>6</sup>, conditions which correspond to the actual economic content of the transaction or act apply for tax purposes (Article 84 of the Estonian Taxation Act).</p>
<p>2.2. If the answer under 2.1. is Yes, can you please provide the definition? [Definition]</p>	<p>2.2. N/A</p>
<p>2.3. If the answer under 2.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]</p>	<p>2.3. N/A</p>
<p>2.4. If there is no formal definition, are you aware of any problems caused by this?</p>	<p>2.4. No</p>

<sup>6</sup> “Tax evasion” is not defined in Estonian legislation.  
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## Part 1: Introduction

### 3. New Specific Measures

3.1. Are there any New Specific Measures in your country? [Yes/No]  
*(If Yes, those measures must be described in Part 2 and Part 3)*

3.1. No

3.2. If the answer under 2.1. is Yes, are there any NCJ Measures amongst those New Specific Measures? [Yes/No]

3.2. N/A

3.3. If the answer under 2.1. is Yes, are there any ATP Measures amongst those New Specific Measures? [Yes/No]

3.3. N/A

### 4. Other Measures

4.1. Are there any Other Specific Measures in your country? [Yes/No]  
*(If Yes, those measures must be described in Part 2)*

4.1. Yes

4.2. Are there any General Anti-abuse Provisions in your country? [Yes/No]  
*(If Yes, those measures must be described in Part 2)*

4.1. Yes

4.3. If the answer under 4.2. is Yes, are those measures generally equally applicable to EU Member States (including purely domestic situations) and Third Countries?

4.3.1. Yes

4.3.1. [Yes/No]

4.3.2. [Please explain]

4.3.2. For the relevant article, the reference is not made to given countries, but to the specific transaction or act. The article applies if it is evident from the content of a transaction or act that the transaction or act is performed for the purposes of tax evasion (see above 2.1.).

### 5. Legislative or administrative proposals

5.1. Are there currently any proposals aimed at introducing new measures in your country which could fall in scope of the current study?

5.1.1. No

## Part 1: Introduction

5.1.1. [Yes/No/Not exclusively]

5.1.2. [If Yes, please briefly explain]

5.1.2. N/A

## Part 2: General Information

### Measure n°1: Payments made to the low tax territories

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. Other Specific Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. NCJ Measure

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Certain payments made to the entities located at low tax rate territories are considered as payments not related to business and therefore automatically subject to 21/79 of the corporate income tax similarly to hidden profit distributions (such taxation takes place irrespective whether the recipient is a related company or not).

Such payments include:

- (a) acquisition of securities issued by a legal person located in a low tax rate territory (§ 10) unless such securities meet the requirements specified in subsection 257 (1) of the Investment Funds Act;
- (b) acquisition of a holding in a legal person located in a low tax rate territory;
- (c) payment of a fine for delay or a contractual penalty, or extra-judicial compensation for damage, to a legal person located in a low tax rate territory;
- (d) grant of a loan or making of an advance payment to a legal person located in a low tax rate territory or acquisition of a right of claim against a legal person located in a low tax rate territory in any other manner;
- (e) losses sustained by a credit institution when it transfers a right of claim or waives the collection of a right of claim (including loans granted and advance



## Part 2: General Information

	payments made) acquired against a legal person located in a low tax rate territory.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Article 52 of the Estonian Income Tax Act
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A
<b>Measure n°2: Services acquired from the entities located in low tax rate territories</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. Other Specific Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. NCJ Measure
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. Services provided to an Estonian resident by an entity located in low tax rate territory are considered to be provided on Estonian territory notwithstanding where the services were effectively provided. Payments for such services are subject to 21% withholding tax on gross amount.  As a counterproof, if the company is able to prove that more than 50 per cent of its

## Part 2: General Information

	annual income is derived from actual economic activity, it will not be considered to be located in the low tax rate territory. See the definition of the “low tax rate territory” in Part 1, Section 1.2 above.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Article 29(3), Article 41 p 11 and Article 43(1)(1) of the Estonian Income Tax Act
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A
<b>Measure n°3: Participation exemption not extended to participations in entities located in low tax rate territories</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. Other Specific Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. NCJ Measure
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. Although generally the dividends received from subsidiaries are subject to participation exemption, provided that 10% threshold is met (additional subject-to-tax clause applies to companies outside EU, EEA and Switzerland), dividends received from

## Part 2: General Information

	<p>low tax rate territories do not qualify for participation exemption at all.</p> <p>Again, as a counterproof, if the company is able to prove that more than 50 per cent of its annual income is derived from actual economic activity, it will not be considered to be located in the low tax rate territory. See the definition of the “low tax rate territory” in Part 1, Section 1.2 above.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 50(1<sup>1</sup>) of the Estonian Income Tax Act.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A</p>
<p><b>Measure n°4: CFC rules</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. Other Specific Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. NCJ Measure</p>
<p>3. Please provide a general description of the measure including also the purpose</p>	<p>3. Profits of the entities located in low tax rate territories (see the definition of the “low</p>

## Part 2: General Information

of the measure (approx. 15 lines)

tax rate territory” in Part 1, Section 1.2 above) are included in the taxable income of the Estonian resident individuals controlling such entity, notwithstanding whether the entity has distributed any dividends or not.

### **Article 21 of the Estonian Income Tax Act.**

(1) Income tax is charged on the income of a legal person located in a low tax rate territory (§ 10) and controlled by Estonian residents, irrespective of whether the legal person has distributed any profits to taxpayers or not.

(2) A legal person is deemed to be controlled by Estonian residents if one or several legal or natural persons who are Estonian residents own at least 50 per cent of the shares, votes or rights to the profits of the legal person directly or together with associated persons (§ 8).

(3) The income of a foreign legal person is deemed to be the taxable income of a resident if the condition prescribed in subsection (2) is fulfilled and the resident owns at least 10 per cent of the shares, votes or rights to the profits of the legal person directly or together with associated persons (§ 8).

(4) The part of the gross income of a foreign legal person specified in subsection (2) which is attributable to a resident taxpayer is deemed to be the income of the taxpayer. The part attributable to a taxpayer is a proportional part of the income of the legal person, which corresponds to the holding of the taxpayer in the share capital, total number of votes or rights to the profits of the legal person.

(5) A taxpayer has, under the conditions prescribed in Chapter 6, the right to deduct the business-related expenses made by a foreign legal person from the taxable income of the foreign legal person. In proportion to the share of a taxpayer in the income of a legal person, the taxpayer has the right to deduct the part of the income tax withheld from the legal person on the basis of § 41 and, in accordance with § 45, the part of the home country income tax paid by the legal person from the income tax to be paid by the

## Part 2: General Information

	<p>taxpayer.</p> <p>(6) Resident natural persons shall declare the shares, votes and rights to the profits of a legal person located in a low tax rate territory which were held by them in the calendar year in their income tax returns. A resident taxpayer specified in subsection (3) shall include the part of the income of a foreign legal person attributable to the taxpayer in the taxpayer's taxable income and declare such income in the taxpayer's income tax return. The formats of income tax returns and the procedure for declaration of the income of legal persons registered in low tax rate territories shall be established by a regulation of the Minister of Finance.</p> <p>(7) If a resident taxpayer has paid income tax on income specified in subsection (1), dividends (subsection 18 (2)) or other profit distributions received by the taxpayer out of the income taxed in accordance with subsection (1) shall not subsequently be subject to income tax.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 21 of the Estonian Income Tax Act.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A</p>

## Part 2: General Information

### Measure n°5: General anti-avoidance provisions

<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. There are two general anti-avoidance provisions in Estonia which are equally applicable to all taxpayers irrespective of the country of residence of the counterparty (thus not specifically targeted to transactions with NCJs).</p> <p>First, the “abuse of law” principle provides that fictitious transactions shall not be taken into account for tax purposes, i.e. if a fictitious transaction is entered into in order to conceal another transaction, provisions concerning the concealed transaction apply to determine the tax liability (Article 83(4) of the Estonian Taxation Act).</p> <p>Secondly, there is a “substance-over-form” principle, meaning that if it is evident from the content of a transaction or act that it is performed for the purposes of tax evasion, conditions which correspond to the actual economic content of the transaction or act apply for tax purposes (Article 84 of the Estonian Taxation Act).</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 83(4) and 84 of the Estonian Taxation Act.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the</p>	<p>6. Most of the cases on anti-abuse rules have been decided on purely domestic issues.</p>

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main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

Mostly those cases have dealt with the issues where the individuals had contributed or sold the shares into their personal holding companies prior to the sale of those to the third parties (e.g. cases 3-3-1-15-11, 3-3-1-52-09 and 3-3-1-59-09). This is due to the distinctive features of the Estonian tax system, income received by resident individual is taxable at the moment of receiving the gain whilst taxation of income received by resident companies may in principle be deferred indefinitely). However, in most of such cases court ruled in favour of taxpayers.

One of the most recent cases with cross-border aspect that has caught a significant attention and has been seen as new trend in the developments can be summarised as follows:

- Supreme Court, case 3-3-1-42-11 of 26 September 2011:

In this case AS Technomar & Adrem (resident of Estonia), T&A Ltd (resident in Isle of Man) and T&A LLC (resident in Utah, US) were represented by the same Estonian resident individual. Tax authorities considered all companies to act under the same management and control. T&A-s bought goods from AS Technomar & Adrem at low price and sold them to third parties at high price as well as bought goods from third parties at lower price and sold them to AS Technomar & Adrem at higher price. This way the profits were transferred to T&A-s abroad. T&A LLC had thereafter transferred profits from its one bank account in US to another bank account in Austria. In this specific situation, Estonian tax authorities could not receive any information regarding of the status of the assets in Austrian bank account through exchange of information.

Court found that under the general anti-abuse clause (Taxation Act § 84), the profits of a non-resident company can be attributed to an Estonian resident company ("look-through" approach), provided the purpose of such transactions is to hide the real transactions of an Estonian resident company. Court concluded that even the transfer of money from one bank account to another bank account of the same company can be treated as non-business related expense provided that the transfer makes the control of

## Part 2: General Information

	<p>the assets in the business of an Estonian company impossible.</p> <p>As a result, the profits of a non-resident company were attributed to an Estonian resident company and taxed as hidden profit distributions at the level of an Estonian resident company.</p>
<p><b>Measure n°6: Taxation of interest exceeding non-arm's length interest</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. If interest charged by non-resident (irrespective whether the taxpayers are related or not) significantly exceeds the arm's length rate when the debt is incurred and the interest payments are made, the interest exceeding the arm's length amount is subject to 21% withholding tax on gross amount.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 29(7) of the Estonian Income Tax Act.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of</p>	<p>6. N/A</p>



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"landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

### Measure n°7: Transfer pricing documentation requirements for SME's that have conducted transactions with entities located in low-tax territories

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. Other Specific Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. NCJ Measure

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. As a general rule, all Estonian group companies and permanent establishments are obliged to prepare transfer pricing documentation to prove arm's length nature of the intercompany transactions.

An exemption applies to small and medium-size enterprises (SME) unless they have conducted transactions with entities located in low-tax territories.

A company or permanent establishment is deemed to be an SME, provided that the previous financial year consolidated results of an Estonian company or a permanent establishment together with its associated enterprises or head office meet all of the following criteria:

- Annual sales less than EUR 50 million;
- Balance sheet less than EUR 43 million; and
- The number of employees less than 250.

4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]

4. Article 18 of Regulation No. 53 issued by the Estonian Ministry of Finance on 10 November 2006 based on the Article 50(8) of the Estonian Income Tax Act

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5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.

5. N/A

6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

6. N/A

## France

### Part 1: Introduction

#### 1. Definition of NCJ

1.1. Is there any formal definition of “NCJ” in your country (or any other concept similar to “NCJ”)? [Yes/No]

1.1. Yes

1.2. If the answer under 1.1. is Yes, can you please provide the definition and the explanation how it operates? [Definition]

1.2. A state or territory is defined as non-cooperative (Non Cooperative State or Territory or “NCST”) if it meets the following criteria:

- it is not a member of the European Union;
- it is reviewed and monitored by the OECD Global Forum on Transparency and Exchange of Information;
- it has concluded no more than 12 Tax Information Exchange Agreements (TIEAs) before 1 January 2010; and
- it has not signed a TIEA with France.

For implementation of this definition, the entity must be incorporated or established in the NCST (hereafter “located in a NCST”).

It should be noted that a jurisdiction, upon inclusion in the OECD’s “white list”, will automatically be removed from the French list of NCSTs, regardless of the above-mentioned domestic criteria.

In addition, a withdrawal from the list of NCSTs is effective immediately, whereas the inclusion on that list is only effective from the following calendar year. As a result, the measures cannot apply immediately upon the inclusion on the list, but may only apply in the following year if the country or territory is still on the list of NCSTs at that date.

The NCSTs list is updated on an annual basis, with specific attention being paid to the

## Part 1: Introduction

	<p>effective implementation of TIEAs signed with France.</p> <p>The most recent list provided by the Ministry of Finance was published on 4 April 2012 with effect from 1 January 2012.</p> <p>It includes the following states: Botswana, Brunei, Guatemala, Marshall Islands, Montserrat, Nauru, Niue, and the Philippines.</p>
1.3. If the answer under 1.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]	1.3. Section 238 0-A of the French Tax Code
1.4. If there is no formal definition, are you aware of any problems caused by this?	1.4. N/A
<b>2. Definition of ATP</b>	
2.1. Is there any formal definition of “ATP” in your country (or any other concept similar to “ATP”)? [Yes/No]	2.1. No
2.2. If the answer under 2.1. is Yes, can you please provide the definition? [Definition]	2.2. N/A
2.3. If the answer under 2.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]	2.3. N/A
2.4. If there is no formal definition, are you aware of any problems caused by this?	2.4. No
<b>3. New Specific Measures</b>	
3.1. Are there any New Specific Measures in your country? [Yes/No] (If Yes, those measures must be described in Part 2 <u>and</u> Part 3)	3.1. Yes

## Part 1: Introduction

3.2. If the answer under 2.1. is Yes, are there any NCJ Measures amongst those New Specific Measures? [Yes/No]

3.2. Yes (measures n° 7, 8, 9, 10, 11, 12, 13 and 14 described in part II)

3.3. If the answer under 2.1. is Yes, are there any ATP Measures amongst those New Specific Measures? [Yes/No]

3.3. No

### 4. Other Measures

4.1. Are there any Other Specific Measures in your country? [Yes/No]  
*(If Yes, those measures must be described in Part 2)*

4.1. No

4.2. Are there any General Anti-abuse Provisions in your country? [Yes/No]  
*(If Yes, those measures must be described in Part 2)*

4.2. Yes (measures n°1, 2, 3, 4, 5 and 6 described in part II)

4.3. If the answer under 4.2. is Yes, are those measures generally equally applicable to EU Member States (including purely domestic situations) and Third Countries?

4.3.1. [Yes/No]

4.3.2. [Please explain]

4.3.1. Yes

4.3.2. Measures 1 and 2 described in part II are applicable to “privileged tax regimes”, i.e. tax regimes in which a foreign jurisdiction subjects taxable income of a foreign entity to less than 50% of the income tax liability which would be incurred in France, had the activity of the foreign entity been performed in France.

Measure 3 described in part II is applicable to simulation and purely tax motivated schemes regardless the country concerned.

Measure 4 described in part II is applicable to the company’s acts of management resulting for this company in bearing an expense or depriving itself from a profit without being able to justify that it is in its own interest to do so.

Measure 5 described in part II is a recent restriction to the deductibility of interest on acquisition debt that apply when the French acquiring company is not able to demonstrate that it takes decisions relating to these shares and has control or influence over the company whose securities are held.

Measure 6 described in part II is an anti-abuse provision, the so-called “amendment

## Part 1: Introduction

Charasse” which provides that where the new purchased company was acquired from a affiliate controlling the group, the financing expenses’ deductibility is limited.

### 5. Legislative or administrative proposals

5.1. Are there currently any proposals aimed at introducing new measures in your country which could fall in scope of the current study?

5.1.1. No

5.1.1. [Yes/No/Not exclusively]

5.1.2. [If Yes, please briefly explain]

5.1.2. N/A

## Part 2: General Information

### Measure n°1: Controlled foreign companies regime (“CFC rules”)

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. The CFC rules provide that:

French corporations are required to include in their taxable income profits made by their more than 50% owned foreign subsidiaries and branches. The 50% holding is determined by direct and indirect control of shares and voting rights.

The minimum holding threshold has to be reduced to 5%, if over 50% of the share capital of the foreign entity is indirectly held through French or foreign companies controlled by a French parent company. However, if the shares in the foreign entity are listed on a regulated market, the French tax authorities will have to demonstrate that the French parent company, together with other entities holding shares in such foreign entity, is acting in concert.

The CFC rules are only applicable if the foreign legal entity or permanent establishment in which the French company owns the requisite percentage of shares is in a country with a privileged tax regime. A privileged tax regime is defined by the French tax code as a tax regime in which a foreign jurisdiction subjects taxable income of a foreign entity to less than 50% of the income tax liability which would be incurred in France, had the activity of the foreign entity been performed in France.

Profits of the foreign entity which fall under the CFC rules are no longer taxed separately. They are now aggregated with the other taxable profits of the French parent company.

## Part 2: General Information

	<p>Consequently, any tax losses incurred by the French parent company may be offset against the foreign entity's profits.</p> <p>The French parent company can avoid the application of the CFC rules if it demonstrates that the foreign entity carries an effective trading or manufacturing activity, conducted from its country of establishment or registered office provided less than 50% of the revenues are not with affiliates and if less than 20% of its income is "passive". Furthermore, the CFC rules, in principle, are not applicable with respect of foreign branches or subsidiaries located in another EU country. However, this exception is not applicable if the French tax authorities can demonstrate that the foreign entity located in another EU country constitutes an artificial arrangement, set up to circumvent French tax legislation.</p> <p>This regime has been significantly amended by the Finance Law for 2005 (entering into force in 2006).</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Section 209 B of the French Tax Code (law 2004-1484 dated 30 December 2004, Article 104).</p> <p>Tax guidelines 4 H-1-07 dated 16 January 2007.</p> <p>Decree 2006-1309 dated 25 October 2006 (sections 102 SA to 102 ZB of Appendix II of the French Tax Code)</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of</p>	<p>6. By two decisions dated 21 November 2011 (Supreme Court 21 November 2011, n° 325214, 9e et 10e s.-s., Société industrielle financière de l'Artois (SIFA); Supreme Court 21 November 2011, n° 327207, 9e et 10e s.-s., Compagnie des Glénans), the Supreme Court provided useful information on the methods for evaluating the preferential tax</p>



## Part 2: General Information

"landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

regime within the framework of section 209 B of the French tax Code. Although the two decisions relate to the mechanism such as it existed prior to the reform introduced by the Finance Law for 2005, the clarifications they provide can be applied to the new regime.

In these two cases, a company based in Vanuatu, Plantations des Terres Rouges (PTR), carried on an industrial and commercial activity (exploitation of plantations in Malaysia) and a holding activity (management of holdings, some of which were French). Its shareholders included two French companies, Société Industrielle et Française de l'Artois (SIFA) and Compagnie des Glénans. Both companies had been taxed in respect of the profits made by PTR on the basis of the provisions of section 209 B of the French Tax Code.

In both cases, the question concerned the tax liability to be taken into account for the assessment of the preferential nature of the tax regime applicable to the Vanuatu company.

Indeed, in Malaysia, PTR had paid profits tax in relation to its exploitation of plantations that was rather similar to what it would have paid in France if it had made the same profits there.

In addition, PTR also suffered a withholding tax in France on the basis of article 119 b/s-2 of the CGI in respect of the dividends paid by a French company (in the absence of a tax convention with Vanuatu, the withholding tax had been levied at the domestic rate of 25%, without any limitation).

The question that arose was thus whether these two impositions should be taken into account when assessing the preferential nature of the tax regime applicable to the foreign company (PTR).

In the first case, the Supreme Court judged that no account should be taken when assessing the preferential nature of the tax regime of the foreign company, of profits

## Part 2: General Information

	<p>made by a branch located in a third tax jurisdiction.</p> <p>In the second case, the Supreme Court judged that the withholding tax levied in France pursuant to article 119 b/s-2 of the CGI in respect of the dividends received by the foreign company must be taken into account when comparing the different levels of taxation.</p>
<p><b>Measure n°2: Anti avoidance rule regarding the payments made to non residents located in a low-tax jurisdiction</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Expenses resulting from transactions (e.g. remuneration, fees and similar payments) undertaken by French companies with non-residents, the effective taxation of which is at least 50% lower than that of similar French residents, are non-deductible.</p> <p>The rationale behind this measure is that such expenses are deemed to be of an “abnormal” nature for tax purposes.</p> <p>This regime also applies where the payment is made to an account of a financial institution located in a low-tax jurisdiction.</p> <p>However, the expenses paid or owed to a non-resident subject to a low-tax liability may become deductible if the taxpayer proves that the payment (i) is related to an effective operation and (ii) is not related to an “abnormal” act of management or an exaggerated act.</p> <p>In addition, with effect from 1 January 2011, the paying French company (i) must prove that the transaction’s main purpose and effect is not to shift income outside France (i.e.</p>

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	<p>both the purpose and the effect must not be driven mainly by tax avoidance) and (ii) must record the expense on a detailed tax return (Section 54 quater of the French Tax Code) if the non-resident is located in an NCST (please see measure n°7).</p> <p>Failure to comply with this filing requirement gives rise to a 5% penalty.</p>
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	<p>4. Section 238 A of the French Tax Code.</p> <p>Tax guidelines 4 C-8-75 dated 26 June 1975.</p>
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. Not available
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. Cf measure n°1 – Supreme Court 21 November 2011, n° 325214, 9e et 10e s.-s., Société industrielle financière de l'Artois (SIFA); Supreme Court 21 November 2011, n° 327207, 9e et 10e s.-s., Compagnie des Glénans.
<b>Measure n°3: Abuse of law theory</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose	3. The abuse of law procedure enables the FTA to disregard transactions or acts carried out by a taxpayer if such transactions or acts are fictitious or if they have, as their sole

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<p>of the measure (approx. 15 lines)</p>	<p>purpose, the avoidance of French taxes that the taxpayer should have borne in the normal course of its activity and when the tax benefit of the transaction is contrary to the intent of the legislator. In case the abuse of law is established, the FTA are entitled to reassess avoided tax and to add a penalty of 40% on this tax (increased to 80% if the taxpayer is the principal investigator or beneficiary).</p> <p>In that respect, the French Supreme Court applies the abuse of law procedure in case of simulation or purely tax motivated schemes:</p> <ul style="list-style-type: none"> <li>• Simulation: as far as simulation is concerned, the abuse of law procedure applies if a scheme (e.g., company, instrument or legal transaction) is fictitious (i.e. fictitious criteria);</li> <li>• Purely tax motivated scheme: the French tax authorities can invoke this specific procedure in order to challenge, for example, a scheme involving a foreign company on the basis that the interposition of such company had, as its sole purpose, the avoidance of French tax.</li> </ul>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Section L 64 of the French Proceedings code.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. The abuse of law theory was illustrated by a great deal of court cases. Nevertheless, since the landmark Janfin case (Supreme Court 27 September 2006 # 260050), the abuse of law principle seems to be quite steady even if, in practice, its implementation might raise difficulties.</p> <p>In Janfin case law the Supreme Administrative Tax Court acknowledged the existence of an overarching concept of tax abuse that may apply in situations not covered by former section L 64 of the French Tax Code. Janfin case law also strengthened the conditions</p>

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	<p>under which a transaction would be found abusive. The two traditional tests were that the arrangement under review was either fictitious or established solely for the purpose of reducing the taxpayer's taxable basis. The judges expressly indicated that the second test is fulfilled only, if, in addition to being solely motivated by a tax purpose, the tax benefit sought results from a literal application of a rule that is in contradiction with its author's objectives. In other words, a transaction should not be considered abusive if, even though it seeks only a tax benefit, that benefit merely results from a fair application of French tax laws.</p>
<p><b>Measure n°4: Abnormal act of management</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. The French tax code does not provide a definition of abnormal act of management. However, according to the French tax case law, a company makes an abnormal act of management if it bears an expense or deprives itself from a profit without being able to justify that it is in its own interest to do so (Supreme Court, July 7, 1958, n°35977).</p> <p>From a practical standpoint, in order to assess whether or not there is an abnormal act of management, French case law clearly rules that the burden of the proof is on the French tax authorities' side. The burden of proof lies with the taxpayer only if the latter cannot prove the accuracy of the accounting entries with respect to both their principles and their amounts (Supreme Court, July 27, 1984, n°34588).</p> <p>In practice, based on French case-law, the abnormal act of management is troublesome to demonstrate by the FTA without interfering with the company's business management</p>

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	<p>decisions. Indeed, French case law clearly states that the FTA should not criticize a management decision as long as the decision taken is in line with the company's interest and its business scope and is not regarded as excessive (Supreme Court, November 4, 1983 n° 34516). In addition, there is no binding obligation for the management of a French company in the framework of a decision process to maximise the profit of the company (Supreme Court, July 7, 1958, n°35977).</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Case law concept.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. The abnormal act of management was illustrated by many court cases but the solutions adopted generally depend on the facts / case by case analysis.</p> <p>Interesting recent court case can be found in the Administrative Court of Appeal of Versailles confirmed in a recent decision (administrative court of Appeal, Versailles, January 24, 2012 # 10VE03601, Yoplait) the right for a company to deduct the interest expenses incurred to finance a share-buy-back.</p> <p>In the said case, the share capital of the French company was held by two shareholders in a 25/75 proportion. In the frame of a restructuring of a division of the company's activity, the company implemented a share-buy-back which allowed to adjust the shareholding to 50/50. Such share-buy-back was financed through debt.</p> <p>The FTA challenged the deductibility of the interest expenses incurred on the grounds of the abnormal act of management theory considering that the operation was not carried out in the interest of the company but in the interest of the minority shareholder who increased its participating shareholdings without any injection of cash.</p>

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	<p>The first level of jurisdiction agreed with the analysis of the FTA. The administrative Court of Appeal reversed the decision taken by the tax Court of Cergy considering that the operation in the case at hand was presenting sufficient consideration for the company itself.</p> <p>The court considered that:</p> <ul style="list-style-type: none"> <li>• The share capital decrease implemented through a share-buy-back was the ultimate step of an overall restructuring of a division, necessary for the implementation of a strategic and financial partnership;</li> <li>• This partnership allowed the company to acquire the control of the tangible and intangible assets of the concerned division and obtain the financing necessary to sustain and develop such division.</li> </ul> <p>Therefore, this decision has not been expressly grounded on the principle of freedom for a company to choose its financing means but on the specific circumstances of the case since the court considered that the interest expenses were deductible in light of the consideration retrieved by the company from the operation.</p>
<p><b>Measure n°5: Restriction on the deductibility of interest on acquisition debt - Qualifying holding control test or so-called "Carrez Amendment"</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. This provision requires the reinstatement (i.e. disallowance) for tax purposes of financial costs relating to the acquisition of shares if the acquiring company is unable to</p>

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demonstrate, by any means:

(i) that decisions relating to these shares are actually taken by the acquiring company or another company established in France which “controls” the acquiring company or by a company established in France controlled by the latter, as required by the Commercial Code (an “affiliate”), and

(ii) where control or influence over the company whose securities are held is exercised, that such control or influence is actually exercised by the company holding the shares or by its affiliate.

If finance costs have to be reinstated, the amount of such costs to be disallowed would be equal to the ratio between the acquisition price of the shares and the amount of debt held by that company. The reinstatement applies in respect of the year of the acquisition and for all subsequent fiscal years ending before the eighth anniversary of the acquisition.

Although the amount of the reinstatement is to be assessed annually, it is only in the year of acquisition itself that the acquiring company must demonstrate that this provision is not applicable (except for acquisitions prior to 1 January 2012 for which such evidence would have to be provided in the first fiscal year beginning after this date).

This provision therefore has a retroactive effect as it applies not only to acquisitions made on or after 1 January 2012 but also those carried out previously, at least for that period for potential reinstatement which remains.

Specific provisions apply in case of mergers and assimilated operations.

Two safeguards have been provided so that it is possible to fall outside the scope of the provision:

i. if the acquisition was not financed by way of loans in respect of which the acquiring company (or a related company within the meaning of Article L 233-3 of the Commercial



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	<p>Code) seeks to deduct interest costs, or</p> <p>ii. if the debt ratio of the group to which these companies belong is greater than or equal to their own debt ratio (the notions of group debt ratio and appreciating identical to those from Article 212 III of the CGI).</p> <p>Moreover, this provision does not apply where the total value of the shares does not exceed €1 million.</p>
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Section 40 of the Finalised Finance Act (FFA) for 2012 and 4th Amended Finance Act 2011.
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. Not available
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A
<b>Measure n°6: Amendement Charasse - Limit the deduction of interest within a tax group when a company is purchased from a related party and joins a tax group afterwards</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure /	2. N/A

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Both]	
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. The "Amendment Charasse" is an anti-abuse rule designed to limit the deduction of interest within a tax group when a company is purchased from a related party and joins a tax group afterwards.</p> <p>Basically, the amount of non deductible interest expenses at the tax group level is computed as following:</p> <p>Disallowed interest expenses = Total interest expenses of tax group members * (purchase price of the company acquired from a related party and joining the tax group / total average debts of tax group members)</p> <p>Such a disallowance mechanism applies during 8 years following the purchase of the company from a related party (providing that the target company joins the tax group).</p> <p>Such a restriction also applies when the target company is merged into a tax group member.</p> <p>Charasse anti-abuse rule and debt financing are disconnected:</p> <ul style="list-style-type: none"> <li>• Charasse rules apply even if there is no intragroup debt (the triggering event only relates to the fact that the purchased company joins the tax group or not);</li> <li>• The acquisition can be financed through intragroup debt without Charasse rules' consequences (provided that the purchased companies do not join the tax group; note that interest deductibility linked to the intragroup debt remains subject to standard thin cap rules).</li> </ul> <p>The Charasse issue can be managed as following:</p> <ul style="list-style-type: none"> <li>• a capital contribution within the 3 months before or after the purchase of the target companies in order to finance the acquisition.</li> <li>• The Charasse rule would not apply should the initial purchaser expressly confirm its</li> </ul>

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	<p>intention of reassigning all its shares held (directly or indirectly) in the French target companies as soon as possible to one of its French affiliates. In practice, French tax guidelines (4 H-2-08 dated April 2,2008) provide for express mention of such intention of reassignment in official documents (e.g. in the minutes of the board of directors/shareholders' meetings approving the purchase of the target group) and in the context of a public offer, in the information notice related to the acquisition.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Section 223 B al.7 of the French Tax Code. Law 2006-1771 dated 30 December 2006 section 82. Tax guidelines 4 H-2-08 dated 2 April 2008.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A</p>
<p><b>Measure n°7: Anti avoidance rule regarding the payments made to non residents located in a NCST</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. New Specific Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure /</p>	<p>2. NCJ Measure</p>

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Both]	
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Paragraph 3 of Section 238-A of the French Tax code strengthens the general provisions of Section 238-A of the French Tax Code by setting up a general interdiction to deduct the expenses resulting from transactions (e.g. remuneration, fees and similar payments) undertaken by French companies with non-residents located in a NCST.</p> <p>In addition to the proof requirements in the framework of the general mechanism (i.e. expenses related to an effective operation and not related to an “abnormal” act of management or an exaggerated act), the paying French company (i) must prove that the transaction’s main purpose and effect is not to shift income outside France (i.e. both the purpose and the effect must not be driven mainly by tax avoidance) and (ii) must record the expense on a detailed tax return (Section 54 quater of the French Tax Code) if the non-resident is located in an NCST.</p> <p>Interest paid in relation to a loan concluded before 1 March 2010 or to a loan concluded as from 1 March 2010 but which can be considered as concluded before are exempted from this specific measure.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Section 238-A, paragraph 3 of the French Tax Code (Article 22, I-O of Law 2009-1674 dated 30 December 2009).</p> <p>French tax guidelines 14 A-5-12 dated 10 May 2012, paragraph 54.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of</p>	<p>6. N/A</p>

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"landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

### Measure n°8: CFC regime strengthened for income from entities located in a NCST

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. New Specific Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. NCJ Measure

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Specific measures regarding NCST:

- Regarding the general “real activity” safeguard clause for taxation of benefits in France, if the foreign company is located in a NCST, the burden of proof is shifted from the tax authorities to the French company. Accordingly, the taxpayer must demonstrate that (i) the foreign entity or permanent establishment is principally engaged in commercial or industrial activities and that (ii) the passive income and remuneration ratios derives from the foreign entity or permanent establishment do not exceed the thresholds provided by section 209 B III of the FTC (less than 50% of the revenues are not with affiliates and if less than 20% of its income is “passive”).
- Regarding the foreign tax paid on passive income received by the CFC entity, such tax is in principle credited against the corresponding French tax, provided that the foreign tax is comparable to French corporate tax. The tax credit is however excluded for withholding taxes on passive income received by the foreign entity and levied by NCSTs.

4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]

4. Section 209 B III bis of the French Tax Code.

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	French tax guidelines 14 A-5-12 dated 10 May 2012, paragraph 25 and following.
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. Not available
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A
<b>Measure n°9: Exclusion from participation exemption regime for dividends paid by a NCST</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. New Specific Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. NCJ Measure
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. Section 145, paragraph 6-j of the French Tax code excludes from the benefit of the participation exemption regime the dividends paid by a subsidiary located in NCST.  This measure applies to fiscal years opened from 1 January 2011.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Section 145, paragraph 6-j of the French Tax Code (Article 22, I-O of Law 2009-1674 dated 30 December 2009).  French tax guidelines 14 A-5-12 dated 10 May 2012, paragraph 44.

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<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A</p>
<p><b>Measure n°10: Transfer pricing documentation requirements for operations or transactions realised by French companies with foreign entities located in a NCST</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. New Specific Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. NCJ Measure</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. With effect from 1 January 2010, large enterprises must provide further documentation on their transfer pricing policy within 30 days upon request of the tax authorities (article L 13 AA LPF).</p> <p>The further documentation requirements may be classified under two categories of information:</p> <ul style="list-style-type: none"> <li>• general information on the affiliated companies; such as a description of the activity and strategy of the group, the legal and organizational structure, a functional analysis, a list of intangible assets and a general overview of the transfer pricing</li> </ul>

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	<p>policy of the group; and</p> <ul style="list-style-type: none"> <li>• specific information on the audited company itself; such as information on activities and business strategy, information on transactions with related parties (e.g. nature, amount), APAs and cost sharing agreements, a comparable and functional analysis, or an explanation of the applied transfer pricing method(s).</li> </ul> <p>With effect from 1 January 2011, complementary disclosure requirements will apply to transactions undertaken with companies located in NCSTs (section L 13 AB LPF). In such a situation, the French taxpayer will be obliged to provide all tax documentation required by the FTC for French companies (e.g. annual balance sheet, profit-and-loss account, form DADS 1) regarding the foreign company.</p> <p>If the company fails to provide the aforementioned information, the company is subject to a fine of EUR 10,000, or 5% of the adjusted profits, whichever is higher (section 1735 ter CGI). However, the application of the proportional penalty of 5% can vary, depending on the level of infringement.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Section L 13 AB LPF (Article 22, I-O of Law 2009-1674 dated 30 December 2009). French tax guidelines 14 A-5-12 dated 10 May 2012, paragraph 71.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A</p>



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### Measure n°11: Exclusion from exemption regime for capital gains on the sale of participations held in companies located in a NCST

<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. New Specific Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. NCJ Measure</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. The tax exemption regime applicable to the capital gains realized on the sale of participations (Sections 39 duodecies and 219 of the French Tax Code) is not applicable to the sale of participations held in companies located in a NCST.</p> <p>Therefore, these sales of participations are subject to the standard rate of corporate income tax (i.e. 33, 1/3).</p> <p>This measure applies to the sales of participations realized as from 1 January 2011.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Sections 39 duodecies and 219 of the French Tax Code.</p> <p>French tax guidelines 14 A-5-12 dated 10 May 2012, paragraph 67.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level</p>	<p>6. N/A</p>

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summary of the given case law.

### Measure n°12: 50% withholding tax on outbound payments to entities located in a NCST

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. New Specific Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. NCJ Measure

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. For outbound payments made as from March 1st 2010 (i.e. dividends, interest and payments in consideration of the supply of any kind of services) to beneficiaries located in Non Cooperative States or Territories (NCSTs), a 50% WHT is applicable to these payments, except in case of bona fide commercial reasons (i.e., “the transactions to which the payments have a main purpose and main effect other than allowing the location of proceeds or income in an NCST”).

4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]

4. Sections 125 A, 125-0 A, 119 bis, 182 A bis and 182B 39 duodecies and 219 of the French Tax Code.

French tax guidelines 14 A-5-12 dated 10 May 2012, paragraph 86 and following.

5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.

5. Not available

6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when

6. N/A

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relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

### Measure n°13: 50% taxation on the real estate capital gains realized in France by entities located in NCSTs

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. New Specific Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. NCJ Measure

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. As a general rule, real estate capital gains realized in France by non tax resident persons are taxed at a 33,1/3% tax rate. This taxation rate is increased to 50% for real estate capital gains realized in France by entities located in a NCST.

4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]

4. Sections 244 bis, 244 bis A of the French Tax Code.

French tax guidelines 14 A-5-12 dated 10 May 2012, paragraph 78 and following.

5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.

5. Not available

6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

6. N/A

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### Measure n°14: 50% taxation on capital gains resulting from the sale of shares in a French company by entities located in NCSTs

<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. New Specific Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. NCJ Measure</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. As a general rule, capital gains realized in France by non tax resident persons for the sale of shares in a French company are taxed at a 19% tax. This taxation rate is increased to 50% for capital gains realized in France by entities located in a NCST on the sales of shares in a French company.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Sections 244 bis B of the French Tax Code.  French tax guidelines 14 A-5-12 dated 10 May 2012, paragraph 84 and following.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A</p>

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### New Specific Measure n°1: Anti avoidance rule regarding the payments made to non residents located in a NCST

1. Is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

*(Same answer as in Part 2 for the New Specific Measure at stake)*

1. NCJ Measure

2. Legal grounds governing this measure.

2.1. Legal provision(s)? [Reference] *(Same answer as in Part 2 for this measure)*

2.2. Practice notes? [Reference]

2.3. Parliamentary works? [Reference]

2.4. Other source? [Reference]

2.1. Section 238-A, paragraph 3 of the French Tax Code.

2.2. French tax guidelines 14 A-5-12 dated 10 May 2012, paragraph 54.

2.3. Article 22, I-O of Law 2009-1674 dated 30 December 2009.

2.4. N/A

3. Can you please provide a detailed description of the measure? This description should include in particular the following elements:

3.1. Main mechanisms? [Description]

3.2. Purpose (i.e. the problem and the countries which are supposed to be tackled by the measure)? [Description]

3.3. Scope Rationae Personae? [Description]

3.4. Scope Rationae Materiae? [Description]

3.5. Effects (sanctions, incentives linked to complying with the measure, etc.)? [Description]

3.6. Burden of proof? [Description]

3.7. Other relevant point? [Comments]

3.8. Is it a new measure / an amended measure or a possible future measure? [new measure / amended measure / possible future measure]

3.9. Are there any intentions or proposals to change the measure? [Comments]

3.1. Complementary proof required for the deduction of the expenses resulting from transactions (e.g. remuneration, fees and similar payments) undertaken by French companies with non-residents located in a NCST.

3.2. The measure's aim is to avoid the shifting of profits to countries with preferential tax regime.

3.3. French companies incurring expenses charged out by entities located in NCSTs.

3.4. Expenses resulting from transactions (e.g. remuneration, fees and similar payments) undertaken by French companies with non-residents located in a NCST.

3.5. The measure strengthens the general provisions of Section 238-A of the French Tax Code by setting up a general interdiction to deduct these expenses for those made to non resident located in NCSTs.

3.6. In addition to the proof requirements in the framework of the general mechanism of Section 238-A of the French Tax Code (i.e. expenses related to an effective operation and

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	<p>not related to an “abnormal” act of management or an exaggerated act), the paying French company (i) must prove that the transaction’s main purpose and effect is not to shift income outside France (i.e. both the purpose and the effect may not be driven mainly by tax avoidance) and (ii) must record the expense on a detailed tax return (Section 54 quater of the French Tax Code) if the non-resident is located in an NCST.</p>
	3.7.
	3.8. New measure
	3.9. No
<p>4. Impact assessment and evaluation</p> <p>4.1. Before enactment: were there impact assessments made / issued / discussed during the preparation of the measure (including a quantitative impact)?</p> <p>4.1.1. [Yes/No]</p> <p>4.1.2. [If Yes, please describe]</p> <p>4.1.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p> <p>4.2. After enactment: are there evaluations (including effectiveness and sufficiency) of the measure issued or discussed during any parliamentary works or in any other official administrative doctrine publicly available?</p> <p>4.2.1. [Yes/No]</p> <p>4.2.2. [If Yes, please describe]</p> <p>4.2.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body,</p>	<p>4.1.1. N/A</p> <p>4.1.2. N/A</p> <p>4.1.3. N/A</p> <p>4.2.1. N/A</p> <p>4.2.2. N/A</p> <p>4.2.3. N/A</p>

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communications from the tax authorities, etc.)]	
5. Litigations	5.1. N/A
5.1. Is there any litigation (pending or decided) before local Courts (first instance, appeal, Supreme Court, etc.) or before EU/international Courts (prejudicial question, infringement procedure, etc.) which questions the measure itself (i.e. not cases where the measure is just involved)?	5.2. N/A
5.2. If Yes, what is the reasoning used?	
5.3. Please provide a quantification of the outcome of the Court decision (e.g. penalties) when available.	5.3. N/A
6. Other points that you would consider relevant to mention regarding this measure?	6. N/A
<b>New Specific Measure n°2: CFC regime strengthened for income from entities located in a NCST</b>	
1. Is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]  <i>(Same answer as in Part 2 for the New Specific Measure at stake)</i>	1. NCJ Measure
2. Legal grounds governing this measure.	2.1. Section 209 B III bis of the French Tax Code.
2.1. Legal provision(s)? [Reference] <i>(Same answer as in Part 2 for this measure)</i>	2.2. French tax guidelines 14 A-5-12 dated 10 May 2012, paragraph 25 and following.
2.2. Practice notes? [Reference]	2.3. Article 22, I-O of Law 2009-1674 dated 30 December 2009
2.3. Parliamentary works? [Reference]	
2.4. Other source? [Reference]	2.4. N/A
3. Can you please provide a detailed description of the measure? This description	3.1. General mechanism: French corporations are required to include in their taxable income profits made by their more than 50% owned foreign subsidiaries and branches.

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should include in particular the following elements:

- 3.1. Main mechanisms? [Description]
- 3.2. Purpose (i.e. the problem and the countries which are supposed to be tackled by the measure)? [Description]
- 3.3. Scope Rationae Personae? [Description]
- 3.4. Scope Rationae Materiae? [Description]
- 3.5. Effects (sanctions, incentives linked to complying with the measure, etc.)? [Description]
- 3.6. Burden of proof? [Description]
- 3.7. Other relevant point? [Comments]
- 3.8. Is it a new measure / an amended measure or a possible future measure? [new measure / amended measure / possible future measure]
- 3.9. Are there any intentions or proposals to change the measure? [Comments]

The 50% holding is determined by direct and indirect control of shares and voting rights.

As a safeguard, CFC rules do not apply in the following cases (safeguard clauses):

- Within the European Union, unless the structure is purely artificial and its sole purpose is to avoid French tax.
- Outside the European Union, if the foreign entity or permanent establishment is principally engaged in commercial or industrial activities. However, even if this is the case, the French company must prove that the operations of the foreign structure are not only motivated by tax reasons in the following cases (article 209 B III CGI):

(i) income is derived for more than 20% from passive income, i.e. the management of shares, participations or assets for its own account or for the account of group companies which are directly or indirectly controlled by the French company, or from the sale or concession of intangible rights related to industrial or intellectual property; or

(ii) income is derived for more than 50% from passive income mentioned in (i) and intra-group services.

Specific mechanism for NCST:

- The tax credit related to the foreign tax paid on passive income received by the entity located in an NCST cannot be credited against the corresponding French tax.
- If the foreign company is located in an NCST, the burden of proof for the application of the safeguard clause outside the EU is shifted from the tax authorities to the French company. Accordingly, the French company must demonstrate that (i) the foreign entity or permanent establishment is principally engaged in commercial or industrial activities and that (ii) the passive income and remuneration ratios derives from the foreign entity or permanent establishment do not exceed the thresholds



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	<p>provided by section 209 B III of the FTC.</p>
	<p>3.2. The measure's aim is to avoid the shifting of profits to countries with preferential tax regime.</p>
	<p>3.3. French companies owning the requisite percentage of shares (more than 50%- the 50% holding is determined by direct and indirect control of shares and voting rights) in an entity located in a country with a privileged tax regime.</p>
	<p>The minimum holding threshold has to be reduced to 5%, if over 50% of the share capital of the foreign entity is indirectly held through French or foreign companies controlled by a French parent company. However, if the shares in the foreign entity are listed on a regulated market, the French tax authorities will have to demonstrate that the French parent company, together with other entities holding shares in such foreign entity, is acting in concert.</p>
	<p>3.4. Income of foreign entities located in a NCST.</p>
	<p>3.5.</p> <ul style="list-style-type: none"> <li>• The tax credit related to the foreign tax paid on passive income received by the entity located in an NCST cannot be credited against the corresponding French tax.</li> <li>• If the foreign company is located in an NCST, the burden of proof for the application of the safeguard clause outside the EU is shifted from the tax authorities to the French company. Accordingly, the French company must demonstrate that (i) the foreign entity or permanent establishment is principally engaged in commercial or industrial activities and that (ii) the passive income and remuneration ratios derives from the foreign entity or permanent establishment do not exceed the thresholds provided by section 209 B III of the FTC.</li> </ul>
	<p>3.6. The French company bears the burden of proof.</p>

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	3.7. N/A
	3.8. New measure
	3.9. No
4. Impact assessment and evaluation	4.1.1. N/A
4.1. Before enactment: were there impact assessments made / issued / discussed during the preparation of the measure (including quantitative impact)?	4.1.2. N/A
4.1.1. [Yes/No]	4.1.3. N/A
4.1.2. [If Yes, please describe]	4.2.1. N/A
4.1.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]	4.2.2. N/A
4.2. After enactment: are there evaluations (including effectiveness and sufficiency) of the measure issued or discussed during any parliamentary works or in any other official administrative doctrine publicly available?	4.2.3. N/A
4.2.1. [Yes/No]	
4.2.2. [If Yes, please describe]	
4.2.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]	
5. Litigations	5.1. N/A

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<p>5.1. Is there any litigation (pending or decided) before local Courts (first instance, appeal, Supreme Court, etc.) or before EU/international Courts (prejudicial question, infringement procedure, etc.) which questions the measure itself (i.e. not cases where the measure is just involved)?</p> <p>5.2. If Yes, what is the reasoning used?</p> <p>5.3. Please provide a quantification of the outcome of the Court decision (e.g. penalties) when available.</p>	<p>5.2. N/A</p>
<p>6. Other points that you would consider relevant to mention regarding this measure?</p>	<p>5.3. N/A</p> <p>6. N/A</p>
<p><b>New Specific Measure n° 3: Exclusion from participation exemption regime for dividends paid by a NCST</b></p>	
<p>1. Is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p> <p><i>(Same answer as in Part 2 for the New Specific Measure at stake)</i></p>	<p>1. NCJ Measure</p>
<p>2. Legal grounds governing this measure.</p> <p>2.1. Legal provision(s)? [Reference] <i>(Same answer as in Part 2 for this measure)</i></p> <p>2.2. Practice notes? [Reference]</p> <p>2.3. Parliamentary works? [Reference]</p> <p>2.4. Other source? [Reference]</p>	<p>2.1. Section 145, paragraph 6-j of the French Tax Code</p> <p>2.2. French tax guidelines 14 A-5-12 dated 10 May 2012, paragraph 44 and following.</p> <p>2.3. Article 22, I-O of Law 2009-1674 dated 30 December 2009.</p> <p>2.4. N/A</p>
<p>3. Can you please provide a detailed description of the measure? This description should include in particular the following elements:</p> <p>3.1. Main mechanisms? [Description]</p> <p>3.2. Purpose (i.e. the problem and countries which are supposed to be tackled</p>	<p>3.1. Exclusion from participation exemption regime for dividends paid by a NCST so that dividends paid by an entity located in a NCST to its French shareholder are taxed at standard corporate income tax rate at the level of the French shareholder (i.e. 33,1/3 if the company is subject to corporate income tax).</p>

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<p>by the measure)? [Description]</p> <p>3.3. Scope Rationae Personae? [Description]</p> <p>3.4. Scope Rationae Materiae? [Description]</p> <p>3.5. Effects (sanctions, incentives linked to complying with the measure, etc.)? [Description]</p> <p>3.6. Burden of proof? [Description]</p> <p>3.7. Other relevant point? [Comments]</p> <p>3.8. Is it a new measure / an amended measure or a possible future measure? [new measure / amended measure / possible future measure]</p> <p>3.9. Are there any intentions or proposals to change the measure? [Comments]</p>	<p>3.2. Excluding from the favourable 5% taxation set forth by the participation exemption regime the dividends paid by entities located in a NCST to their French shareholders.</p> <p>3.3. French companies owning more than 5% of the shares in an entity located in a NCST.</p> <p>3.4. Dividends paid by entities located in a NCST to their French shareholders.</p> <p>3.5. Dividends paid by entities located in a NCST to their French shareholders are taxed at standard corporate income tax rate, i.e. 33,1/3%.</p> <p>3.6. N/A</p> <p>3.7. This measure entered into force for fiscal years opened as from 1 January 2011.</p> <p>3.8. New measure</p> <p>3.9. No</p>
<p>4. Impact assessment and evaluation</p> <p>4.1. Before enactment: were there impact assessments made / issued / discussed during the preparation of the measure (including quantitative impact)?</p> <p>4.1.1. [Yes/No]</p> <p>4.1.2. [If Yes, please describe]</p> <p>4.1.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p> <p>4.2. After enactment: are there evaluations (including effectiveness and sufficiency) of the measure issued or discussed during any parliamentary works or in any other official administrative doctrine publicly available?</p>	<p>4.1.1. N/A</p> <p>4.1.2. N/A</p> <p>4.1.3. N/A</p> <p>4.2.1. N/A</p> <p>4.2.2. N/A</p> <p>4.2.3. N/A</p>

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<p>4.2.1. [Yes/No] 4.2.2. [If Yes, please describe] 4.2.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p>	
<p>5. Litigations</p> <p>5.1. Is there any litigation (pending or decided) before local Courts (first instance, appeal, Supreme Court, etc.) or before EU/international Courts (prejudicial question, infringement procedure, etc.) which questions the measure itself (i.e. not cases where the measure is just involved)?</p> <p>5.2. If Yes, what is the reasoning used?</p> <p>5.3. Please provide a quantification of the outcome of the Court decision (e.g. penalties) when available.</p>	<p>5.1. N/A</p> <p>5.2. N/A</p> <p>5.3. N/A</p>
<p>6. Other points that you would consider relevant to mention regarding this measure?</p>	<p>6. N/A</p>
<p><b>New Specific Measure n° 4: Transfer pricing documentation requirements for operations or transactions realised by French companies with foreign entities located in a NCST</b></p>	
<p>1. Is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p> <p><i>(Same answer as in Part 2 for the New Specific Measure at stake)</i></p>	<p>1. NCJ Measure</p>
<p>2. Legal grounds governing this measure.</p> <p>2.1. Legal provision(s)? [Reference] <i>(Same answer as in Part 2 for this</i></p>	<p>2.1. Section L 13 AB LPF.</p> <p>2.2. French tax guidelines 14 A-5-12 dated 10 May 2012, paragraph 71.</p>

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<p><i>measure</i>)</p> <p>2.2. Practice notes? [Reference]</p> <p>2.3. Parliamentary works? [Reference]</p> <p>2.4. Other source? [Reference]</p>	<p>2.3. Article 22, I-O of Law 2009-1674 dated 30 December 2009.</p> <p>2.4. N/A</p>
<p>3. Can you please provide a detailed description of the measure? This description should include in particular the following elements:</p> <p>3.1. Main mechanisms? [Description]</p> <p>3.2. Purpose (i.e. the problem and countries which are supposed to be tackled by the measure)? [Description]</p> <p>3.3. Scope Rationae Personae? [Description]</p> <p>3.4. Scope Rationae Materiae? [Description]</p> <p>3.5. Effects (sanctions, incentives linked to complying with the measure, etc.)? [Description]</p> <p>3.6. Burden of proof? [Description]</p> <p>3.7. Other relevant point? [Comments]</p> <p>3.8. Is it a new measure / an amended measure or a possible future measure? [new measure / amended measure / possible future measure]</p> <p>3.9. Are there any intentions or proposals to change the measure? [Comments]</p>	<p>3.1. Additional transfer pricing documentation requirements for operations or transactions realised by French companies with foreign entities located in a NCST.</p> <p>3.2. Discourage operations with entities located in NCSTs.</p> <p>3.3. French companies implementing operations with foreign entities located in a NCST.</p> <p>3.4. Transactions undertaken with companies located in NCSTs.</p> <p>3.5. Large enterprises must provide further documentation on their transfer pricing policy within 30 days upon request of the tax authorities (article L 13 AA LPF).</p> <p>The further documentation requirements may be classified under two categories of information:</p> <ul style="list-style-type: none"> <li>- general information on the affiliated companies; such as a description of the activity and strategy of the group, the legal and organizational structure, a functional analysis, a list of intangible assets and a general overview of the transfer pricing policy of the group; and</li> <li>- specific information on the audited company itself; such as information on activities and business strategy, information on transactions with related parties (e.g. nature, amount), APAs and cost sharing agreements, a comparable and functional analysis, or an explanation of the applied transfer pricing method(s).</li> </ul> <p>With effect from 1 January 2011, complementary disclosure requirements will apply to transactions undertaken with companies located in NCSTs (section L 13 AB LPF). In such a situation, the French taxpayer will be obliged to provide all tax documentation required by the FTC for French companies (e.g. annual balance sheet, profit-and-loss account,</p>

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	<p>form DADS 1) regarding the foreign company.</p> <p>If the company fails to provide the aforementioned information, the company is subject to a fine of EUR 10,000, or 5% of the adjusted profits, whichever is higher (section 1735 ter CGI). However, the application of the proportional penalty of 5% can vary, depending on the level of infringement.</p> <p>3.6. French companies undertaking operations with entities located in NCSTs bear the burden of proof.</p> <p>3.7. This measure entered into force on 1 January 2011.</p> <p>3.8. New measure</p> <p>3.9. No</p>
<p>4. Impact assessment and evaluation</p> <p>4.1. Before enactment: were there impact assessments made / issued / discussed during the preparation of the measure (including quantitative impact)?</p> <p>4.1.1. [Yes/No]</p> <p>4.1.2. [If Yes, please describe]</p> <p>4.1.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p> <p>4.2. After enactment: are there evaluations (including effectiveness and sufficiency) of the measure issued or discussed during any parliamentary works or in any other official administrative doctrine publicly available?</p> <p>4.2.1. [Yes/No]</p>	<p>4.1.1. N/A</p> <p>4.1.2. N/A</p> <p>4.1.3. N/A</p> <p>4.2.1. N/A</p> <p>4.2.2. N/A</p> <p>4.2.3. N/A</p>

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<p>4.2.2. [If Yes, please describe] 4.2.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p>	
<p>5. Litigations</p> <p>5.1. Is there any litigation (pending or decided) before local Courts (first instance, appeal, Supreme Court, etc.) or before EU/international Courts (prejudicial question, infringement procedure, etc.) which questions the measure itself (i.e. not cases where the measure is just involved)?</p> <p>5.2. If Yes, what is the reasoning used?</p> <p>5.3. Please provide a quantification of the outcome of the Court decision (e.g. penalties) when available.</p>	<p>5.1. N/A</p> <p>5.2. N/A</p> <p>5.3. N/A</p>
<p>6. Other points that you would consider relevant to mention regarding this measure?</p>	<p>6. N/A</p>
<p><b>New Specific Measure n° 5: Exclusion from exemption regime for capital gains on the sale of participations held in companies located in a NCST</b></p>	
<p>1. Is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both] <i>(Same answer as in Part 2 for the New Specific Measure at stake)</i></p>	<p>1. NCJ Measure</p>
<p>2. Legal grounds governing this measure.</p> <p>2.1. Legal provision(s)? [Reference] <i>(Same answer as in Part 2 for this measure)</i></p> <p>2.2. Practice notes? [Reference]</p>	<p>2.1. Section 39 duodecies and 219, I, paragraph a sexies-0 ter of the French Tax Code.</p> <p>2.2. French tax guidelines 14 A-5-12 dated 10 May 2012, paragraph 67.</p> <p>2.3. Article 22, I-O of Law 2009-1674 dated 30 December 2009</p>



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<p>2.3. Parliamentary works? [Reference] 2.4. Other source? [Reference]</p>	<p>2.4. N/A</p>
<p>3. Can you please provide a detailed description of the measure? This description should include in particular the following elements:</p> <p>3.1. Main mechanisms? [Description] 3.2. Purpose (i.e. the problem and countries which are supposed to be tackled by the measure)? [Description] 3.3. Scope Rationae Personae? [Description] 3.4. Scope Rationae Materiae? [Description] 3.5. Effects (sanctions, incentives linked to complying with the measure, etc.)? [Description] 3.6. Burden of proof? [Description] 3.7. Other relevant point? [Comments] 3.8. Is it a new measure / an amended measure or a possible future measure? [new measure / amended measure / possible future measure] 3.9. Are there any intentions or proposals to change the measure? [Comments]</p>	<p>3.1. Exclusion from exemption regime for capital gains on the sale of participations held in companies located in a NCST.</p> <p>3.2. Excluding from the favourable 90% exemption set forth by the participation exemption regime the capital gains on the sales of shares held in companies resident in companies located in NCSTs.</p> <p>3.3. French companies selling their shares in entities located in NCSTs.</p> <p>3.4. Capital gains resulting from the sale of participations held in companies located in a NCST.</p> <p>3.5. Capital gains resulting from the sales of participations held in an entity located in a NCST are subject to standard corporate income tax rate (i.e 33,1/3 if the French beneficiary is subject to corporate income tax in France or progressive brackets taxation system if the French beneficiary is subject to income tax in France).</p> <p>3.6. N/A</p> <p>3.7. Sales of participations realized as from 1 January 2011.</p> <p>3.8. New measure</p> <p>3.9. No</p>
<p>4. Impact assessment and evaluation</p> <p>4.1. Before enactment: were there impact assessments made / issued / discussed during the preparation of the measure (including quantitative</p>	<p>4.1.1. N/A</p> <p>4.1.2. N/A</p> <p>4.1.3. N/A</p>

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<p>impact)?</p> <p>4.1.1. [Yes/No] 4.1.2. [If Yes, please describe] 4.1.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p> <p>4.2. After enactment: are there evaluations (including effectiveness and sufficiency) of the measure issued or discussed during any parliamentary works or in any other official administrative doctrine publicly available?</p> <p>4.2.1. [Yes/No] 4.2.2. [If Yes, please describe] 4.2.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p>	4.2.1. N/A
	4.2.2. N/A
	4.2.3. N/A
<p>5. Litigations</p> <p>5.1. Is there any litigation (pending or decided) before local Courts (first instance, appeal, Supreme Court, etc.) or before EU/international Courts (prejudicial question, infringement procedure, etc.) which questions the measure itself (i.e. not cases where the measure is just involved)?</p> <p>5.2. If Yes, what is the reasoning used?</p> <p>5.3. Please provide a quantification of the outcome of the Court decision (e.g. penalties) when available.</p>	5.1. N/A
	5.2. N/A
	5.3. N/A
<p>6. Other points that you would consider relevant to mention regarding this measure?</p>	6. N/A

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### New Specific Measure n° 6: 50% withholding tax on outbound payments to entities located in a NCST

1. Is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

*(Same answer as in Part 2 for the New Specific Measure at stake)*

1. NCJ Measure

2. Legal grounds governing this measure.

2.1. Legal provision(s)? [Reference] *(Same answer as in Part 2 for this measure)*

2.2. Practice notes? [Reference]

2.3. Parliamentary works? [Reference]

2.4. Other source? [Reference]

2.1. Section 125 A, 125-0 A, 119 bis, 182 A bis and 182 B, 39 duodecies and 219 of the French Tax Code.

2.2. French tax guidelines 14 A-5-12 dated 10 May 2012, paragraph 86 and following.

2.3. Article 22, I-O of Law 2009-1674 dated 30 December 2009

2.4. N/A

3. Can you please provide a detailed description of the measure? This description should include in particular the following elements:

3.1. Main mechanisms? [Description]

3.2. Purpose (i.e. the problem and countries which are supposed to be tackled by the measure)? [Description]

3.3. Scope Rationae Personae? [Description]

3.4. Scope Rationae Materiae? [Description]

3.5. Effects (sanctions, incentives linked to complying with the measure, etc.)? [Description]

3.6. Burden of proof? [Description]

3.7. Other relevant point? [Comments]

3.8. Is it a new measure / an amended measure or a possible future measure? [new measure / amended measure / possible future measure]

3.9. Are there any intentions or proposals to change the measure?

3.1. 50% withholding tax on outbound payments to entities located in a NCST.

3.2. Exclusion from the domestic withholding tax exemption applicable to payments made by entities located in NCSTs.

3.3. Beneficiaries of payments (interest, dividends, royalties and payments in consideration of the supply of any kind of services) located in NCSTs.

3.4. Dividends, interest, royalties and payments in consideration of the supply of any kind of services.

3.5. A 50% WHT is applicable to these payments except in case of bona fide commercial reasons (i.e., “the transactions to which the payments have a main purpose and main effect other than allowing the location of proceeds or income in an NCST”).

3.6. N/A

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<p>[Comments]</p>	<p>3.7. N/A</p> <p>3.8. New measure</p> <p>3.9. No</p>
<p>4. Impact assessment and evaluation</p> <p>4.1. Before enactment: were there impact assessments made / issued / discussed during the preparation of the measure (including quantitative impact)?</p> <p>4.1.1. [Yes/No]</p> <p>4.1.2. [If Yes, please describe]</p> <p>4.1.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p> <p>4.2. After enactment: are there evaluations (including effectiveness and sufficiency) of the measure issued or discussed during any parliamentary works or in any other official administrative doctrine publicly available?</p> <p>4.2.1. [Yes/No]</p> <p>4.2.2. [If Yes, please describe]</p> <p>4.2.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p>	<p>4.1.1. N/A</p> <p>4.1.2. N/A</p> <p>4.1.3. N/A</p> <p>4.2.1. N/A</p> <p>4.2.2. N/A</p> <p>4.2.3. N/A</p>
<p>5. Litigations</p>	<p>5.1. N/A</p>

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<p>5.1. Is there any litigation (pending or decided) before local Courts (first instance, appeal, Supreme Court, etc.) or before EU/international Courts (prejudicial question, infringement procedure, etc.) which questions the measure itself (i.e. not cases where the measure is just involved)?</p>	<p>5.2. N/A</p>
<p>5.2. If Yes, what is the reasoning used? 5.3. Please provide a quantification of the outcome of the Court decision (e.g. penalties) when available.</p>	<p>5.3. N/A</p>
<p>6. Other points that you would consider relevant to mention regarding this measure?</p>	<p>6. N/A</p>
<p><b>New Specific Measure n° 7: 50% taxation on real estate capital gains realized in France by entities located in a NCST</b></p>	
<p>1. Is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]  <i>(Same answer as in Part 2 for the New Specific Measure at stake)</i></p>	<p>1. NCJ Measure</p>
<p>2. Legal grounds governing this measure.</p> <p>2.1. Legal provision(s)? [Reference] <i>(Same answer as in Part 2 for this measure)</i> 2.2. Practice notes? [Reference] 2.3. Parliamentary works? [Reference] 2.4. Other source? [Reference]</p>	<p>2.1. Section 244 bis and 244 bis A of the French Tax Code. 2.2. French tax guidelines 14 A-5-12 dated 10 May 2012, paragraph 78 and following. 2.3. Article 22, I-O of Law 2009-1674 dated 30 December 2009 2.4. N/A</p>
<p>3. Can you please provide a detailed description of the measure? This description should include in particular the following elements:</p> <p>3.1. Main mechanisms? [Description] 3.2. Purpose (i.e. the problem and countries which are supposed to be tackled by the measure)? [Description]</p>	<p>3.1. As a general rule, real estate capital gains realized in France by non tax resident persons are taxed at a 33, 1/3% tax rate. This taxation rate is increased to 50% for real estate capital gains realized in France by entities located in a NCST. 3.2. Higher taxation in France for entities located in NCSTs.</p>

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<p>3.3. Scope Rationae Personae? [Description] 3.4. Scope Rationae Materiae? [Description] 3.5. Effects (sanctions, incentives linked to complying with the measure, etc.)? [Description] 3.6. Burden of proof? [Description] 3.7. Other relevant point? [Comments] 3.8. Is it a new measure / an amended measure or a possible future measure? [new measure / amended measure / possible future measure] 3.9. Are there any intentions or proposals to change the measure? [Comments]</p>	<p>3.3. Entities located in NCSTs. 3.4. Real estate capital gains realized in France by entities located in a NCST. 3.5. A 50% taxation rate is applicable to real estate capital gains realized in France by entities located in a NCST. 3.6. N/A 3.7. Sales realized as from March 1<sup>st</sup> 2010. 3.8. New measure 3.9. No</p>
<p>4. Impact assessment and evaluation</p> <p>4.1. Before enactment: were there impact assessments made / issued / discussed during the preparation of the measure (including quantitative impact)?</p> <p>4.1.1. [Yes/No] 4.1.2. [If Yes, please describe] 4.1.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p> <p>4.2. After enactment: are there evaluations (including effectiveness and sufficiency) of the measure issued or discussed during any parliamentary works or in any other official administrative doctrine publicly available?</p> <p>4.2.1. [Yes/No] 4.2.2. [If Yes, please describe]</p>	<p>4.1.1. N/A 4.1.2. N/A 4.1.3. N/A 4.2.1. N/A 4.2.2. N/A 4.2.3. N/A</p>

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<p>4.2.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p>	
<p>5. Litigations</p> <p>5.1. Is there any litigation (pending or decided) before local Courts (first instance, appeal, Supreme Court, etc.) or before EU/international Courts (prejudicial question, infringement procedure, etc.) which questions the measure itself (i.e. not cases where the measure is just involved)?</p> <p>5.2. If Yes, what is the reasoning used?</p> <p>5.3. Please provide a quantification of the outcome of the Court decision (e.g. penalties) when available.</p>	<p>5.1. N/A</p> <p>5.2. N/A</p> <p>5.3. N/A</p>
<p>6. Other points that you would consider relevant to mention regarding this measure?</p>	<p>6. N/A</p>
<p><b>New Specific Measure n° 8: 50% taxation on the capital gains resulting from the sales of shares in French companies realized by entities located in a NCST</b></p>	
<p>1. Is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p> <p><i>(Same answer as in Part 2 for the New Specific Measure at stake)</i></p>	<p>1. NCJ Measure</p>
<p>2. Legal grounds governing this measure.</p> <p>2.1. Legal provision(s)? [Reference] <i>(Same answer as in Part 2 for this measure)</i></p> <p>2.2. Practice notes? [Reference]</p>	<p>2.1. Section 244 bis B the French Tax Code.</p> <p>2.2. French tax guidelines 14 A-5-12 dated 10 May 2012, paragraph 84 and following.</p> <p>2.3. Article 22, I-O of Law 2009-1674 dated 30 December 2009</p>

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<p>2.3. Parliamentary works? [Reference] 2.4. Other source? [Reference]</p>	<p>2.4. N/A</p>
<p>3. Can you please provide a detailed description of the measure? This description should include in particular the following elements:</p> <p>3.1. Main mechanisms? [Description] 3.2. Purpose (i.e. the problem and countries which are supposed to be tackled by the measure)? [Description] 3.3. Scope Rationae Personae? [Description] 3.4. Scope Rationae Materiae? [Description] 3.5. Effects (sanctions, incentives linked to complying with the measure, etc.)? [Description] 3.6. Burden of proof? [Description] 3.7. Other relevant point? [Comments] 3.8. Is it a new measure / an amended measure or a possible future measure? [new measure / amended measure / possible future measure] 3.9. Are there any intentions or proposals to change the measure? [Comments]</p>	<p>3.1. As a general rule, capital gains realized in France by non tax resident persons for the sale of shares in a French company are taxed at a 19% tax rate. This taxation rate is increased to 50% for capital gains realized in France by an entity located in a NCST on the sales of shares in a French company.</p> <p>3.2. Higher taxation for entities located in NCSTs.</p> <p>3.3. Entities located in NCSTs realizing capital gains in France on the sale of shares in French entities.</p> <p>3.4. Sales of shares in French entities realized by entities located in NCSTs.</p> <p>3.5. A 50% taxation for capital gains realized in France by entities located in a NCST on the sales of shares in a French company.</p> <p>3.6. N/A</p> <p>3.7. Sales realized as from March 1<sup>st</sup> 2010.</p> <p>3.8. New measure</p> <p>3.9. No</p>
<p>4. Impact assessment and evaluation</p> <p>4.1. Before enactment: were there impact assessments made / issued / discussed during the preparation of the measure (including quantitative impact)?</p> <p>4.1.1. [Yes/No]</p>	<p>4.1.1. N/A</p> <p>4.1.2. N/A</p> <p>4.1.3. N/A</p> <p>4.2.1. N/A</p>



## Part 3: Detailed Information

<p>4.1.2. [If Yes, please describe]</p> <p>4.1.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p> <p>4.2. After enactment: are there evaluations (including effectiveness and sufficiency) of the measure issued or discussed during any parliamentary works or in any other official administrative doctrine publicly available?</p> <p>4.2.1. [Yes/No]</p> <p>4.2.2. [If Yes, please describe]</p> <p>4.2.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p>	<p>4.2.2. N/A</p> <p>4.2.3. N/A</p>
<p>5. Litigations</p> <p>5.1. Is there any litigation (pending or decided) before local Courts (first instance, appeal, Supreme Court, etc.) or before EU/international Courts (prejudicial question, infringement procedure, etc.) which questions the measure itself (i.e. not cases where the measure is just involved)?</p> <p>5.2. If Yes, what is the reasoning used?</p> <p>5.3. Please provide a quantification of the outcome of the Court decision (e.g. penalties) when available.</p>	<p>5.1. N/A</p> <p>5.2. N/A</p> <p>5.3. N/A</p>
<p>6. Other points that you would consider relevant to mention regarding this measure?</p>	<p>6. N/A</p>



## Germany

### Part 1: Introduction

#### 1. Definition of NCJ

1.1. Is there any formal definition of “NCJ” in your country (or any other concept similar to “NCJ”)? [Yes/No]

1.1. No

As such NCJ aiming only on Third Countries is not defined in the German tax law (neither in public legislative work nor administrative doctrine). However, some measures with regard to entities resident in a list of uncooperative countries / non-cooperative jurisdictions that do not adhere to the OECD standards on tax information exchange were introduced in 2009 by way of a tax act aimed at combating "tax evasion and harmful tax practices".

A Country has to be considered as Non-Cooperative Jurisdiction (not only relating to third countries not being part of the EU but addressing all foreign countries) according to Art. 33 Sec. 1 No. 2 e) of the German Corporate Income Tax Act (CITA), if

- the respective country has not concluded an information exchange agreement with Germany, that corresponds with Art. 26 of the OECD model agreement (2005), or
- the respective country does not provide information to an extent comparable to Art. 26 of the OECD model agreement (2005), and
- is unwilling to provide such information.

The latter is especially true, if such country is even after having received a formal request from Germany not willing to implement a legal basis for an exchange of information.

However, the measures on Non-Cooperative Jurisdictions can only be applied, if the respective country has been (black-)listed by the federal ministry of finance. Anyway, until today no single country has actually been blacklisted.

Part 1: Introduction	
1.2. If the answer under 1.1. is Yes, can you please provide the definition and the explanation how it operates? [Definition]	1.2. N/A
1.3. If the answer under 1.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]	1.3. N/A
1.4. If there is no formal definition, are you aware of any problems caused by this?	1.4. No
2. Definition of ATP	
2.1. Is there any formal definition of “ATP” in your country (or any other concept similar to “ATP”)? [Yes/No]	<p>2.1. No</p> <p>ATP as such is neither defined in the German tax law nor in relating administrative doctrines or circulars of the ministry of finance. Anyway, there is, among others, a general anti-abuse provision in Germany that does not only relate to Third Countries outside the EU, but principally to any foreign country.</p> <p>For further details on the general anti abuse provision, please see our explanation below.</p>
2.2. If the answer under 2.1. is Yes, can you please provide the definition? [Definition]	2.2. N/A
2.3. If the answer under 2.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]	2.3. N/A
2.4. If there is no formal definition, are you aware of any problems caused by this?	2.4. No
3. New Specific Measures	
3.1. Are there any New Specific Measures in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2 <u>and</u> Part 3)</i>	<p>3.1. No</p> <p>In general, the German law addresses Third Countries only on rare occasions (e.g., § 2a</p>

## Part 1: Introduction

	<p>ITA, § 12 (3) CITA).</p> <p>However, these cases are only an indirect effect of EU fundamental freedoms and ECJ cases ("Ritter-Coulais" and REWE Zentralfinanz", "Lidl Belgium", "Krankenheim Wannsee", ...) through which the German legislators have been forced to limit more general measures to activities in foreign countries outside the EU/ EEA.</p>
<p>3.2. If the answer under 2.1. is Yes, are there any NCJ Measures amongst those New Specific Measures? [Yes/No]</p>	<p>3.2. N/A</p>
<p>3.3. If the answer under 2.1. is Yes, are there any ATP Measures amongst those New Specific Measures? [Yes/No]</p>	<p>3.3. N/A</p>
<h3>4. Other Measures</h3>	
<p>4.1. Are there any Other Specific Measures in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2)</i></p>	<p>4.1. No</p> <p>The German tax legislation does not provide any specific measure specifically relating to Third countries that has been enacted before 1 January 2007 or has not substantially amended since 1 January 2007.</p>
<p>4.2. Are there any General Anti-abuse Provisions in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2)</i></p>	<p>4.2. Yes</p> <p>The German tax legislation comprises some general anti-abuse measures either focused on specific arrangements or addressing tax arrangements in general.</p>
<p>4.3. If the answer under 4.2. is Yes, are those measures generally equally applicable to EU Member States (including purely domestic situations) and Third Countries?</p> <p>4.3.1. [Yes/No] 4.3.2. [Please explain]</p>	<p>4.3.1. Not exclusively</p> <p>4.3.2.</p> <p>Principally the measures are applicable to EU and Third Countries as well. However, the applicability of the measures could actually be limited to Third Countries or it is at least</p>

## Part 1: Introduction

questionable whether such measures are applicable to intra EU cases due to (potential) infringement of the EU fundamental freedoms.

Beyond that, some of those measures are applicable also to purely domestic situations, whilst other measures aim specifically on cross-border situations, regardless whether to EU Countries or Third Countries.

### 5. Legislative or administrative proposals

5.1. Are there currently any proposals aimed at introducing new measures in your country which could fall in scope of the current study?

5.1.1. [Yes/No/Not exclusively]

5.1.2. [If Yes, please briefly explain]

5.1.1. No

Actually, the Government published a white paper on 14 February 2012 suggesting different wide ranging provisions aiming on tax planning like e.g.

- Exclusion of losses of foreign permanent establishments
- Extended anti loss trafficking rules / NOL forfeiture in case of mergers
- Limitation of "leveraged buyouts" (debt-pushdown structures) by way of limitation of interest expense deduction
- Avoidance of double-dip benefit through hybrid financing structures
- Treatment of cross-border investments in partnerships

However, the government's draft bill of the Annual Tax Act 2013 presented on 23 May 2012 does not contain any of those proposed provisions. Thus, currently there are no official proposals available, aiming at introducing new measures which could fall in the scope of this study.

Furthermore, the measures indicated in the white paper do no specifically aim at Third Countries.

5.1.2.N/A

## Part 2: General Information

### Measure n°1: Limited deduction of foreign tax losses

1. Is the measure a New Specific Measure, and Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Provision

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. The main purpose of this provision is to avoid offsetting tax losses suffered in foreign countries against tax profits generated in Germany. The measure especially aims at such activities that are in principle not appropriate to achieve reasonable profits, but often lead to ongoing losses whilst only providing a profit in total when considering the built-in gains realized some years in the future.

- Activities in scope: The provision contains a catalogue of such harmful activities in Third Countries like agriculture and forestry, renting of immovable property, passive permanent establishments, bare-boat chartering, silent partner of or shareholder loan to a commercial trade business, etc.
- Countries in scope: “Third Countries” in the meaning of this provision and as legally defined in Art. 2a Sec. 2a sentence 1 Income Tax Act are all countries that are not part of the EU. However, according to Art. 2a Sec. 2a sentence 2 Income Tax Act Countries not being part of the EU but at least of the EEA (i.e. Liechtenstein, Norway and Iceland) are treated the same way as EU countries for purposes of this provision.

As far as Germany has not already concluded a tax treaty according to which income arising from such activities is tax exempt in Germany (as in such case the losses incurred would in any case not be deductible in Germany), losses suffered from such activities are according to this measure nevertheless not deductible in Germany and thus cannot be set off against other income taxable in Germany. Instead, such ongoing losses suffered from any harmful activity enumerated in the law can only be set off against future profits that

## Part 2: General Information

	are of the same type of income generated in the same country in which the losses had originally been suffered.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Art. 2a Income Tax Act (Einkommensteuergesetz (EStG))
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	<p>5. The measure, even amended in the meantime, has been enacted some years (decades) ago. The figures originally provided about the quantitative impact of the measure can, thus, not be meaningful for today's analysis.</p> <p>The subsequent amendments of the measures, however, further reduced the tax revenue to be expected by the authorities due to the fact, that the scope of the measure does not anymore comprise EU/EEA cases to the same extent as before.</p>
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. Very rare case law, which cannot be considered decisive for the application of the said measure.
<b>Measure n°2: Abuse of legal arrangements</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose	3. The purpose of the central German anti-abuse provision is to avoid a non-taxation or



## Part 2: General Information

<p>of the measure (approx. 15 lines)</p>	<p>reduced tax burden by the "abuse of legal arrangements". According to the established case law of the German Federal Court of Finance (Bundesfinanzhof (BFH)), a legal arrangement is considered to be abusive, if it is inappropriate or inadequate compared to the economic intention, that is aimed at achieving a tax reduction and that cannot be justified by economic or other relevant non-tax reasons (BFH, I R 63/99). However, the tax advantage sought by the inappropriate arrangement has to violate the spirit (albeit not the wording) of the provision at stake in order to be considered as abusive (BFH, I R 77/96). The consequence of applying the general anti-abuse provision to a transaction is that tax is due as if an arrangement considered to be appropriate had been chosen by the taxpayer. As a consequence, tax is due on the substance of a transaction and not based on its legal form.</p> <p>The provision has been substantially amended by the annual tax act 2008 and is now legally defining the abusive transaction<sup>7</sup>. This legal definition effectively adopts the definition of abusive transactions that has been developed by jurisprudence. The main reason for the amendment, however, was to resolve a long-term controversy between the BFH and the fiscal authorities regarding the relationship between the general anti-abuse provision and special anti-avoidance rules, especially the German CFC-rules. Under the amended and reworded general anti-abuse provision, special anti-avoidance provisions always have to be tested as a first step. Only if no such special anti-avoidance provision applies, the transaction is to be tested against the general anti-abuse provision.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 42 General Fiscal Code (Abgabenordnung (AO))</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the</p>	<p>5. See above (measure No. 1) – the same applies here</p>

<sup>7</sup> Principally this could be seen as a kind of definition of ATP in a wider sense. However, a provision can only be qualified as ATP for purposes of this study if it is only aiming at operations/arrangements with Third Countries outside the EU. The German General anti-avoidance provision, however, covers all countries and further not only cross-border operations (so even operations that are performed merely in Germany are in the scope of this provision).

## Part 2: General Information

<p>concerned MS of the effectiveness and sufficiency of the measures.</p>	
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. There is a number of case law available, but each is specific only for the respective particular case – no indication towards future legislation or other tendency can be taken from this.</p>
<p><b>Measure n°3: Transfer pricing rules and relocation of functions</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Tax treaties are not self-executing in the German legal framework. Thus, article 9 of the OECD model agreement does not provide for a basis for income adjustments according to domestic tax law. However, if related parties have not adhered to the arm's length principle, any income adjustment has to rely on the national transfer pricing provisions, which are as follows:</p> <p>Any transaction between a German company and (foreign as well as domestic) related parties that is not in line with the arm's length principle principally can be considered as a hidden distribution or contribution. This means, the income of the company is adjusted and dividend withholding tax can be due. However, if a shareholder grants an advantage to his company this can only be considered as being a hidden contribution if and as far as the benefit granted qualifies as an asset in the balance sheet. Insofar as a taxation according to the arm's length standards cannot be ensured by the concept of hidden</p>

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	<p>distribution or contribution, e.g. due to the fact that a benefit granted does not qualify as an asset (like inappropriate low interest rates on a loan granted by the shareholder to his company), the provisions of hidden contribution and distribution would be supplemented by Art. 1 of the Foreign Tax Act (Außensteuergesetz (AStG)), which triggers an income adjustment where the income of a German company has been reduced due to a transaction with a related party that did not comply with the arm's length standard. Anyway, Art. 1 AStG only increases the income of German companies. If, according to arm's length standards, the income of a German entity is higher than appropriate, Art. 1 AStG does not allow to reduce the income accordingly. (In such case the taxpayer has to rely on Art. 9 OECD model convention or eventually has to initiate a mutual agreement procedure (Art. 25 OECD model convention).</p> <p>As from financial year 2008 on, Art. 1 sec. 3 AStG contains a special rule on the relocation of functions, backed up by a decree law ("Funktionsverlagerungsverordnung"). Where a function has been relocated, the arm's length principle has to be considered based on the value of the "transfer package" that includes intangibles and tangible goods as well as opportunities, risks and other advantages. Such "transfer package" has to be remunerated based on the profit potential of both the company that relocates the function (defining the minimum price of the seller) and the company that assumes the function (defining the maximum price of the buyer). If the actual profit of the enterprise that assumed the function exceeds the estimate to a certain extent, a price adjustment clause is deemed to have been agreed upon by the parties upfront, triggering an adjustment with retroactive effect.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 1 Foreign Tax Act (Außensteuergesetz (AStG))</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. see above (measure No. 1) – the same applies here</p>

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6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

6. There is only very rare case law available (mainly disputes are resolved outside courts) with no clear tendency.

### Measure n°4: CFC rules

1. Is the measure a New Specific Measure, and Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Under the German CFC rules (Art. 7-14 Foreign Tax Act), any corporate entity not subject to taxation in Germany is classified as a CFC (Zwischengesellschaft) if more than 50 percent of the voting rights or shares are held by one or more German taxpayers unlimitedly subject to tax (individual and/or corporate) and the foreign entity earns low-taxed (below 25 percent) passive income. If the foreign entity, however, earns income of a mainly financial character, a shareholding of 1 percent (or even less) can be sufficient. (Art. 7 sec. 6 Foreign Tax Act).

The CFC rules, however, follow the transactional approach, so that the existence of low-tax passive income does not taint any active or high-taxed passive income. Thus, only the part of income of the CFC that does not derive from operations deemed to be active and is taxed at a low rate (Zwischeneinkünfte) is attributed to its German shareholders as a deemed dividend. In this case, neither the dividend exemptions provided in the German domestic tax law nor any treaty exemptions (see more detailed below, Art. 20 sec. 1 Foreign Tax Act) are applied on these deemed dividends. Following the ECJ decision in

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	<p>the case "Cadbury Schweppes", the German CFC rules have been amended with effect from financial years 2008 and will no longer apply to EU/EEA subsidiaries that can prove they are engaged in real economic activity in their state of residence. (Thus, the German CFC rules are tougher in relation to Third Countries than intra-EU. Anyway, this is merely an indirect effect of the required amendment of the CFC rules due to a possible violation of the fundamental freedoms of the EU.)</p> <p>Further, the German CFC rules are backed up by a provision targeting the profits of a passive, low-taxed PE (see more details below, Art. 20 sec. 2 Foreign Tax Act: measure No. 7).</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Art. 7-14 Foreign Tax Act (Außensteuergesetz (AStG))</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. See above (measure No. 1) – the same applies here</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. There is only very rare case law available (mainly disputes are resolved outside courts) with no clear tendency.</p>
<p><b>Measure n°5: Treaty override under CFC rules</b></p>	
<p>1. Is the measure a New Specific Measure, and Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure, in addition and relating to CFC rules</p>

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2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Principally, the CFC rules could be in conflict with double tax treaties:

Prior to (a) qualifying CFC income as a certain kind of income under a treaty it has (b) to be assessed in a first step, who actually earned the income. The tax treaties themselves do not include any explicit rule on to whom to attribute the (CFC) income. Thus, the relevant provisions of domestic tax law are decisive for the question of whether CFC income is attributed to the CFC or to its shareholders.

Under the deemed dividend concept, the CFC is treated as the entity that generates the income but the German shareholders are subject to CFC taxation. At the level of the CFC, however, income is assessed separately and jointly and qualifies as business profits for which Germany has no right of taxation as this income is earned by and thus attributed to the CFC. Taxation of this income would, thus, be in conflict with treaties on the avoidance of double taxation. (This would only be the case when following a two-step approach according to which the CFC would have to be treated as transparent and thus, the German shareholders are taxed on the profits derived by the CFC that are requalified and attributed to the shareholders.) However, following the deemed dividend concept, such deemed dividends constitute a distinct type of income that is attributed to and taxed at the level of the German shareholders.

Thus, following the deemed dividend concept, the German CFC rules would principally only be in conflict with tax treaties that provide a participation exemption and Germany was obliged to exempt certain dividends from taxation. A lot of German tax treaties exempt inter-company dividends derived from substantial shareholdings of e.g. 25 percent. Most treaties do not stipulate an activity test for the applicability of exemption of dividends so that the exemption also applies in case of passive income subject to German CFC provisions. Thus, CFC rules are at least in many cases in conflict with tax treaties.

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	To nevertheless ensure the applicability of CFC rules, the German legislator included an explicit unilateral treaty override with respect to the CFC rules according to which any tax treaties on the avoidance of double taxation have to be disregarded for the application of the German CFC rules.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Art. 20 sec. 1 Foreign Tax Act (Außensteuergesetz (AStG))
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. See above
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. See above
<b>Measure n°6: Principle of corresponding treatment of hidden distributions / treaty override</b>	
1. Is the measure a New Specific Measure, and Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. Principally, dividends received by German corporations are tax exempt, whilst 5% of the amount is added back as notional business expenses deemed not to be deductible for

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	<p>tax purposes. Thus, effectively 95% of the dividends received are tax exempt.</p> <p>German tax law does not (yet) provide a general principle that dividends are only tax exempt insofar as the payments have not been treated as tax deductible at the level of the distributing entity.</p> <p>However, another unilateral treaty override denies the dividend exemption for all <u>hidden</u> distributions received by a German corporation unless the payments have not been tax deductible. This principle of corresponding treatment applies in domestic cases (where, due to procedural reasons, the treatment at the level of the distributing entity deviates from the treatment at the level of the shareholders) but also in cross-border cases (where qualification mismatches might give rise to differences in treatment). By overriding the domestic dividend exemption as well as any treaty exemptions granted for qualifying dividends, the respective provision in German tax law contains an explicit treaty override for those treaties that do not already provide for a similar condition (like e.g. the DTT concluded between Germany and Austria, Art. 23 Sec. 1 (a)).</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Art. 8b sec. 1 (3) Corporate Income Tax Act (Körperschaftsteuergesetz (KStG))</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available (figures only available as bulk, i.e. combined with other effects).</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level</p>	<p>6. Not available</p>



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summary of the given case law.	
<b>Measure n°7: Unilateral switch-over clause under CFC rules in PE cases</b>	
1. Is the measure a New Specific Measure, and Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure, in addition and relating to CFC rules
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. Foreign PE's earning passive income are not directly addressed by the scope of the German CFC rules as Art. 7-14 Foreign Tax Act merely aims on foreign corporations without legal seat or effective place of management (and thus not unlimitedly subject to tax) in Germany. To avoid a loophole, the CFC rules have been backed up by an additional provision targeting the profits of passive, low-taxed permanent establishments (PE).</p> <p>If a German tax resident has a PE abroad which earns profits that are subject to the exemption method under the applicable treaty but would have been subject to the CFC rules had they been derived through a CFC (i.e. low-taxed passive income of the PE according to the CFC rules applied analogously), Germany will not grant the exemption method agreed upon in the treaty. Instead, the credit method will be applied due to a unilateral switch-over clause. Thus, Germany taxes the profits of such foreign PE and grants a credit for the foreign taxes paid.</p> <p>It has to be noted, that the German CFC rules provide a separate definition on what kind of income has to be considered as passive. Some tax treaties define a separate and distinct active income test with regard to the applicability of an activity clause to which the exemption method is subject to. Thus, the German switch-over rule might still apply if the activity clause under the relevant treaty was met but the domestic activity test was</p>

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	<p>failed. In such cases, the income might be considered active under the treaty but not under domestic tax law and thus subject to the credit method even though the treaty provided otherwise. However, if and insofar as this unilateral switch-over clause applies, only that part of the PE's income that is considered as low-taxed passive income is subject to the credit method (similar to the transactional approach in the CFC rules, the active and/or non low-taxed income is not be tainted). However, contrary to that, the activity clauses of the tax treaties usually affect the whole income of the foreign PE.</p> <p>The treaty-override regarding the CFC-rules (Art. 20 sec. 1 Foreign Tax Act, see above) also applies to this unilateral switch-over clause. Nevertheless the switch-over clause only applies in case the income of the PE has to be exempt due to an exemption rule as provided by an Article of the treaty concerning the methods for elimination of double taxation. Should Germany not have a right to tax the profits of the PE already due to an Article of the taxation of income, the German domestic switch-over rule does not lead to the applicability of the credit method.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Art. 20 sec. 2 Foreign Tax Act (Außensteuergesetz (AStG))</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. See above (measure No. 4)</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. See above (measure No. 4)</p>

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### Measure n°8: Unilateral switch-over clause

1. Is the measure a New Specific Measure, and Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. If a diverging interpretation of the provision of a tax treaty leads to a double non-taxation, the German tax authorities can nevertheless impose tax (despite contrary provisions in a tax treaty) on a German resident based on a provision introduced in domestic German law in late 2006. This unilateral subject to tax clause is in line with the OECD commentary on article 23, no. 32 (6), which resolves the conflict of double non-taxation by interpreting article 23. Principally, all German treaties concluded since the 1990s contain such provision, so that such provisions should only be seen as backed by the German domestic provision. Obviously Germany felt, that the OECD commentary does not provide sufficient certainty and, thus, has decided to implement a domestic provision instead of relying on treaty-based provision and the OECD commentary.

According to the domestic provision, exemption of income due to the relevant tax treaty is not granted, if (i) the other contracting state interprets the tax treaty in a way disallowing this contracting state to tax this income or concedes this contracting state merely the right to tax this income with a reduced tax rate (which leads to a non-taxation in whole or in part) or if (ii) the income is not taxed in the other contracting state merely due to the fact, that such income is not taxable according to domestic law because the recipient of this income is not subject to full tax liability for lack of residence (permanent home), habitual abode, legal seat or effective place of management.

Part (ii), however, is not applicable on dividends exempt from German taxation based on a tax treaty unless the dividends have not been tax deductible for tax purposes at the

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	<p>distributing entity.</p> <p>Nevertheless, this German provision would not prevent double non-taxation due to differences in domestic law where only the other contracting state would have the right to tax the income under the common interpretation of the treaty, but would exempt the income under its own tax laws. Such scenarios would only be covered by subject to tax clauses that are contained in the applicable tax treaty.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Art. 50d sec. 9 Income Tax Act (Einkommensteuergesetz (EStG))</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available (figures only available as bulk, i.e. combined with other effects).</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. Not available</p>
<p><b>Measure n°9: Anti treaty shopping provision</b></p>	
<p>1. Is the measure a New Specific Measure, and Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>

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<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. To prevent treaty or directive shopping through conduit company structures with the effect of reducing the German withholding tax (mainly on dividends but also with regard to other types of payment), Germany introduced a special provision in 1994, which was considerably tightened in 2007 and again substantially amended with effect from 1 January 2012.</p> <p>Under the provision currently applicable, a foreign entity is not entitled to treaty or directive benefits if its shareholders would not be entitled to these benefits had they received the payments directly and the foreign company's gross receipts in the respective business year do not stem from own active business activities and there are no commercial or other significant non-tax reasons for interposing the foreign entity or the foreign company has no suitable business premises or is otherwise not adequately equipped to participate in commerce given its purpose.</p> <p>The burden for proving that economic or significant other non-tax reasons exist and that sufficient substance is available rests explicitly with the foreign company.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Art. 50d sec. 3 Income Tax Act (Einkommensteuergesetz (EStG))</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. see above (measure No. 1) – the same applies here</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. Not available – in particular for the new rule</p>

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### Measure n°10: Thin-capitalization rules / limitation of interest deduction

1. Is the measure a New Specific Measure, and Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Germany firstly enacted special thin-capitalization provisions in 1993. However, due to a violation of the EU's freedom of establishment (ECJ case "Lankhorst-Hohorst"), the provisions have been substantially amended as from 2008 and developed to a limitation of interest deduction, instead.

The "interest deduction limitation" or "interest capping rule" (Zinsschranke) neither distinguishes anymore between related party debt and third party debt nor between domestic and cross-border situations. Further, there is not debt-to-equity ratio test and no requalification of excess interest to hidden distributions.

The principle of the interest deduction limitation is as follows: If net interest paid exceeds a threshold of EUR 3m, interest expenses are non-deductible to the extent as net interest expenses exceed 30 percent of the tax EBITDA unless one of the exception clauses (equity test or stand-alone exception) can be met.

The stand-alone exception avoids the applicability of the interest capping provision, if the German business is not part of an affiliated group.

The equity test is met, if a German business is part of an affiliated group, but the equity ratio of the company exceeds or at least does not fall short of the group's equity ratio by more than 2%. However, the equity test based escape clause is not applicable if a loan is granted to *any* entity (German or foreign) of the affiliated group by a significant

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shareholder (>25%) who is not a member of the affiliated group and the interest expenses exceeds 10% of the net interest expenses of the entity to which the loan is granted. This exception applies as well if the loan is granted by a person related to a significant shareholder or a third party with recourse to the shareholder or the related person.

If the amount of net interest exceeds the threshold of EUR 3m and none of the exception clauses apply, interest expenses that have not been tax deductible are carried forward unlimited in time for deduction in future years of assessment, however, also subject to interest deduction limitation. Also EBITDA can be carried forward for up to 5 years to the extent the net interest is lower than 30% of the FY's tax EBITDA.

It should be noted that the purpose of disallowing the applicability of the escape clause under specific circumstances is to avoid an excessive shareholder debt financing. So group internal financing activities are not harmful for the applicability of the escape clause whilst it is considered as harmful for the applicability of the escape-clause if too much interest is paid to corporations or individuals outside that group.

As an example:

Shareholders of company Z are X (50%) Y (20%) and D (30%). X, Y and Z are in the same group whilst D is a shareholder outside the group. X, Y and D granted different loans to Z. Z has interest expenses exceeding the interest income (net interest expenses) by EUR 4m, of which EUR 450k are paid to D. Thus, the threshold of EUR 3m is exceeded and the deduction of the interest is limited by the provision mentioned above.

The equity ratio of D and Y, respectively, amounts to 32 percent whilst the equity ratio of X is 31%, The equity ratio of Z amounts to 30 percent. Principally, the equity test is satisfied as the equity ratio of Z does not fall short of the group's equity ratio by more than 2 percentage points.

Nevertheless, as 11.25% (more than 10%) of the total interest expenses exceeding the interest income of Z are paid to D (EUR 450k / EUR 4m), who has an interest in Z of

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	more than 25 percent and who is not part of the group the applicability of the escape clause is denied (not only in relation to D but also to X and Y).
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Art. 4h Income Tax Act (Einkommensteuergesetz (EStG)) and Art. 8a Corporate Income Tax Act (Körperschaftsteuergesetz (KStG))
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. See above (measure No. 1) – the same applies here
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. Not available (in particular for the new rule)
<b>Measure n°11: Anti loss trafficking rule</b>	
1. Is the measure a New Specific Measure, and Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. To avoid trading with tax losses accrued, a Tax Loss Carry Forward forfeits if one purchaser (or a group of purchasers) directly or indirectly acquires shares in or voting rights of the corporation within a period of five years to the following extent:</p> <ul style="list-style-type: none"> <li>• more than 25% and up to 50%: forfeiture of respective percentage of Tax Loss Carry</li> </ul>



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	<p>Forward</p> <ul style="list-style-type: none"> <li>more than 50%: forfeiture of total Tax Loss Carry Forward</li> </ul> <p>The same applies in case of capital increase or comparable circumstances. This is applicable also to Interest Carried Forward, if any.</p> <p>However, the tax losses carried forward could be preserved to the extent, the respective entities have sufficient hidden reserves (built-in gains). Hence, if the remaining and until the acquisition date unutilized Tax Loss Carry Forward does not exceed the entire hidden reserves (built-in gains) available in the domestic corporate business property, all tax losses carried forward can be preserved.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Art. 8c Corporate Income Tax Act (Körperschaftsteuergesetz (KStG))</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Estimated quantitative effect EUR 1,475m per year</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. Not available for new rule</p>

## Hungary

### Part 1: Introduction

#### 1. Definition of NCJ

<p>1.1. Is there any formal definition of “NCJ” in your country (or any other concept similar to “NCJ”)? [Yes/No]</p>	<p>1.1. No, however Hungarian Corporate Income Tax Act (“CITA”) provides the concept of controlled foreign companies (“CFC”) applicable to entities tax resident in non-treaty countries, which is a notion of NCJ. Please find the currently effective definition and its history below.</p>
<p>1.2. If the answer under 1.1. is Yes, can you please provide the definition and the explanation how it operates? [Definition]</p>	<p>1.2. Before 2010 the definition of CFC referred to non-treaty countries levying corporate income tax below 2/3 of the Hungarian tax rate. The requirement of the Hungarian private person ownership or income from Hungary was incorporated in the definition only in 2010, resulting that practically the CFC definition currently refers to Hungarian capital located in offshore territories.</p> <p>Currently the following companies qualify as CFC: foreign persons and non-resident entities with foreign place of management (“non-resident company”),</p> <ul style="list-style-type: none"> <li>• in which there is a beneficial owner who is considered as a Hungarian resident according to the Hungarian Personal Income Tax Act concerning the majority of the non-resident company’s tax year, as well as</li> <li>• the non-resident company whose revenues for the tax year originate from Hungary for the most part,</li> </ul> <p>in either case if the effective tax rate* is less than 10 per cent or the non-resident company did not pay any tax equivalent to corporate tax on account of its tax base being zero or negative, even though it has made a profit.</p> <p>*quotient of the tax amount paid (payable) by the non-resident company for the tax</p>

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year - less any tax refund - and the tax base [in the case of group taxation arrangement the amount of tax paid (payable) at group level, less any tax refund, and the tax base]

This provision does not apply if:

- the non-resident company is established or is a resident of a Member State of the European Union, a Member State of the OECD, or a State with which the Republic of Hungary has an agreement on double taxation and
- in which state the non-resident company maintains “real economic presence” (as defined below).
- Besides, any non-resident company in which a person listed for at least five years on a recognised stock exchange or its affiliated company holds a share of at least 25 per cent effective on the first day of the tax year and on each day of the tax year, does not qualify as a controlled foreign company.

The "real economic presence" means when a non-resident company is engaged in gainful activities in another state – together with its affiliates established in that state, where applicable –, such as in manufacturing, processing, agricultural, service, “investment and trading activities”, using its own equipment and own workforce, where their revenues from such activities represent at least 50 per cent of all revenues. The burden of proof of the said real economic presence shall lie with the taxpayer.

The "investment activities" are the acquisition, holding and disposal of long-term investments in equity securities and debt securities, as well as the investments made by and the activities of funds, companies and other bodies operating in any State under the regulations of that State pertaining to securities and investment services, authorised by the competent authorities exercising supervision of financial services and investment services in that State, furthermore, the investments made by and the activities of funds, companies and other bodies managed by a professional fund manager authorised by the competent authorities of a State, or established in that State.

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	<p>If the balance sheet total or the tax base is zero or negative, the amount of the tax equivalent to corporate tax according to the laws of the foreign state shall reach 10 per cent.</p> <p>The non-resident company's tax year shall be understood as the last tax year ending on or by the last day of its shareholder's tax year.</p> <p>These provisions shall apply to any permanent establishments of the non-resident company located in a state other than the company's registered seat or residence.</p> <p>"Beneficial owner" means a private individual who controls – directly or indirectly – at least ten per cent of the voting rights or the capital of the non-resident company, or has a dominant influence by definition of the Hungarian Civil Code.</p> <p>The fact that a business partner does not qualify as a CFC should be proved by the taxpayer.</p>
<p>1.3. If the answer under 1.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]</p>	<p>1.3. Point 11 of Section 4 of CITA.</p>
<p>1.4. If there is no formal definition, are you aware of any problems caused by this?</p>	<p>1.4.</p>
<h3>2. Definition of ATP</h3>	
<p>2.1. Is there any formal definition of "ATP" in your country (or any other concept similar to "ATP")? [Yes/No]</p>	<p>2.1. As such ATP is not defined in the Hungarian tax legislation. However, three general anti-avoidance provisions apply:</p> <ul style="list-style-type: none"> <li>• substance over form principle;</li> <li>• exercise of rights within their meaning and intent which cannot be the intent to obviate the provisions of the tax laws; and</li> <li>• non tax-deductibility of costs and expenses of a transaction entered into for the sole purpose of reducing tax.</li> </ul>

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	In addition to the above, OECD based transfer pricing rules apply.
2.2. If the answer under 2.1. is Yes, can you please provide the definition? [Definition]	2.2. N/A
2.3. If the answer under 2.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]	2.3. N/A
2.4. If there is no formal definition, are you aware of any problems caused by this?	2.4. Yes. The law does not contain any further details regarding the Hungarian anti-avoidance rules, other than described below. Therefore, in the Tax Authority's practice the interpretations of these rules is quite broad, and the qualification of the transactions may differ in each case.
<b>3. New Specific Measures</b>	
3.1. Are there any New Specific Measures in your country? [Yes/No] (If Yes, those measures must be described in Part 2 <u>and</u> Part 3)	3.1. Yes
3.2. If the answer under 1.1. is Yes, are there any NCJ Measures amongst those New Specific Measures? [Yes/No]	3.2. Yes
3.3. If the answer under 2.1. is Yes, are there any ATP Measures amongst those New Specific Measures? [Yes/No]	3.3. Yes
<b>4. Other Measures</b>	
4.1. Are there any Other Specific Measures in your country? [Yes/No] (If Yes, those measures must be described in Part 2)	4.1. No
4.2. Are there any General Anti-abuse Provisions in your country? [Yes/No] (If Yes, those measures must be described in Part 2)	4.1. Yes

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4.3. If the answer under 4.2. is Yes, are those measures generally equally applicable to EU Member States (including purely domestic situations) and Third Countries?

4.3.1. [Yes/No]

4.3.2. [Please explain]

4.3.1. Yes

4.3.2. The Anti-abuse Provisions mentioned at point 2.1 above apply to parties independently from their country of residence.

## 5. Legislative or administrative proposals

5.1. Are there currently any proposals aimed at introducing new measures in your country which could fall in scope of the current study?

5.1.1. [Yes/No/Not exclusively]

5.1.2. [If Yes, please briefly explain]

5.1.1. No

5.1.2. N/A

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### Measure n°1: Substance over Form Principle

<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. The principle prescribes the classification of arrangements according to their commercial substance, though, it does not specify any further details. This provision gives the right to the tax authority to re-qualify transactions, if the substance of a transaction differs from its reported legal status. The tax authority's right to re-qualification was strengthened by Resolution 724/B/1994 of the Constitutional Court, where the Constitutional Court stated that the right of the Tax Authority to re-qualify a transaction is not unconstitutional. Nevertheless, there is only limited established court practice regarding the interpretation of the anti-avoidance provisions, and the interpretation of the substance over form provision is interpreted relatively broadly by the Supreme Court, and the burden of proof is on the taxpayer.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Section 1 (7) of Act on Rules of Taxation (“ROT”)</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5.</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of</p>	<p>6. In its Resolution BH2002.509, the Supreme Court declared in connection with a case where an employer issued bonds to their employees and bought back them with a 200% capital gain to avoid personal income tax, that the taxpayer's aim to reach a favourable tax position itself does not violate the principle of exercising rights within their meaning</p>

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"landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

and content. Rather, the court ruled against the taxpayer based on the substance over form rule regarding the contracts establishing the capital gain.

In its Resolution EBH2002.702, the Supreme Court states that tax authorities – during their audits – have to judge the contracts, transactions, and similar actions based on their real content and the tax authority has the right to examine the contracts, transactions, and similar actions for tax law purposes. This right is based on the fact that civil relationships and contracts may have public law related effects, for example tax authority and taxpayer which is a subordinated relationship. It is also stated that only the real content of contracts, transactions, and similar actions can determine the tax liability of taxpayers.

Please note, however, that in Hungary the case law does not apply (i.e. the Supreme court decision is not binding on the practice of the tax authority).

### Measure n°2: Exercise of rights within their meaning and intent

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. The provision states that "in tax-related matters all rights must be exercised within their meaning and intent. In the application of tax laws, contracts and other transactions constructed with the intent to obviate the provisions of the tax laws will not be construed as exercised within their specific intent." The tax legislation does not specify any further details.

This provision gives the right to the tax authority to re-qualify transactions, if a taxpayer



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	<p>did not execute its rights within their meaning and intent. The tax authority's right to re-qualification was strengthened by Resolution 724/B/1994 of the Constitutional Court, where the Constitutional Court stated that the right of the Tax Authority to re-qualify a transaction is not unconstitutional. Nevertheless, there is only limited established court practice regarding the interpretation of the anti-avoidance provisions.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Section 2 (1) of ROT</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5.</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. In Resolution BH2005.332 the Supreme Court considered another personal tax and social security case. The court ruled that a tax relieving provision may only be applied where the underlying legal arrangements meet the purpose of the tax relieving provision. This essentially concluded that where the legal substance does not conform with the provisions of a rule, then that is the misuse of a right. The court also emphasized that the burden of proof is on the taxpayer.</p> <p>In the Resolution BH2011.327 of the Supreme Court states that profit before tax based on series of transactions against the exercising of rights within their meaning and intent is unstatutable. The case is about a company that accounted <i>other short term liability</i> in the amount of HUF 3.35 billion for compensation and decreased its tax base with the same amount. The tax authority found that this compensation liability was dissembled and the company could not decrease its tax base since the company did not exercise its rights properly. The tax authority reclassified the contracts and transactions in accordance with the established actual purpose of the series of transactions.</p> <p>Please note, however, that in Hungary the case law does not apply. I. e. the Supreme court decision is not binding on the practice of the tax authority.</p>

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### Measure n° 3: Non tax-deductibility of costs and expenses of a transaction entered into for the sole purpose of reducing tax

<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. This is an unusual provision which refers to the legal circumstances around the claiming of a tax reduction or benefit, or a tax relieving provision. The Commentary to the ROT states that an abuse of law is established when the contract is specifically driven by saving tax rather than reaching economic benefits available in the market thus aiming at harming the financing of the state budget. There is not a clear requirement that transactions must have an economic aim, but rather that the sole purpose may not be one of reducing Hungarian taxation. However, an underlying principle is that a transaction or series of transactions must have an economic effect.</p> <p>The provision gives the right to the tax authority to re-qualify transactions (Resolution 724/B/1994 of the Constitutional Court).</p> <p>However, Commentary of ROT also says that “According to the Act applying transactions to decrease the tax liability does not violate the principle of “exercise the rights within their meaning and intent”. It would not be appropriate to force the taxpayer to conclude contracts with the most unfavourable conditions from a taxation point of view.”</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Section 1 (2) of CITA</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the</p>	<p>5.</p>

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<p>concerned MS of the effectiveness and sufficiency of the measures.</p>	
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. The accepted principle that a taxpayer has the freedom to structure transactions in a manner which it considers feasible as long as it does not aim purely at avoiding Hungarian tax liabilities, is supported in the following juridical practice:</p> <ul style="list-style-type: none"> <li>• In 2/1998 Administration Resolution for the unity of law issued by the Supreme Court of Hungary (in connection with a case where an individual received tax relief) declared that in general the mere fact, that a taxpayer gets in a better position for tax purposes does not involve that the taxpayer breaches the laws, provided that the law stating the tax rules enables the taxpayer to do so.</li> <li>• Resolution 1/1998 Administration Resolution for the unity of law issued by the Supreme Court of Hungary (in connection with a case where an individual received tax relief) declares that in general the taxpayer's aim to reach a more favourable tax position does not violate the principle to execute the rights within their meaning and intent.</li> </ul>
<p><b>Measure n° 4: Loss carry forward limitation</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Existing tax loss of a Hungarian company may not be carried forward if the entity directly or indirectly acquiring the majority of shares in the Hungarian company, in the previous two subsequent years have not continuously been a related party of the Hungarian entity, except for the following cases:</p>

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	<ul style="list-style-type: none"> <li>the Hungarian company's or the acquiring company's shares are introduced in a qualifying stock exchange</li> <li>if the Hungarian company continues to carry on its business activity in the following two subsequent years after the change in the ownership, and the nature of the business activity does not change significantly (i.e. nature of services provided, products sold, maintained capital, market, customers), and the Hungarian company makes profit from this business activity in these following two years.</li> </ul>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Section 7 (1) a) and Section 17 (9) of CITA</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5.</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6.</p>
<p><b>Measures n° 5-7: Restrictions related to CFCs</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. New Specific Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. NCJ Measure</p>

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<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Please find the details regarding the CFC related restrictions in Part 3. below</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4.</p> <ul style="list-style-type: none"> <li>• Section 8 (1) d) of CITA</li> <li>• Point A) 9 of Annex 3 of CITA</li> <li>• Point 5 of Section 4 of CITA</li> <li>• Section 7 (1) dz) of CITA</li> <li>• Section 7 (1) g) of CITA</li> <li>• Section 7 (1) gy) of CITA</li> <li>• Section 8 (1) m) of CITA</li> </ul>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5.</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6.</p>
<p><b>Measure n° 8: Thin Capitalisation</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure (considering it does not only apply towards third countries)</p>

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<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. According to the Act LXXXI of 1996 on corporate tax and dividend tax, the total of the interest expense and the tax base decreasing transfer pricing adjustment, relating to certain amount of liabilities exceeding three times the equity is not deductible from the company's corporate income tax base.</p> <p>For the purpose of this regulation, certain amount of liabilities means the daily average of the loan liability, liability relating to private shares, promissory note, any other interest-bearing liability, and interest-free liabilities in relation to which the company applies tax base decreasing transfer pricing adjustment; except for liabilities to suppliers, and liabilities to financial institutions connected to their financing activity. This amount may be decreased with the total of the monetary claims relating to the financial investments, receivables and securities.</p> <p>Equity means the total of daily average of registered capital, capital reserve, profit reserve and undistributable reserve.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Paragraphs (1) j) and (5) of Section 8 of CITA.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available</p>

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6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

6. Not available

## Part 3: Detailed Information

The following three New Specific Measures relate to the CFC concept.

### New Specific Measure n°1: Non tax-deductibility of payments performed to a CFC

1. Is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

*(Same answer as in Part 2 for the New Specific Measure at stake)*

1. NCJ Measure

2. Legal grounds governing this measure.

2.1. Legal provision(s)? [Reference] *(Same answer as in Part 2 for this measure)*

2.2. Practice notes? [Reference]

2.3. Parliamentary works? [Reference]

2.4. Other source? [Reference]

2.1. Section 8 (1) d) and Point A) 9 of Annex 3 of CITA

2.2.

2.3.

2.4.

3. Can you please provide a detailed description of the measure? This description should include in particular the following elements:

3.1. Main mechanisms? [Description]

3.2. Purpose (i.e. the problem and the countries which are supposed to be tackled by the measure)? [Description]

3.3. Scope Rationae Personae? [Description]

3.4. Scope Rationae Materiae? [Description]

3.5. Effects (sanctions, incentives linked to complying with the measure, etc.)? [Description]

3.6. Burden of proof? [Description]

3.7. Other relevant point? [Comments]

3.8. Is it a new measure / an amended measure or a possible future measure? [new measure / amended measure / possible future measure]

3.9. Are there any intentions or proposals to change the measure?

3.1. Costs and expenses incurred in connection to payments performed to a CFC do not qualify as business costs and expenses, thus, may not be deducted from the corporate income tax base, if the taxpayer cannot prove that these costs and expenses are for the benefit of its economic operations. As a part of the burden of proof, the taxpayer should prepare a documentation for each agreement (consolidated documentation for agreements with same subject), containing

- the name,
- registered seat,
- tax number (if not available, similar identification number)
- of the parties involved;
- name and seat of the registry court (authority);
- subject of the agreement;
- date of the conclusion and amendments of the agreement;
- term of the agreement;



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<p>[Comments]</p>	<ul style="list-style-type: none"> <li>• the way and terms of performance of the agreement;</li> <li>• date of preparation of the documentation; and</li> <li>• the reasoning for the cost and expense booking.</li> </ul> <p>3.2. The aim of the measure is the defence of the corporate income tax base.</p> <p>3.3. The measure should be applied by all entities subject to CITA (Hungarian entities and foreign entities qualifying as taxpayers according to CITA)</p> <p>3.4. The measure applies to all transactions that may qualify as payments performed to a CFC.</p> <p>3.5. In lack of the documentation the Tax Authority may assess HUF 2 million default penalty per missing documentation. The penalty increases in the case of repeated default.</p> <p>If the taxpayer does not increase its tax base with the amount of payments to CFCs, and this results in a tax shortage, the tax authority may levy tax penalty of 50% of the tax shortage and time proportionate late payment interest from the original due date of the tax liability until the date of payment.</p> <p>3.6. The burden of proof is on the taxpayer decreasing its tax base.</p> <p>3.7.</p> <p>3.8. Amended measure</p> <p>3.9. No</p>
<p>4. Impact assessment and evaluation</p> <p>4.1. Before enactment: were there impact assessments made / issued / discussed during the preparation of the measure (including a quantitative</p>	<p>4.1.1. No</p> <p>4.1.2.</p> <p>4.1.3.</p>

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<p>impact)?</p> <p>4.1.1. [Yes/No] 4.1.2. [If Yes, please describe] 4.1.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p> <p>4.2. After enactment: are there evaluations (including effectiveness and sufficiency) of the measure issued or discussed during any parliamentary works or in any other official administrative doctrine publicly available?</p> <p>4.2.1. [Yes/No] 4.2.2. [If Yes, please describe] 4.2.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p>	4.2.1. No
	4.2.2.
	4.2.3.
<p>5. Litigations</p> <p>5.1. Is there any litigation (pending or decided) before local Courts (first instance, appeal, Supreme Court, etc.) or before EU/international Courts (prejudicial question, infringement procedure, etc.) which questions the measure itself (i.e. not cases where the measure is just involved)? 5.2. If Yes, what is the reasoning used? 5.3. Please provide a quantification of the outcome of the Court decision (e.g. penalties) when available.</p>	5.1.
	5.2.
	5.3.
<p>6. Other points that you would consider relevant to mention regarding this measure?</p>	6.

## Part 3: Detailed Information

### New Specific Measure n°2: Restrictions relating to the reported shareholdings

<p>1. Is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p> <p><i>(Same answer as in Part 2 for the New Specific Measure at stake)</i></p>	<p>1. NCJ Measure</p>
<p>2. Legal grounds governing this measure.</p> <p>2.1. Legal provision(s)? [Reference] <i>(Same answer as in Part 2 for this measure)</i></p> <p>2.2. Practice notes? [Reference]</p> <p>2.3. Parliamentary works? [Reference]</p> <p>2.4. Other source? [Reference]</p>	<p>2.1. Point 5 of Section 4 of CITA</p> <p>Section 7 (1) dz) of CITA</p> <p>2.2.</p> <p>2.3.</p> <p>2.4.</p>
<p>3. Can you please provide a detailed description of the measure? This description should include in particular the following elements:</p> <p>3.1. Main mechanisms? [Description]</p> <p>3.2. Purpose (i.e. the problem and the countries which are supposed to be tackled by the measure)? [Description]</p> <p>3.3. Scope Rationae Personae? [Description]</p> <p>3.4. Scope Rationae Materiae? [Description]</p> <p>3.5. Effects (sanctions, incentives linked to complying with the measure, etc.)? [Description]</p> <p>3.6. Burden of proof? [Description]</p> <p>3.7. Other relevant point? [Comments]</p> <p>3.8. Is it a new measure / an amended measure or a possible future measure? [new measure / amended measure / possible future measure]</p> <p>3.9. Are there any intentions or proposals to change the measure?</p>	<p>3.1. Taxpayers may report their shareholdings exceeding 30% to the tax authority within 60 days after the acquisition or reaching of the 30% participation. In this case the capital gain or loss of the sale or contribution in kind of such shareholding (or its impairment), kept in the books of the taxpayer for at least one year, is free from corporate income tax. Shareholding in CFCs may not be reported, thus, the above beneficial taxation may not be applied.</p> <p>3.2. The measure excludes the CFC shareholding related gain (or loss) from beneficial taxation.</p> <p>3.3. The measure should be applied by all entities subject to CITA (Hungarian entities and foreign entities qualifying as taxpayers according to CITA)</p> <p>3.4. The measure applies to all shareholdings qualifying based on the above definition.</p> <p>3.5. N/A</p>

## Part 3: Detailed Information

<p>[Comments]</p>	<p>3.6. The burden of proof is on the taxpayer decreasing its tax base.</p> <p>3.7.</p> <p>3.8. New measure</p> <p>3.9. No</p>
<p>4. Impact assessment and evaluation</p> <p>4.1. Before enactment: were there impact assessments made / issued / discussed during the preparation of the measure (including quantitative impact)?</p> <p>4.1.1. [Yes/No]</p> <p>4.1.2. [If Yes, please describe]</p> <p>4.1.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p> <p>4.2. After enactment: are there evaluations (including effectiveness and sufficiency) of the measure issued or discussed during any parliamentary works or in any other official administrative doctrine publicly available?</p> <p>4.2.1. [Yes/No]</p> <p>4.2.2. [If Yes, please describe]</p> <p>4.2.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p>	<p>4.1.1. No</p> <p>4.1.2.</p> <p>4.1.3.</p> <p>4.2.1. No</p> <p>4.2.2.</p> <p>4.2.3.</p>
<p>5. Litigations</p>	<p>5.1.</p>

## Part 3: Detailed Information

<p>5.1. Is there any litigation (pending or decided) before local Courts (first instance, appeal, Supreme Court, etc.) or before EU/international Courts (prejudicial question, infringement procedure, etc.) which questions the measure itself (i.e. not cases where the measure is just involved)?</p> <p>5.2. If Yes, what is the reasoning used?</p> <p>5.3. Please provide a quantification of the outcome of the Court decision (e.g. penalties) when available.</p>	5.2.
	5.3.
6. Other points that you would consider relevant to mention regarding this measure?	6.
<p><b>New Specific Measure n° 3: Restrictions related to participation in a CFC</b></p>	
<p>1. Is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p> <p><i>(Same answer as in Part 2 for the New Specific Measure at stake)</i></p>	1. NCJ Measure
<p>2. Legal grounds governing this measure.</p> <p>2.1. Legal provision(s)? [Reference] <i>(Same answer as in Part 2 for this measure)</i></p> <p>2.2. Practice notes? [Reference]</p> <p>2.3. Parliamentary works? [Reference]</p> <p>2.4. Other source? [Reference]</p>	<p>2.1. Section 7 (1) g) of CITA</p> <p>Section 7 (1) gy) of CITA</p> <p>Section 8 (1) m) of CITA</p> <p>2.2.</p> <p>2.3.</p> <p>2.4.</p>
3. Can you please provide a detailed description of the measure? This description	3.1. In order to avoid double taxation, taxpayers may decrease their corporate income tax base with dividend income and gain from retirement of the shareholding from the

## Part 3: Detailed Information

should include in particular the following elements:

- 3.1. Main mechanisms? [Description]
- 3.2. Purpose (i.e. the problem and countries which are supposed to be tackled by the measure)? [Description]
- 3.3. Scope Rationae Personae? [Description]
- 3.4. Scope Rationae Materiae? [Description]
- 3.5. Effects (sanctions, incentives linked to complying with the measure, etc.)? [Description]
- 3.6. Burden of proof? [Description]
- 3.7. Other relevant point? [Comments]
- 3.8. Is it a new measure / an amended measure or a possible future measure? [new measure / amended measure / possible future measure]
- 3.9. Are there any intentions or proposals to change the measure? [Comments]

taxpayer's books due to liquidation without legal succession, capital withdrawal or preferential transformation (Hungarian "participation exemption regime"). I. e. 100% of the dividend income and gain described above may be deducted from the corporate income tax base, except for dividend received from CFCs and gain related to shareholdings in CFCs.

In the case of dividend income received from a CFC or gain from retirement of the shareholding in a CFC, this income may be deducted from the taxpayer's corporate income tax base if the taxpayer either in the previous years or in the current year applied the below tax base adjustment. I. e. only that amount of the income may decrease the tax base, which was previously or simultaneously added back to the tax base under the below tax base adjustment.

Part of the year-end profit of the CFC, that was not distributed as dividend, proportionate with the shareholding of the taxpayer, should increase the corporate income tax base of the taxpayer, if the taxpayer's shareholding or voting rights in the CFC exceed 25%, or it has major influence over the CFC, and the taxpayer does not have any Hungarian resident private person shareholder.

In addition, any capital loss, foreign exchange loss or impairment accounted by the taxpayer, and related to the shareholding in a CFC may not decrease the corporate income tax base (i.e. its amount should increase the corporate income tax base of the taxpayer).

3.2. The purpose of the measure is to avoid the beneficial taxation and tax deductibility of the CFC related costs and expenses.

3.3. The measure should be applied by all entities subject to CITA (Hungarian entities and foreign entities qualifying as taxpayers according to CITA)

3.4. The measure applies to all shareholdings qualifying based on the above definition.

## Part 3: Detailed Information

	<p>3.5. If the taxpayer does not adjust its corporate income tax base in accordance with the rules described above, and this results in tax shortage, the tax authority may levy tax penalty of 50% of the tax shortage, and time proportionate late payment interest from the original due date of the tax liability until the date of payment.</p>
	<p>3.6. The burden of proof is on the taxpayer decreasing its tax base.</p>
	<p>3.7.</p>
	<p>3.8. An amended measure</p>
	<p>3.9. No</p>
<p>4. Impact assessment and evaluation</p> <p>4.1. Before enactment: were there impact assessments made / issued / discussed during the preparation of the measure (including quantitative impact)?</p> <p>4.1.1. [Yes/No] 4.1.2. [If Yes, please describe] 4.1.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p> <p>4.2. After enactment: are there evaluations (including effectiveness and sufficiency) of the measure issued or discussed during any parliamentary works or in any other official administrative doctrine publicly available?</p> <p>4.2.1. [Yes/No] 4.2.2. [If Yes, please describe] 4.2.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body,</p>	<p>4.1.1. No</p> <p>4.1.2.</p> <p>4.1.3.</p> <p>4.2.1. No</p> <p>4.2.2.</p> <p>4.2.3.</p>

## Part 3: Detailed Information

communications from the tax authorities, etc.)]	
<p>5. Litigations</p> <p>5.1. Is there any litigation (pending or decided) before local Courts (first instance, appeal, Supreme Court, etc.) or before EU/international Courts (prejudicial question, infringement procedure, etc.) which questions the measure itself (i.e. not cases where the measure is just involved)?</p> <p>5.2. If Yes, what is the reasoning used?</p> <p>5.3. Please provide a quantification of the outcome of the Court decision (e.g. penalties) when available.</p>	<p>5.1.</p> <p>5.2.</p> <p>5.3.</p>
6. Other points that you would consider relevant to mention regarding this measure?	6.



## Ireland

### Part 1: Introduction

#### 1. Definition of NCJ

<p>1.1. Is there any formal definition of “NCJ” in your country (or any other concept similar to “NCJ”)? [Yes/No]</p>	<p>1.1. No</p> <p>There is no definition of NCJ in Irish tax law. However, there are particular provisions in Irish tax law that provide for the tax benefits in relation to payments to and from Ireland on the basis that the income is subject to tax in the recipient foreign territory.</p>
<p>1.2. If the answer under 1.1. is Yes, can you please provide the definition and the explanation how it operates? [Definition]</p>	<p>1.2. N/A</p>
<p>1.3. If the answer under 1.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]</p>	<p>1.3. N/A</p>
<p>1.4. If there is no formal definition, are you aware of any problems caused by this?</p>	<p>1.4. None that we are aware of</p>

#### 2. Definition of ATP

<p>2.1. Is there any formal definition of “ATP” in your country (or any other concept similar to “ATP”)? [Yes/No]</p>	<p>2.1. No</p> <p>There is no definition of ATP in Irish tax law. However, you will note below that Ireland has a general anti-avoidance tax provision. The general anti-avoidance section in Ireland (section 811) is designed to counteract transactions which lack commercial reality and are put in place with a view to reduce or avoid a charge to Irish tax. The section imposes a territorial limit as to what constitutes a “tax advantage” (and therefore a “tax avoidance transaction”) i.e. Irish tax avoidance, but it applies equally to all taxpayers irrespective of</p>
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## Part 1: Introduction

	<p>the country of residence of the counterparty.</p> <p>In addition, Ireland has recently introduced a mandatory disclosure reporting obligation for tax advisors in relation to reporting particular schemes that give rise to an Irish tax advantage with a view to legislating against schemes that are viewed as aggressive.</p>
2.2. If the answer under 2.1. is Yes, can you please provide the definition? [Definition]	2.2. N/A
2.3. If the answer under 2.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]	2.3. N/A
2.4. If there is no formal definition, are you aware of any problems caused by this?	2.4. None that we are aware of
<b>3. New Specific Measures</b>	
3.1. Are there any New Specific Measures in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2 <u>and</u> 2)</i>	3.1. Yes
3.2. If the answer under 2.1. is Yes, are there any NCJ Measures amongst those New Specific Measures? [Yes/No]	3.2. Yes
3.3. If the answer under 2.1. is Yes, are there any ATP Measures amongst those New Specific Measures? [Yes/No]	3.3. Yes
<b>4. Other Measures</b>	
4.1. Are there any Other Specific Measures in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2)</i>	4.1. Yes
4.2. Are there any General Anti-abuse Provisions in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2)</i>	4.1. Yes

## Part 1: Introduction

4.3. If the answer under 4.2. is Yes, are those measures generally equally applicable to EU Member States (including purely domestic situations) and Third Countries?

4.3.1. [Yes/No]

4.3.2. [Please explain]

4.3.1. Yes

4.3.2. Yes

The general anti-avoidance section in Ireland (section 811) is designed to counteract transactions which lack commercial reality and are put in place with a view to reduce or avoid a charge to Irish tax. The section imposes a territorial limit as to what constitutes a “tax advantage” (and therefore a “tax avoidance transaction”) i.e. Irish tax avoidance, but it applies equally to all taxpayers irrespective of the country of residence of the counterparty.

A "tax avoidance transaction" is a transaction in relation to which, having regard to the results of the transaction, its use as a means of achieving those results and any other means by which the results could have been achieved, the Revenue form the opinion that the transaction gives, or would give, rise to a tax advantage and was not undertaken or arranged primarily for purposes other than to give rise to a tax advantage.

Revenue may not regard a transaction as a tax avoidance transaction where:

- The transaction was undertaken by a person with a view, directly or indirectly, to the realisation of profits in the course of the business activities carried on by the person, and was not undertaken or arranged primarily to give rise to a tax advantage; and
- The transaction was undertaken or arranged for the purpose of obtaining the benefit of any relief, allowance or other abatement provided by any provision of Irish tax law and the transaction would not result directly or indirectly in a misuse of the provision or an abuse of the provision having regard to the purposes for which it was provided.

## Part 1: Introduction

### 5. Legislative or administrative proposals

5.1. Are there currently any proposals aimed at introducing new measures in your country which could fall in scope of the current study?

5.1.1. None that we are currently aware of

5.1.1. [Yes/No/Not exclusively]

5.1.2. [If Yes, please briefly explain]

5.1.2. N/A

## Part 2: General Information

### Measure n°1: Targeted anti-avoidance measure introduced to restrict deductibility of certain interest under Ireland’s securitisation regime

<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-Abuse Measure</p> <p>(Although this measure has been modified recently, considering the measure is not only applicable to Third Countries only it is not considered as a “Specific Measure” in the framework of this questionnaire)</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. A qualifying company under section 110 is generally allowed to deduct, against its taxable income, interest payable on a profit participating loan.</p> <p>A change to the legislation was introduced in Finance Act 2011 to restrict the deductibility of such interest only where paid by a qualifying company:</p> <ul style="list-style-type: none"> <li>• to an Irish tax resident person,</li> <li>• to a Pension fund, government body or other specific tax exempt person resident in a treaty territory,</li> <li>• to a non-resident recipient in a tax treaty territory which taxes the foreign income and provided a notional deduction against the income is not available in that territory, and</li> <li>• in respect of two qualifying instruments (wholesale debt or quoted Eurobond).</li> </ul> <p>This change attempted to counteract transactions whereby the taxable profit in the Irish company was eroded and the income was not being taxed in the recipient territory.</p> <p>The main focus of the change was anti-avoidance in relation to ATP so as to ensure deductibility of such interest payments would only be available where there is taxation of the income in the counterparty territory (save for specific exceptions in the second</p>

## Part 2: General Information

	category). By implication payments to NCJ will not qualify for deductibility.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Section 110 Taxes Consolidation Act 1997
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A
<b>Measure n°2: Targeted anti-avoidance in relation to Franked Investment Income</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-Abuse Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. Dividends paid from one Irish tax resident company to another Irish tax resident company are exempt from Irish tax as Franked Investment Income.  Finance Act 2010 introduced a new section (section 129A) which disapplies this exemption treatment in particular circumstances. The exemption will not apply where an Irish resident company receives a dividend sourced from profits earned by an Irish

## Part 2: General Information

	<p>resident paying company before it became Irish tax resident. The provision applies where the paying company became resident in Ireland within the period of 10 years prior to the dividend payment (but only from 3 April 2010).</p> <p>This measure clearly impacts any planning to repatriate profits of a subsidiary resident in a foreign territory through a migration of residence into Ireland followed by a dividend. In such cases the dividend would be taxable as a foreign dividend and underlying tax suffered on the profits would be available as a credit against Irish tax payable. Such planning for subsidiaries resident in a NCJ would be captured by this provision.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. section 129A Taxes Consolidation Act 1997</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A</p>
<p><b>Measure n°3: Specific cash pooling interest relief</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. New specific measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure /</p>	<p>2. NCJ</p>

## Part 2: General Information

Both]	
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Payments of “short” interest (interest on loans of less than 1 year term) to a 75% related party group company resident in a non-treaty territory are reclassified as non-deductible distributions.</p> <p>Finance Act 2012 introduced a new section into Irish tax law (section 452A) which provides for relief for interest payable by a qualifying company. A qualifying company is defined as a company:</p> <ul style="list-style-type: none"> <li>• that advances money in the ordinary course of a trade carried on in Ireland, and</li> <li>• for which any interest payable in respect of money so advanced is taken into account in computing the income of its trade.</li> </ul> <p>Where interest is paid by a qualifying company to a connected company that is tax resident in a territory with which Ireland does not have a treaty, section 452A provides that a proportion of the interest will not be reclassified as a non-deductible distribution. This means that the company will be able to claim a tax deduction in respect of that proportion of the interest.</p> <p>The deductible amount represents the amount of the interest that will be taxed in the recipient country and the effective tax rate applied. Where the interest is taxed in the recipient country at a rate of 12.5% or more then the full amount of the interest can be claimed as a tax deduction. If the interest is not taxed in the recipient country then a tax deduction may not be claimed for the interest. Where the interest is taxed at a rate of less than 12.5% then a proportion of the interest at the foreign effective rate may be claimed as a tax deduction.</p> <p>Under this new provision payments of short interest to NCJ territories will not qualify for the relief assuming that such territories do not tax the interest receipt.</p>
4. In which legal/regulatory/administrative provision(s) is the measure provided?	4. section 452A Taxes Consolidation Act 1997



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[Reference]	
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A
<b>Measure n°4: Exemption from Irish withholding tax for payments of royalties to non-resident companies</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. New specific measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. NCJ
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. Payments of patent royalties (and certain other annual payments) by a company resident in Ireland to a non-resident company may be liable to Irish withholding tax at 20%.</p> <p>An exemption from Irish withholding tax is available under section 242A where the royalty is payable in the ordinary course of a trade or business to a company that is tax resident in an EU or treaty territory which imposes a tax that generally applies to royalties receivable in that territory by companies from sources outside that territory.</p>

## Part 2: General Information

	<p>This provision was introduced by Finance Act 2010.</p> <p>The implication of this exemption is that patent royalties paid to companies in non-treaty territories (including NCJ) are not exempt from Irish withholding tax.</p>
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. section 242A Taxes Consolidation Act 1997
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A
<b>Measure n°5: Exemption from Irish withholding tax for payments of interest to non-resident companies</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. Other specific measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. NCJ
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. Payments of interest by a company resident in Ireland to a non-resident company may be liable to Irish withholding tax at 20%.</p> <p>An exemption from Irish withholding tax is available under section 246(3)(h) where the</p>

## Part 2: General Information

	<p>interest is payable in the ordinary course of a trade or business to a company that is tax resident in an EU or treaty territory which imposes a tax that generally applies to interest receivable in that territory by companies from sources outside that territory.</p> <p>The implication of this exemption is that interest paid to companies in non-treaty territories (including NCJ) is not exempt from Irish withholding tax.</p> <p>This exemption was in place prior to 1 January 2007 and it was amended in Finance Act 2010. Previously the exemption was available where the recipient company was resident in an EU or treaty territory.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. section 246(3)(h) Taxes Consolidation Act 1997</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A</p>
<p><b>Measure n°6: Exemption from Irish income tax for payments of interest to non-resident companies</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. Other specific measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the</p>	<p>2. NCJ</p>

## Part 2: General Information

<p>measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Payments of interest by a company resident in Ireland to a non-resident company may be liable to a residual charge to Irish income tax chargeable on the non-resident company.</p> <p>An exemption from this residual income tax charge is available under section 198 where the interest is payable to a company that is tax resident in an EU or treaty territory which imposes a tax that generally applies to interest receivable in that territory by companies from sources outside that territory.</p> <p>This exemption was in place prior to 1 January 2007 and it was amended in Finance Act 2010 with an amendment for the “subject to tax” wording. Previously the exemption was available where the recipient company was resident in an EU or treaty territory. This exemption was also recently extended in Finance Act 2012 to interest paid in respect of two qualifying instruments (wholesale debt and quoted Eurobond).</p> <p>The implication of this exemption is that interest paid to companies in non-treaty territories (including NCJ) and not under the qualifying instruments noted is not exempt from this potential residual charge to Irish income tax.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. section 198 Taxes Consolidation Act 1997</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when</p>	<p>6. N/A</p>

## Part 2: General Information

relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

### Measure n°7: Participation exemption for gains made on disposals of qualifying subsidiaries

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. Other specific measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. NCJ

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Irish tax law contains a provision which exempts gains made by an Irish resident company on disposals of qualifying shareholdings. The following criteria must be satisfied to qualify for the relief:

1. **The treaty/EU test:** The company being disposed of must be tax resident in the EU or in a territory with which Ireland has a double tax treaty at the time of disposal.
2. **The holding period/holding percentage test:** The company making the disposal must hold (directly or indirectly), in the company being disposed of:

- at least 5% of the ordinary share capital;
- an entitlement to at least 5% of the profits; and
- an entitlement to at least 5% of the assets of the company;

for a consecutive 12 month period (commencing before and ending not more than 2 years after the disposal). Holdings anywhere in a 51% worldwide group count towards meeting this test.

3. **The trading test:** At the time of the disposal, the business of the company being

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	<p>disposed of must be “wholly or mainly” trading, or (alternatively) the business of holding company and all subsidiary companies, when taken together, be “wholly or mainly” trading.</p> <p>The first test requires the company being disposed of to be tax resident in the EU or a treaty territory and as such gains made on disposals of subsidiaries that are tax resident in a non-treaty territory (including NCJ) will not qualify.</p> <p>A similar exemption applies to disposals of assets related to shares in qualifying subsidiaries (i.e. securities convertible into shares) and the same criteria applies so that assets or securities related to non-treaty territories (including NCJ) will not qualify for the exemption.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. section 626B and section 626C Taxes Consolidation Act 1997</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A</p>
<p><b>Measure n°8: Dividend withholding tax exemptions</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General</p>	<p>1. Other specific measure</p>

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Anti-abuse Measure]	
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. NCJ
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. Dividends paid by an Irish resident company attract withholding tax at 20%. There are wide ranging domestic exemptions from dividend withholding tax for qualifying non-resident corporate shareholders. The non-resident companies that may qualify for exemption are outlined below:</p> <ul style="list-style-type: none"> <li>a) A parent company resident in the EU that is exempt under the EU Parent Subsidiary Directive.</li> <li>b) A non-resident company that is tax resident in the EU or a treaty territory and not under the control Irish residents.</li> <li>c) A non-resident company that is under the control of EU or treaty residents, and such residents are not themselves under the control of non-EU/treaty residents.</li> <li>d) A non-resident listed company or a 75% subsidiary of a listed company.</li> </ul> <p>Although a non-treaty resident company can qualify for exemption under c and d there is no specific exemption for all non-treaty resident companies.</p>
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. section 172D Taxes Consolidation Act 1997
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when	6. N/A

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relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

### Measure n°9: Targeted anti-avoidance in EU Parent Subsidiary Directive legislative provision

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. Other specific measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. ATP/NCJ

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Dividends paid by an Irish resident company attract withholding tax at 20%. The EU Parent Subsidiary Directive provides for exemption from dividend withholding tax for EU tax resident parent companies. Section 831 Taxes Consolidation Act 1997 gives legal effect to the provisions of the EU Parent Subsidiary Directive in Ireland.

The exemption from dividend withholding tax under the EU Parent Subsidiary Directive will not apply where the EU resident parent company is controlled by non-treaty residents unless it is shown that the EU resident parent company exists for bona fide commercial reasons and does not form part of any scheme to avoid Irish tax.

This specific anti-avoidance provision aims to prevent the insertion of an EU resident parent company between an Irish company and a non-treaty resident parent company to take advantage of the dividend withholding tax exemption. In such circumstances the exemption will not apply unless the EU resident parent company exists for reasons other than avoiding Irish dividend withholding tax.

This measure is aimed at preventing the use of conduit companies which are established



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	solely for the purpose of avoiding dividend withholding tax.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. section 831(6) Taxes Consolidation Act 1997
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A
<b>Measure n°10: Reclassification of interest payable to non-deductible distributions</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. Other specific measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. NCJ
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. Interest payable by an Irish company to a non-resident 75% group company is generally reclassified as a non-deductible distribution under s130(2)(d)(iv).</p> <p>An election can be made by a trading company with its tax return to ensure interest payable in the ordinary course of its trade is not reclassified in this way and remains deductible.</p>

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	<p>No such election can be made in respect of non-trading interest payable e.g. interest on funds borrowed to buy shares in a company. However, section 130(2B) provides that such non-trading interest payable to a company that is tax resident in the EU is excluded from the reclassification under section 130(2)(d)(iv). In addition, most tax treaties override the reclassification treatment under section 130(2)(d)(iv) due to the presence of a non-discrimination article in the tax treaty.</p> <p>In summary this means that a company borrowing funds for non-trade purposes from a non-treaty resident 75% group company cannot avoid the reclassification of the interest payable on such borrowing to non-deductible distribution. This clearly impacts borrowing from NCJ group companies to fund company acquisitions.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. section 130(2B) Taxes Consolidation Act 1997</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A</p>
<p><b>Measure n°11: Exit charge on migration of company residence from Ireland</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. Other specific measure</p>

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<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. NCJ</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Irish tax law contains an exit charge provision. Section 627 provides for a deemed disposal and re-acquisition of all assets of a company which moves its tax residence outside of Ireland. The charge to capital gains tax applies to the appreciation in value of all chargeable assets of the company concerned up to the date of migration.</p> <p>An exception to this rule applies in the case of an “excluded company”. An excluded company is a company that has not less than 90% of its issued share capital ultimately held by a foreign company (or foreign companies). A foreign company is a company which:</p> <ul style="list-style-type: none"> <li>• is not resident in Ireland,</li> <li>• is under the control of treaty residents, and</li> <li>• is not under the control of Irish residents.</li> </ul> <p>What this means is that an Irish resident company that is controlled by non-treaty residents (including NCJ) may not avail of this exclusion from the exit charge should that Irish resident company migrate its tax residence outside Ireland.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. section 627 Taxes Consolidation Act 1997</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when</p>	<p>6. N/A</p>

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relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

### Measure n°12: Default Irish tax residence rules

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. Other specific measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. ATP/NCJ

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. With some exceptions, a company incorporated in Ireland is automatically considered to be Irish tax resident under section 23A Taxes Consolidation Act 1997. The exceptions are:

- a company regarded as solely tax resident in another country under the tax treaty with that country
- a company carrying on a trade in Ireland (or a company related to such a company) provided either the ultimate parent is quoted on a recognised Stock Exchange or the company is ultimately controlled by EU or tax treaty country residents.

An Irish incorporated company that is controlled by non-treaty residents and is not part of a listed group could not avoid being treated as Irish tax resident through exercising central management and control in a non-treaty territory (including NCJ) as it would not fall under any of the exceptions listed above. In this way any attempts for such a company to become tax resident in a NCJ and not in Ireland would not be possible under Irish tax rules, and the company would remain within the charge to Irish tax on its worldwide income and gains.

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4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. section 23A Taxes Consolidation Act 1997
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A
<b>Measure n°13: Capital gains tax group relief rules in Ireland</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. Other specific measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. NCJ
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. A group for Irish capital gains tax purposes consists of a principal company and all its 75% effective subsidiary companies. The reference to a “company” for the purposes of capital gains tax groups is a reference to a company that is tax resident in an EU or EEA territory.</p> <p>Transfers of chargeable assets between companies in the same Irish capital gains tax group are deemed to take place at no gain/no loss.</p>

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	A non-EU/EEA resident company (including NCJ) may not avail of this relief and may not be used to form a capital gains tax group.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. section 616 Taxes Consolidation Act 1997
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A
<b>Measure n°14: General anti-avoidance rules</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General anti-abuse measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. ATP
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. The general anti-avoidance section in Ireland (section 811) is designed to counteract transactions which lack commercial reality and are put in place with a view to reduce or avoid a charge to Irish tax. The section imposes a territorial limit as to what constitutes a "tax advantage" (and therefore a "tax avoidance transaction") i.e. Irish tax avoidance, but it applies equally to all taxpayers irrespective of the country of residence of the

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	<p>counterparty.</p> <p>A "tax avoidance transaction" is a transaction in relation to which, having regard to the results of the transaction, its use as a means of achieving those results and any other means by which the results could have been achieved, the Revenue form the opinion that the transaction gives, or would give, rise to a tax advantage and was not undertaken or arranged primarily for purposes other than to give rise to a tax advantage.</p> <p>Revenue may not regard a transaction as a tax avoidance transaction where:</p> <ul style="list-style-type: none"> <li>• The transaction was undertaken by a person with a view, directly or indirectly, to the realisation of profits in the course of the business activities carried on by the person, and was not undertaken or arranged primarily to give rise to a tax advantage; and</li> <li>• The transaction was undertaken or arranged for the purpose of obtaining the benefit of any relief, allowance or other abatement provided by any provision of Irish tax law and the transaction would not result directly or indirectly in a misuse of the provision or an abuse of the provision having regard to the purposes for which it was provided.</li> </ul> <p>If the transaction is found to be a "tax avoidance scheme", then the Irish tax benefit arising from the scheme will be denied and this will result in a tax liability together with interest and penalties owed on the underpayment of tax.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. section 811 Taxes Consolidation Act 1997</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this</p>	<p>6. There has been only one case in the Irish courts which has dealt with the application of section 811. The case was a very recent case that was concluded in 2011 and is the</p>

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measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

Revenue Commissioners v O’Flynn Construction [2011] IESC 47.

The Supreme Court held that the Revenue Commissioners were correct in forming the opinion O’Flynn Construction Ltd had engaged in tax avoidance in relation to tax planning carried out between 1991 and 1992.

The scheme involved a complex series of transactions consisting of 40 individual steps carried out over a period of 50 days. In summary, it involved the sale by a company entitled to Export Sales Relief (“ESR”) of its ESR reserves to O’Flynn Construction Ltd. O’Flynn subsequently paid a tax free dividend to its shareholders. The dividends were treated as exempt in the hands of the shareholders as the original source of the reserves which funded this dividend payment was income which qualified for ESR.

The Court determined that the scheme was highly artificial, was arranged primarily to give rise to a tax advantage, and was a misuse or abuse of the tax relief. The purpose of the relief was not to allow the shareholders in a non-exporting company to benefit from ESR on the profits of the non-exporting company.

This decision confirms Revenue’s ability to look at the purpose for which tax relief was introduced in determining whether a transaction is a tax avoidance scheme.

### Measure n°15: Restriction on deductibility of certain interest

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General anti-abuse measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. ATP

3. Please provide a general description of the measure including also the purpose

3. Section 817C is an anti-avoidance measure that restricts the amount of interest



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of the measure (approx. 15 lines)

deductible as a trading expense. It is directed at arrangements under which a trading company claims a deduction for the amount of accrued interest where:

- a) the interest is payable to a connected person,
- b) the interest would otherwise be allowable in computing trading income, and
- c) i) if the connected person is chargeable to tax in respect of the interest, the interest does not fall to be taxed as trading income, or
- ii) in any other case, if the connected person were resident in Ireland the interest would not fall to be taxed as trading income.

Category “c) i)” essentially refers to interest paid to Irish residents and to Irish source interest paid to non-treaty residents (as these two categories remain “chargeable to tax in respect of the interest”).

However, section 817C will not apply to interest paid to a connected company where the company is not resident in Ireland and is not under the ultimate control of Irish residents.

The section attempts to match the timing of the interest deduction in the Irish trading company (which is generally on an accruals basis) to the timing of the taxation of the interest in the hands of the connected person who is within the charge to Irish tax or will ultimately be within the charge to Irish tax on the income. The interest deduction is restricted where this section applies until such time as the income is subject to tax in the counterparty.

As already noted the section does not apply to interest paid to a connected company where the company is not resident in Ireland and is not under the ultimate control of Irish residents. However, interest paid by an Irish resident company to NCJ resident company that is controlled by Irish residents will be restricted until such a time as the interest income is subject to tax.

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4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. section 817C Taxes Consolidation Act 1997
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A
<b>Measure n°16: Mandatory disclosure of certain transactions</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General anti-abuse measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. ATP
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. Finance Act 2010 introduced new mandatory disclosure obligations on “promoters” of certain tax related transactions to give details of those transactions to the Revenue Commissioners shortly after they are first marketed or made available for use. In limited circumstances, the users of the transactions are required to provide the details.</p> <p>The rules apply to transactions that have a main benefit in the obtaining of a tax advantage and are of a kind described in the legislation (a specified transaction). Tax</p>

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advantage is a reference to an Irish tax advantage.

The specified transaction categories are as follows:

- Confidentiality where a promoter is involved: where it might be reasonably expected that a promoter would wish to keep how the transaction gives rise to a tax advantage confidential from other promoters or the Revenue Commissioners.
- Confidentiality where no promoter involved: where it might be reasonably expected that a person implementing such a transaction would wish to keep how the transaction gives rise to a tax advantage confidential from other promoters or the Revenue Commissioners.
- Fees: where it might be reasonably be expected that a promoter would be able to obtain a premium fee from or charge a premium fee to a person implementing such a transaction.
- Standardised tax products: where the transaction has, or is intended to have standardised, or substantially standardised, documentation the purpose of which is to enable the implementation of such a transaction and the form of which is determined by a promoter.
- Loss schemes – individuals: where the promoter expects that more than one individual to implement the same transaction and the transaction is such that an informed observer could reasonably conclude that a main outcome of such a transaction is the provision of losses and those individuals could use those losses to reduce their tax bill.
- Loss schemes – companies: where one of the parties to the transaction is a company that has unrelieved losses and an informed observer could reasonably conclude that a main benefit of the transaction is that the company transfers those losses to another party to reduce their tax bill or the company is able to use those losses to reduce its tax bill (in circumstances other than what the losses were expected to be used).
- Employment schemes: N/A for the purposes of this report.
- Income into capital schemes: where, as a consequence of a transaction, a person who

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	<p>would otherwise incur a liability to income tax in any tax year, will incur a lesser or nil liability to income tax in that year and will acquire an asset, the disposal of which would be a capital gain.</p> <ul style="list-style-type: none"> <li>Income into gift schemes: where, as a consequence of a transaction, a person who would otherwise incur a liability to income tax in any tax year, will incur a lesser or nil liability to income tax in that year and is deemed to take a gift.</li> </ul> <p>The reporting obligations apply to transactions equally irrespective of the country of residence of the counterparty. The purpose of the reporting is to help Revenue gather details of particular transactions with a view to legislating against schemes that are viewed as aggressive.</p> <p>This reporting obligation does not impact the tax situation of the promoter or the concerned entity.</p> <p>The legislation does provide for the imposition of penalties where there is a failure to comply with the obligations imposed by the Mandatory Disclosure legislation and the penalty depends on the nature of the failure. The liability to and the amount of the penalty is determined by the Courts. Penalties range from initial amounts of €4,000 together with fixed daily penalties of €100-500 per day.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. section 817D-817R Taxes Consolidation Act 1997</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of</p>	<p>6. N/A</p>

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"landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

### Measure n°17: Transfer pricing rule

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General anti-abuse measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Ireland has recently introduced transfer pricing rules (since 2010). The rules apply to all trading transactions between related party group companies and the requirement is for the pricing to be at arm's length and be supported by sufficient documentation. If the pricing is found not to be at arm's length, the rules provide for one way adjustments to increase the taxable profit in Ireland either through imputation of taxable income (where income is understated) or restricting a tax deduction (where expense is overstated).

4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]

4. sections 835A-835H Taxes Consolidation Act 1997

5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.

5. N/A

6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level

6. N/A

## Part 2: General Information

summary of the given case law.	
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## Part 3: Detailed Information

### New Specific Measure n°1: Specific cash pooling interest relief

1. Is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

*(Same answer as in Part 2 for the New Specific Measure at stake)*

1. NCJ

2. Legal grounds governing this measure.

2.1. Legal provision(s)? [Reference] *(Same answer as in Part 2 for this measure)*

2.2. Practice notes? [Reference]

2.3. Parliamentary works? [Reference]

2.4. Other source? [Reference]

2.1. section 452A Taxes Consolidation Act 1997

2.2. N/A

2.3. N/A

2.4. Explanatory Memorandum Finance Act 2012

3. Can you please provide a detailed description of the measure? This description should include in particular the following elements:

3.1. Main mechanisms? [Description]

3.2. Purpose (i.e. the problem and countries which are supposed to be tackled by the measure)? [Description]

3.3. Scope Rationae Personae? [Description]

3.4. Scope Rationae Materiae? [Description]

3.5. Effects (sanctions, incentives linked to complying with the measure, etc.)? [Description]

3.6. Burden of proof? [Description]

3.7. Other relevant point? [Comments]

3.8. Is it a new measure / an amended measure or a possible future measure? [new measure / amended measure / possible future measure]

3.9. Are there any intentions or proposals to change the measure? [Comments]

3.1. Payments of “short” interest (interest on loans of less than 1 year term) to a 75% related party group company resident in a non-treaty territory are reclassified as non-deductible distributions.

Finance Act 2012 introduced a new section into Irish tax law (section 452A) which provides for relief for interest payable by a qualifying company. A qualifying company is defined as a company:

- that advances money in the ordinary course of a trade carried on in Ireland, and
- for which any interest payable in respect of money so advanced is taken into account in computing the income of its trade.

Where interest is paid by a qualifying company to a connected company that is resident in a territory with which Ireland does not have a treaty, section 452A provides that a proportion of the interest will not be reclassified as a non-deductible distribution. This means that the company will be able to claim a tax deduction in respect of that proportion of the interest.

## Part 3: Detailed Information

The deductible amount represents the amount of the interest that will be taxed in the recipient country and the effective tax rate applied. Where the interest is taxed in the recipient country at a rate of 12.5% or more then the full amount of the interest can be claimed as a tax deduction. If the interest is not taxed in the recipient country then a tax deduction may not be claimed for the interest. Where the interest is taxed at a rate of less than 12.5% then a proportion of the interest at the foreign effective rate may be claimed as a tax deduction.

Under this new provision it is clear that payments of short interest to NCJ territories will not qualify for the relief.

3.2. The purpose of the new section was to provide relief for short interest payments by Irish cash pool leaders to group companies in non-treaty territories where the interest income was being subject to tax.

3.3. Any Irish treasury trading company paying short interest in the ordinary course of its trade to connected companies in non-treaty territories.

3.4. N/A

3.5. Deductibility of otherwise non-deductible short interest payments is the incentive provided by this new section.

3.6. The burden of proof is on the taxpayer to show that it has satisfied criteria for relief should the tax authorities challenge the deduction claimed.

3.7. N/A

3.8. New measure

3.9. None that we are aware of



## Part 3: Detailed Information

<p>4. Impact assessment and evaluation</p> <p>4.1. Before enactment: were there impact assessments made / issued / discussed during the preparation of the measure (including quantitative impact)?</p> <p>4.1.1. [Yes/No] 4.1.2. [If Yes, please describe] 4.1.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p> <p>4.2. After enactment: are there evaluations (including effectiveness and sufficiency) of the measure issued or discussed during any parliamentary works or in any other official administrative doctrine publicly available?</p> <p>4.2.1. [Yes/No] 4.2.2. [If Yes, please describe] 4.2.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p>	<p>4.1.1. None that we are aware of.</p> <p>4.1.2.</p> <p>4.1.3.</p> <p>4.2.1. None that we are aware of.</p> <p>4.2.2.</p> <p>4.2.3.</p>
<p>5. Litigations</p> <p>5.1. Is there any litigation (pending or decided) before local Courts (first instance, appeal, Supreme Court, etc.) or before EU/international Courts (prejudicial question, infringement procedure, etc.) which questions the measure itself (i.e. not cases where the measure is just involved)?</p>	<p>5.1. None that we are aware of.</p> <p>5.2.</p>

## Part 3: Detailed Information

<p>5.2. If Yes, what is the reasoning used?</p> <p>5.3. Please provide a quantification of the outcome of the Court decision (e.g. penalties) when available.</p>	<p>5.3.</p>
<p>6. Other points that you would consider relevant to mention regarding this measure?</p>	<p>6. No</p>
<p><b>New Specific Measure n°2: Exemption from Irish withholding tax for payments of royalties to non-resident companies</b></p>	
<p>1. Is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p> <p><i>(Same answer as in Part 2 for the New Specific Measure at stake)</i></p>	<p>1. NCJ</p>
<p>2. Legal grounds governing this measure.</p> <p>2.1. Legal provision(s)? [Reference] <i>(Same answer as in Part 2 for this measure)</i></p> <p>2.2. Practice notes? [Reference]</p> <p>2.3. Parliamentary works? [Reference]</p> <p>2.4. Other source? [Reference]</p>	<p>2.1. section 242A Taxes Consolidation Act 1997</p> <p>2.2. N/A</p> <p>2.3. N/A</p> <p>2.4. Explanatory Memorandum Finance Act 2010</p>
<p>3. Can you please provide a detailed description of the measure? This description should include in particular the following elements:</p> <p>3.1. Main mechanisms? [Description]</p> <p>3.2. Purpose (i.e. the problem and countries which are supposed to be tackled by the measure)? [Description]</p> <p>3.3. Scope Rationae Personae? [Description]</p> <p>3.4. Scope Rationae Materiae? [Description]</p> <p>3.5. Effects (sanctions, incentives linked to complying with the measure, etc.)?</p>	<p>3.1. Payments of patent royalties (and certain other annual payments) by a company resident in Ireland to a non-resident company may be liable to Irish withholding tax at 20%.</p> <p>An exemption from Irish withholding tax is available under section 242A where the royalty is payable in the ordinary course of a trade or business to a company that is tax resident in an EU or treaty territory which imposes a tax that generally applies to royalties' receivable in that territory by companies from sources outside that territory. This provision was introduced by Finance Act 2010.</p>

## Part 3: Detailed Information

<p>[Description] 3.6. Burden of proof? [Description] 3.7. Other relevant point? [Comments] 3.8. Is it a new measure / an amended measure or a possible future measure? [new measure / amended measure / possible future measure] 3.9. Are there any intentions or proposals to change the measure? [Comments]</p>	<p>The implication of this exemption is that patent royalties paid to companies in non-treaty territories (including NCJ) are not exempt from Irish withholding tax.</p> <p>3.2. The purpose of the new section was to provide exemption from withholding tax for payments of patent royalties to good locations (EU or treaty).</p> <p>3.3. Any Irish trading company paying patent royalties in the ordinary course of its trade to companies resident in EU or treaty territories.</p> <p>3.4. N/A</p> <p>3.5. The incentive is the exemption from withholding tax and avoiding administration necessary to obtain treaty relief (in some cases).</p> <p>3.6. The burden of proof is on the taxpayer to show that it has satisfied criteria for exemption should the tax authorities challenge the exemption claimed.</p> <p>3.7. N/A</p> <p>3.8. New measure</p> <p>3.9. None that we are aware of</p>
<p>4. Impact assessment and evaluation</p> <p>4.1. Before enactment: were there impact assessments made / issued / discussed during the preparation of the measure (including quantitative impact)?</p> <p>4.1.1. [Yes/No] 4.1.2. [If Yes, please describe] 4.1.3. [If Yes, please enclose the documentation you are referring to (e.g.</p>	<p>4.1.1. None that we are aware of.</p> <p>4.1.2.</p> <p>4.1.3.</p> <p>4.2.1. None that we are aware of.</p> <p>4.2.2.</p>

## Part 3: Detailed Information

<p>report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p> <p>4.2. After enactment: are there evaluations (including effectiveness and sufficiency) of the measure issued or discussed during any parliamentary works or in any other official administrative doctrine publicly available?</p> <p>4.2.1. [Yes/No]</p> <p>4.2.2. [If Yes, please describe]</p> <p>4.2.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p>	<p>4.2.3.</p>
<p>5. Litigations</p> <p>5.1. Is there any litigation (pending or decided) before local Courts (first instance, appeal, Supreme Court, etc.) or before EU/international Courts (prejudicial question, infringement procedure, etc.) which questions the measure itself (i.e. not cases where the measure is just involved)?</p> <p>5.2. If Yes, what is the reasoning used?</p> <p>5.3. Please provide a quantification of the outcome of the Court decision (e.g. penalties) when available.</p>	<p>5.1. None that we are aware of.</p> <p>5.2.</p> <p>5.3.</p>
<p>6. Other points that you would consider relevant to mention regarding this measure?</p>	<p>6. No</p>

## Luxembourg

### Part 1: Introduction

#### 1. Definition of NCJ

<p>1.1. Is there any formal definition of “NCJ” in your country (or any other concept similar to “NCJ”)? [Yes/No]</p>	<p>1.1. No</p> <p>NCJ is not defined by any specific provision of the Luxembourg tax law (neither in public legislative work, nor in the administrative circulars).</p> <p>However, the concept of NCJ could be indirectly derived from several provisions of Luxembourg income tax law (“LITL”). Indeed, various provisions of the LITL are applicable to joint stock companies resident in Third Countries (i.e. non EU Member States) to the extent that <i>“[these companies] are fully liable in ([their] state of residence) to a tax corresponding to Luxembourg corporate income tax”</i>.</p> <p>The above concept of a tax corresponding to the Luxembourg one will be further detailed in our below measures (notably article 166 LITL).</p>
<p>1.2. If the answer under 1.1. is Yes, can you please provide the definition and the explanation how it operates? [Definition]</p>	<p>1.2. N/A</p>
<p>1.3. If the answer under 1.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]</p>	<p>1.3. N/A</p>
<p>1.4. If there is no formal definition, are you aware of any problems caused by this?</p>	<p>1.4. Not to the best of our knowledge.</p>

## Part 1: Introduction

### 2. Definition of ATP

<p>2.1. Is there any formal definition of “ATP” in your country (or any other concept similar to “ATP”)? [Yes/No]</p>	<p>2.1. No.</p> <p>As such ATP is not defined in the Luxembourg tax law (neither in public legislation work, nor in the administrative circulars). There are two general anti-avoidance provisions in Luxembourg which will be further detailed in Part 2 and which are equally applicable to all taxpayers irrespective of the country of residence of the counterparty.</p> <ul style="list-style-type: none"> <li>• §5 Steueranpassungs-Gesetz (“StAnpG”) which refers to the concept of simulation (i.e. where the agreement under examination is found to be a “sham”, put in place to cover another agreement).</li> <li>• §6 Steueranpassungs-Gesetz (“StAnpG”) which refers to the concept of “abuse of law” and it could be considered also as a “substance over form” provision. In short, it applies when the route chosen to carry out a transaction is one which would not habitually be taken and there is a lack of other (non-tax) reasons justifying this choice. Moreover, a tax liability would have to be circumvented for the operation to be classified as “abusive”.</li> </ul>
<p>2.2. If the answer under 2.1. is Yes, can you please provide the definition? [Definition]</p>	<p>2.2. N/A</p>
<p>2.3. If the answer under 2.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]</p>	<p>2.3. N/A</p>
<p>2.4. If there is no formal definition, are you aware of any problems caused by this?</p>	<p>2.4. Not to the best of our knowledge.</p>
<h3>3. New Specific Measures</h3>	
<p>3.1. Are there any New Specific Measures in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2 <u>and</u> Part 3)</i></p>	<p>3.1. Yes</p>

## Part 1: Introduction

3.2. If the answer under 2.1. is Yes, are there any NCJ Measures amongst those New Specific Measures? [Yes/No]

3.2. Yes

3.3. If the answer under 2.1. is Yes, are there any ATP Measures amongst those New Specific Measures? [Yes/No]

3.3. No

### 4. Other Measures

4.1. Are there any Other Specific Measures in your country? [Yes/No]  
*(If Yes, those measures must be described in Part 2)*

4.1. Yes

4.2. Are there any General Anti-abuse Provisions in your country? [Yes/No]  
*(If Yes, those measures must be described in Part 2)*

4.1. Yes

4.3. If the answer under 4.2. is Yes, are those measures generally equally applicable to EU Member States (including purely domestic situations) and Third Countries?

4.3.1. Yes

4.3.1. [Yes/No]

4.3.2. [Please explain]

4.3.2. Please see further Part 2.

## Part 1: Introduction

### 5. Legislative or administrative proposals

5.1. Are there currently any proposals aimed at introducing new measures in your country which could fall in scope of the current study?

5.1.1. [Yes/No/Not exclusively]

5.1.2. [If Yes, please briefly explain]

5.1.1. New treaties are currently being negotiated which should contain the exchange of information clause (please refer to Part 3, New Specific Measure N°1). Moreover, the policy is to update the exchange of information clauses also in the existing treaties including article 26.5. However, no official information is available in this respect.

5.1.2.N/A



## Part 2: General Information

### Measure n°1: Exchange of information provisions in double tax treaties (“DTT”) with dozens of Third Countries

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. New Specific Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. NCJ (to the extent some of the Third Countries would be considered as NCJ according to a non-Luxembourg definition).
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. Luxembourg has signed dozens of DTTs with Third Countries which include the exchange of information provision in line with the OECD tax convention model (see for further details Part 3).
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. International Conventions
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. No relevant case law to the best of our knowledge.

### Measure n°2: Participation exemption regime on dividends and capital gains

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. Other Specific Measure
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## Part 2: General Information

Anti-abuse Measure]	
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. Both
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. Dividends received may be tax exempt in Luxembourg, according to the domestic participation exemption regime, if the conditions described below are satisfied:</p> <ul style="list-style-type: none"> <li>• At the date on which the income is made available, the beneficiary has been holding or undertakes to hold, directly, for an uninterrupted period of at least 12 months, a participation in the share capital of the subsidiary of at least 10% or with an acquisition price of at least EUR 1.2 million for dividend and EUR 6 million for capital gains.</li> <li>• The beneficiary company is: <ul style="list-style-type: none"> <li>– a Luxembourg resident collective entity, which is fully taxable and takes one of the forms listed in the appendix to paragraph 10 of article 166 LITL; or</li> <li>– a Luxembourg resident joint-stock company, which is fully taxable and does not take one of the forms listed in the above-mentioned appendix; or</li> <li>– a domestic permanent establishment (“PE”) of a collective entity falling within the scope of article 2 of the UE Council directive dated 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, 2011/96/UE (hereafter Parent-Subsidiary Directive) as amended; or</li> <li>– a domestic PE of a joint-stock company that is resident in a country with which Luxembourg has concluded a DTT, or</li> <li>– a domestic PE of a joint-stock company or of a cooperative society, which is a resident of a European Economic Area (EEA) Member State (other than an EU Member State).</li> </ul> </li> </ul>

## Part 2: General Information

- The distributing company is:
  - a collective entity falling within the scope of article 2 of Parent Subsidiary Directive, or
  - a Luxembourg resident joint-stock company, which is fully taxable and does not take one of the forms listed in the appendix to paragraph 10 of article 166 LITL, or
  - **a non-resident joint-stock company that is fully liable (in its state of residence) to a tax corresponding to the Luxembourg corporate income tax .**

With regard to the requirement a non-resident joint-stock company that is *fully liable (in its state of residence) to a tax corresponding to the Luxembourg corporate income tax* , the parliamentary works (doc. parl. n°5232, Chambre des Députés, session ordinaire 2003-2004, commentaries des articles p.8 and p.9) specify that in order to benefit from the domestic participation exemption for dividends and capital gains a subsidiary must be liable to corporate income tax in its country of residence at an effective rate equal to at least 50% of the official rate of Luxembourg corporate income tax (currently this rate must be at least 10.5%) and that the method of calculating the taxable basis of the subsidiary has to be similar to that one used in Luxembourg.

As a consequence, this "equivalent taxation" rule does not allow the exemption of dividends (or capital gains) from companies in countries with low taxation. In other words, it could cover without mentioning them, NCJ countries (depending on how one would define them).

Other provisions use the concept of a non-resident joint-stock company fully liable on its state of residence to a tax corresponding to the Luxembourg corporate income tax, and even the net wealth tax law.

Article 22 bis LITL which allows a roll over in case of share for share transaction **ONLY** if the beneficiary company is a company resident in a EU/EEA Member State, **or a joint-**

## Part 2: General Information

**stock company fully liable to a tax corresponding to Luxembourg corporate income tax.**

Article 115.15 (a) LITL which provides for a 50% exemption on income from capital (according to article 146 (1), paragraph 1, section 1 and 3 and paragraph 2), provided that the distributing entity is:

- a Luxembourg resident joint-stock company, which is fully taxable; or
- a collective entity that is resident in a State with which Luxembourg has concluded a double tax treaty and which **is fully liable to a tax corresponding to Luxembourg corporate income tax**, or
- a collective entity falling under the Parent / Subsidiary Directive (2011/96/UE).

Article 164 bis LITL according to which the tax unity is only possible if a fully taxable entity resident in Luxembourg holds, directly or indirectly (meaning through Luxembourg companies or through a non-resident joint-stock companies **fully liable to a tax corresponding to Luxembourg corporate income tax**), at least 95% of the share capital, one or several Luxembourg fully taxable subsidiaries during at least 5 years.

§ 60 of the Valuation Law (*Bewertungsgesetz*) provides that resident companies in Luxembourg are subject each year to a net worth tax, at the rate of 0,5%, assessed on 1 January of each year on the basis of their net asset value. Briefly speaking the net asset value is equal to the assets of the companies less its third party liabilities. However qualifying participation are exempt provided certain conditions and only if it is:

- a collective entity falling under the Parent / Subsidiary Directive (2011/96/UE); or
- a Luxembourg resident joint-stock company, which is fully taxable and incorporated in the legal form of an unlimited company; or
- **a non-resident joint-stock company that is fully liable (in its state of residence) to a tax corresponding to the Luxembourg corporate income tax .**

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	<p>Moreover, in some double tax treaties including new ones such as Bahrain, Liechtenstein and Monaco, the dividends can be exempt only if there is the “subject to tax “requirement (i.e., a company that is fully liable (in its state of residence) to a tax corresponding to the Luxembourg corporate income tax). In other treaties, it is foreseen a tax credit method so that a full exemption could be granted only according to the domestic Participation-Exemption regime which relies on the equivalent taxation rule meaning that a non-resident joint-stock company should be fully liable (in its state of residence) to a tax corresponding to the Luxembourg corporate income tax: e.g. Hong-Kong, Barbados, Qatar.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4.</p> <p>Article 166 LITL and the related parliamentary work (doc. parl. 5232)</p> <p>Grand Ducal Decree dated 21 December 2001 (capital gains exemption)</p> <p>Article 22 bis LITL detailed in the Circular LITL n°22bis/1 dated 27 November 2002 and in the parliamentary work (doc. parl. n°4855 and n°5232).</p> <p>Article 115.15 (a) LITL detailed in the Circular LITL n° 115/8 dated 15 December 2008 and in the related parliamentary work (doc. parl. n°5232).</p> <p>Article 164 bis LITL detailed in the Circular LITL n°164bis/1 dated 27 September 2004 and in the related parliamentary work (doc. parl. n°5232).</p> <p>§ 60 of the Valuation Law (<i>Bewertungsgesetz</i>)</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this</p>	<p>6. No relevant case law to the best of our knowledge.</p>

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measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

### Measure n°3: Withholding tax exemption

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. Other Specific Measure.

The provision in relation to the Third Countries tax regime was entered into force on 1 January 2009. However, the concept of this amendment regarding the "equivalent taxation" rule was already present in Luxembourg law as explained above.

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. Both

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Dividends distributed by a Luxembourg fully taxable resident company should in principle be subject to a 15% withholding tax.

However, Article 147 LITL provides for an exemption from withholding tax in Luxembourg if the following conditions are fulfilled:

1. the distributing company is:

- a Luxembourg resident collective entity, which is fully taxable and takes one of the forms listed in the appendix to the paragraph 10 of article 166 LITL (see enclosure); or
- a Luxembourg resident joint-stock company, which is fully taxable and does not take one of the forms listed in the above-mentioned appendix;

## Part 2: General Information

2. the entity receiving the dividends is:

- a collective entity falling under the Parent / Subsidiary Directive (2011/96/UE); or
- a Luxembourg resident joint-stock company, which is fully taxable and does not take one of the forms listed in the above-mentioned appendix; or
- a permanent establishment of a collective entity falling under one of the two previous categories; or
- a collective entity that is resident in a State with which Luxembourg has concluded a double tax treaty and which **is fully liable to a tax corresponding to Luxembourg corporate income tax**, or a domestic permanent establishment of such entity ; or
- a Swiss resident joint-stock company that is subject to Swiss corporate income tax without benefiting from any exemption; or
- a joint-stock company or a cooperative society which is resident in a EEA<sup>8</sup> Member State (other than a EU Member State) and **is fully liable to a tax corresponding to Luxembourg corporate income tax**; or
- a permanent establishment of a joint-stock company or of a cooperative society which is resident in a EEA Member State (other than a EU Member State),

and

3. at the date on which the income is made available, the beneficiary has been holding or undertakes to hold, directly, for an uninterrupted period of at least 12 months, a participation of at least 10%, or with an acquisition price of at least EUR 1.2 million in the share capital of the income debtor. If the participation is held through a tax-transparent entity falling under § 1 of article 175 LITL, this will be regarded as a direct participation, proportionally to the interest held in the tax-transparent entity.

As explained above, qualifying shareholders need to be fully taxable collective entities

<sup>8</sup> EEA stands for European Economic Area. EEA states which are not EU Member States comprise Liechtenstein, Norway and Iceland.

## Part 2: General Information

	subject in their country of residence to a tax similar to that imposed by Luxembourg and with an effective rate of at least 10.5% according to the parliamentary documents.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Article 147 LITL
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. No relevant case law to the best of our knowledge.
<b>Measure n°4: General anti-abuse provision</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-Abuse Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. In Luxembourg, general anti-abuse provisions are equally applicable to all taxpayers irrespective of the country of residence of the counterparty (not specifically targeting transactions with NCJs). Thus, Luxembourg law distinguishes two principles: the simulation and the abuse or breach of law.



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	<ul style="list-style-type: none"> <li>• §5 Steueranpassungs-Gesetz (“StAnpG”) which refers to the concept of simulation (i.e. where the agreement under examination is found to be a “sham”, put in place to cover another agreement).</li> </ul> <p>If the tax authorities find out the simulation, they will tax the outcome of the “real” transaction that should have been occurred without the simulation.</p> <ul style="list-style-type: none"> <li>• §6 Steueranpassungs-Gesetz (“StAnpG”) which refers to the concept of “abuse of law” and it could be considered also as a “substance over form” provision. In short, it applies when the route chosen to carry out a transaction is one which would not habitually be taken and there is a lack of other (non-tax) reasons justifying this choice. Moreover, a tax liability would have to be circumvented for the operation to be classified as “abusive”.</li> </ul> <p>The “anti-abuse” cases are sanctioned by applying the fiscal consequences that the taxpayer wanted to circumvent.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. §5 and §6 of the Steueranpassungsgesetz (“StAnpG”) or <i>Loi d’adaptation fiscale</i>.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of “landmark” decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6.</p> <p><b>Administrative Court n°23487 dated 19 February 2009</b></p> <p>A Luxembourg company (LuxCo) is held by another Luxembourg holding company. The latter received a certain amount of cash from a third party (a company located in Hong Kong) and gave in its turn this cash to its subsidiary under the form of a loan. Absent of any relevant explanations from LuxCo with respect to the purpose of this transaction and</p>

## Part 2: General Information

of the whole holding structure, the Luxembourg tax authorities viewed the whole operation as a simulation (based on §5 StAnpG) and considered that the sums received by LuxCo under the loan should actually be considered as profits generated by its commercial activities. As a consequence, these sums were requalified into taxable profits at the level of LuxCo and as a hidden distribution subject to withholding tax.

The Tribunal confirmed the position of the tax authorities based on the facts at hand and therefore confirmed that a hidden distribution occurred due to the fact that the shareholder received sums which he would not have received otherwise (see also article 164(3) below).

### **Administrative Court n. 18971 dated 11 May 2005**

The case could be considered an implementation of the “substance-over-form” approach applied to tax residency. In this judgement, the Luxembourg administrative court decided only on a procedural issue.

The tax authorities denied the tax residency in Luxembourg of a Luxembourg private limited company (Sàrl). The tax authorities deemed that according to the DTT between France and Luxembourg, art. 2(4) “a company is considered to be a resident of the country where it has its place of effective management (i.e. the place where the business of the company is managed and controlled and in particular where the offices of the directors of the company are situated)”. As a consequence, the company was deemed to be resident in France and not in Luxembourg, according to the Luxembourg tax authorities, because it was effectively managed and controlled in France.

### **Measure n°5: Thin-capitalisation rules**

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-Abuse Measure

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<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3.</p> <p>Thin capitalisation rules exist in Luxembourg on the basis of an administrative practice. Thin-capitalisation rules are equally applicable to all taxpayers irrespective of the country of residence of the counterparty (not specifically targeted to transactions with NCJs).</p> <p>In practice, the tax authorities apply an 85:15 debt-to-equity ratio for the intra-group financing of participations (meaning at least 15% of the investments should be financed by equity). Should the 85:15 ratio not be complied with by the taxpayer, the surplus of interest could be re-qualified by the tax authorities as a hidden distribution of profits which would be non-deductible and potentially subject to a 15% WHT.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. An administrative practice.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. No relevant case law to the best of our knowledge.</p>

## Part 2: General Information

### Measure n°6: Arm's length principles

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-Abuse Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Arm's length principles are provided by the Luxembourg law under the articles 56 LITL and 164 LITL.

In the case of profits transfer which is unjustified and realized because of a special economic relationship, directly or indirectly, with a related company or person (resident in a Third Country or in the EU), the profits of the resident company may be reassessed by the tax authorities.

Article 164 (3) LIR provides that hidden profits distributions should be reintegrated in the taxable income of the resident company. Under this article, "hidden profits distribution" arise in particular when a shareholder, a member or an interested party receives either directly or indirectly advantages from a company or an association which he normally would not have received if this relationship had not existed.

The application of the arm's length principle to intra-group lending activities financed by borrowings has been further clarified by two Circulars in 2011 (Circulars LITL n.164/2 and 164/2 bis), which follows the OECD Model Convention and the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax administration.

The above mentioned transfer pricing Circulars have reiterated the importance of having sufficient substance to carry on the activity envisaged (e.g. among others a majority of

## Part 2: General Information

	<p>the members of the board of directors, directors, or managers having the ability to act on behalf of the entity, are either Luxembourg residents, or non-residents with a professional activity in Luxembourg and who are liable to tax in Luxembourg for at least 50% of these total revenues, and need to have the required professional knowledge to fulfil their duties correctly, key decisions concerning the entity management have to be taken in Luxembourg, the entity should not be considered a tax resident in another State, the entity own capital should be appropriate with regards to the functions performed, taking into account assets used and risk assumed).</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Articles 56 LITL and 164 LITL Circular LITL n.164/2 dated 28 January 2011 Circular LITL n.164/2bis dated 8 April 2011</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. <b>Administrative Court n°23487 dated 19 February 2009</b> (Please refer to the summary of the case above) <b>Tribunal Administratif n° 28679 and 28680, dated 7 May 2012</b> This is a very recent illustration of a “hidden distribution case law”. The tax office requested to review the accounts of a company (the “Company”) managed and held in majority by a Luxembourg resident individual (the “Claimant”). After a deep review of the Company’s book-keeping, profits and operating assets the tax office issued assessments and recognized hidden profits distributions made to the Claimant. Besides,</p>

## Part 2: General Information

	<p>the Claimant was considered as co-debtor for the taxes due by the Company.</p> <p>The Claimant challenged the above mentioned tax assessments. Further to the rejection of its claim by the Tax Authorities, the Claimant introduced another claim in front of the Administrative Tribunal which confirmed the Tax Authorities position.</p> <p>The Claimant based its arguments on the absence of any relevant evidence to demonstrate the existence of hidden distributions. According to the Claimant, his behaviour was not at fault.</p> <p>The State representative argued that the Company's book-keeping were not properly established so that it did not reflect its actual activities. In addition, the Company recorded debit operations in the same time than transfer payments were made to the benefit of the Claimant. According to the State's representative, the Claimant reduced the Company's profits by distributing part of these profits to its own benefit. It was therefore due to the Claimant's fault that the Company was not able to meet its tax obligation.</p> <p>The Tribunal approved the position taken by the Tax Authorities and rejected the claims.</p>
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### Measure n°7: Abolition of the specific regime for 1929 Holding Companies

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. The specific tax regime governing 1929 Holding Companies in Luxembourg was abolished after 31 December 2010.
4. In which legal/regulatory/administrative provision(s) is the measure provided?	4. Law dated 22 December 2006.

## Part 2: General Information

[Reference]	
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A
<b>Measure n°8: Foreign tax credit</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General anti-abuse measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3.</p> <ul style="list-style-type: none"> <li>• <b>Credit per country:</b> as a general rule, foreign tax credits are calculated on a country-by-country basis, each foreign country has to be considered separately (basically no distinction of income category within one country). The creditable amount on the Luxembourg tax due is limited to the amount of Luxembourg tax that would have been levied on this foreign income, the exceeding part being deductible.</li> </ul> <p>An effect of the measure ensures that Luxembourg Companies are not used as</p>

## Part 2: General Information

	<p>vehicles through which foreign taxes on income from one (high-tax) source are set-off against Luxembourg taxes on income from another (low-tax) source.</p> <ul style="list-style-type: none"> <li>• <b>Global credit method:</b> As an alternative and upon request of the taxpayer, a credit may be claimed for foreign withheld tax in relation only to income from capital (i.e. interest and dividend) without any distinction between source States. This method is subject to some restrictions.</li> </ul>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 134 bis/ter LITL and Grand-Ducal regulation of 26 May 1979.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. No relevant case law to the best of our knowledge.</p>



## Part 3: Detailed Information

### New Specific Measure n°1: Exchange of information provisions in DTTs with dozens of Third Countries

1. Is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

*(Same answer as in Part 2 for the New Specific Measure at stake)*

1. NCJ (to the extent some of the Third Countries would be considered as NCJ according to a non-Luxembourg definition).

2. Legal grounds governing this measure.

2.1. Legal provision(s)? [Reference] *(Same answer as in Part 2 for this measure)*

2.2. Practice notes? [Reference]

2.3. Parliamentary works? [Reference]

2.4. Other source? [Reference]

2.1.

Provisions in relation to the exchange of information were inserted in the double-tax treaties (“DTTs”) between Luxembourg and dozens of Third Countries.

The provisions for exchange of information concluded between Luxembourg and the majority of those Third Countries (among others Liechtenstein, Monaco, San Marino, Switzerland and Barbados) strictly follow the wording of the revised article 26 of the OECD Model Tax Convention.

2.2. N/A

2.3. N/A

2.4. N/A

3. Can you please provide a detailed description of the measure? This description should include in particular the following elements:

3.1. Main mechanisms? [Description]

3.1.

Article 26 of the OECD Model Tax Convention creates an obligation to exchange information that could be relevant to the correct application of the tax convention or for the purposes of the administration of the contracting states or for the enforcement of domestic legislation.

Article 26 of the OECD convention model was updated in July 2005, by adding paragraphs 4 and 5. These paragraphs states that a state cannot refuse a request for information on the grounds that it has no domestic tax interest in the information (paragraph 4) or solely

## Part 3: Detailed Information

3.2. Purpose (i.e. the problem and the countries which are supposed to be tackled by the measure)? [Description]

because it is held by a bank or other financial institution (paragraph 5). Indeed, according to the OECD "bank secrecy is not incompatible with the requirements of Article 26, and virtually all countries have bank secrecy or confidentiality rules. Meeting the standard of Article 26 requires only limited exceptions to bank secrecy rules and would not undermine the confidence of citizens in the protection of their privacy" (reference: [http://www.oecd.org/document/34/0,3343,en\\_2649\\_33767\\_33614197\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/34/0,3343,en_2649_33767_33614197_1_1_1_1,00.html)).

3.2.

Provisions for exchange of information were inserted in the DTTs concluded between Luxembourg and dozens of Third Countries, which are Armenia, Azerbaijan, Bahrain, Barbados, Canada, Georgia, Hong-Kong, India, Island, Japan, Liechtenstein, Mexico, Moldavia, Monaco, Norway, Panama, Qatar, San Marino, Switzerland, Turkey, United-Arab Emirates, United-States of America and Russia.

We do not detail this well known provision for all the treaties. As a matter of example, the provisions for exchange of information inserted in the DTT between Luxembourg and Panama strictly follow the wording of article 26 of the OECD. We will therefore only detail this provision which is depicted in the article 26 of the DTT between Luxembourg and Panama.

Please find hereunder the provision for exchange of information inserted in the DTT between Luxembourg and Panama:

“1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States or of their local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as

## Part 3: Detailed Information

- 3.3. Scope Rationae Personae? [Description]
- 3.4. Scope Rationae Materiae? [Description]
- 3.5. Effects (sanctions, incentives linked to complying with the measure, etc.)? [Description]
- 3.6. Burden of proof? [Description]
- 3.7. Other relevant point? [Comments]
- 3.8. Is it a new measure / an amended measure or a possible future measure? [new measure / amended measure / possible future measure]
- 3.9. Are there any intentions or proposals to change the measure?

secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information upon request solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary

## Part 3: Detailed Information

<p>[Comments]</p>	<p>capacity or because it relates to ownership interests in a person.”</p> <p>3.3.</p> <p>3.3 N/A</p> <p>3.4. N/A</p> <p>3.5.</p> <p>3.6. N/A</p> <p>3.7. N/A</p> <p>3.8.N/A</p> <p>3.9. Not to the best of our knowledge.</p>
<p>4. Impact assessment and evaluation</p> <p>4.1. Before enactment: were there impact assessments made / issued / discussed during the preparation of the measure (including a quantitative impact)?</p> <p>4.1.1. [Yes/No]</p> <p>4.1.2. [If Yes, please describe]</p> <p>4.1.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p> <p>4.2. After enactment: are there evaluations (including effectiveness and sufficiency) of the measure issued or discussed during any parliamentary</p>	<p>4.1.1. Not to the best of our knowledge.</p> <p>4.1.2. N/A</p> <p>4.1.3. N/A</p>

## Part 3: Detailed Information

<p>works or in any other official administrative doctrine publicly available?</p> <p>4.2.1. [Yes/No]</p> <p>4.2.2. [If Yes, please describe]</p> <p>4.2.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p>	<p>4.2.1. N/A</p> <p>4.2.2. N/A</p> <p>4.2.3. N/A</p>
<p>5. Litigations</p> <p>5.1. Is there any litigation (pending or decided) before local Courts (first instance, appeal, Supreme Court, etc.) or before EU/international Courts (prejudicial question, infringement procedure, etc.) which questions the measure itself (i.e. not cases where the measure is just involved)?</p> <p>5.2. If Yes, what is the reasoning used?</p> <p>5.3. Please provide a quantification of the outcome of the Court decision (e.g. penalties) when available.</p>	<p>5.1. Not to the best of our knowledge.</p> <p>5.2. N/A</p> <p>5.3. N/A</p>
<p>6. Other points that you would consider relevant to mention regarding this measure?</p>	<p>6. N/A</p>

## Malta

### Part 1: Introduction

#### 1. Definition of NCJ

<p>1.1. Is there any formal definition of “NCJ” in your country (or any other concept similar to “NCJ”)? [Yes/No]</p>	<p>1.1. No, under Maltese law there is no formal statutory definition of NCJ.</p> <p>The only reference that relates to other jurisdictions exchanging information on direct tax matters is found in article 10A of the Income Tax Management Act (‘ITMA’) and in subsidiary legislation 123.127 of the Laws of Malta entitled ‘Cooperation with other jurisdictions on tax matters regulations’.</p> <ul style="list-style-type: none"> <li>• The above-mentioned Article10A refers to those countries with which Malta has arrangements for the reciprocal exchange of information for tax purposes.</li> <li>• The above-mentioned subsidiary legislation is established in order to ensure effective cooperation with other jurisdictions on tax matters where arrangements that enable such cooperation are in place and shall be interpreted accordingly.</li> </ul> <p>Malta does not exchange information with countries which do not enter into an agreement with Malta for such exchange of information (e.g. NCJs).</p> <p>However, the above Article 10A and subsidiary legislation are not charging provisions as they are restricted exclusively to the field of exchange of information.</p>
<p>1.2. If the answer under 1.1. is Yes, can you please provide the definition and the explanation how it operates? [Definition]</p>	<p>1.2. N/A</p>
<p>1.3. If the answer under 1.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]</p>	<p>1.3. N/A</p>

## Part 1: Introduction

1.4. If there is no formal definition, are you aware of any problems caused by this?

1.4. We are not aware of any problems caused by this.

### 2. Definition of ATP

2.1. Is there any formal definition of “ATP” in your country (or any other concept similar to “ATP”)? [Yes/No]

2.1. No, there is no statutory definition of ATP under Maltese income tax Act (hereinafter the “ITA”).

2.2. If the answer under 2.1. is Yes, can you please provide the definition? [Definition]

2.2. N/A

2.3. If the answer under 2.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]

2.3. N/A

2.4. If there is no formal definition, are you aware of any problems caused by this?

2.4. In general, it is not expected that problems should arise from the lack of a formal definition of ATP. This is because Maltese tax law includes several specific measures which would ultimately tackle tax avoidance.

Furthermore, the general anti-avoidance provisions offer the Commissioner possibilities to counter tax avoidance measures.

### 3. New Specific Measures

3.1. Are there any New Specific Measures in your country? [Yes/No]  
*(If Yes, those measures must be described in Part 2 and Part 3)*

3.1. No

3.2. If the answer under 2.1. is Yes, are there any NCJ Measures amongst those New Specific Measures? [Yes/No]

3.2. N/A

3.3. If the answer under 2.1. is Yes, are there any ATP Measures amongst those New Specific Measures? [Yes/No]

3.3. No

## Part 1: Introduction

### 4. Other Measures

4.1. Are there any Other Specific Measures in your country? [Yes/No]  
(If Yes, those measures must be described in Part 2)

4.1. No

4.2. Are there any General Anti-abuse Provisions in your country? [Yes/No]  
(If Yes, those measures must be described in Part 2)

4.1. Yes

4.3. If the answer under 4.2. is Yes, are those measures generally equally applicable to EU Member States (including purely domestic situations) and Third Countries?

4.3.1. Yes

4.3.1. [Yes/No]

4.3.2. [Please explain]

4.3.2. The measures apply across the board and there is no distinction between EU 'person' and non-EU 'person' in the general anti-avoidance measures.

The only instance in the ITA that includes such distinction relates to the possibility of having a participation exemption (article 12(1)(u) of the ITA) which gives a more generous application to EU investments, however, in principle, this should not be considered to be an anti-avoidance measure.

### 5. Legislative or administrative proposals

5.1. Are there currently any proposals aimed at introducing new measures in your country which could fall in scope of the current study?

5.1.1. No, we are not aware of any measures that are being discussed in this respect.

5.1.1. [Yes/No/Not exclusively]

5.1.2. [If Yes, please briefly explain]

5.1.2. N/A



## Part 2: General Information

### Measure n°1: General anti-abuse provision – Article 51(1) and (2) ITA

<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General anti-abuse measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. The ITA establishes a general rule under article 51(1) of the ITA which gives the power to the Commissioner of Inland Revenue to disregard any scheme which reduces the amount of tax payable by any person where such scheme is artificial or fictitious or is in fact not given effect to. The relevant person concerned shall be assessable accordingly.</p> <p>Subarticle (2) of the same Article 51 allows the Commissioner to nullify or modify schemes and connected advantages obtained as a direct or indirect result of any scheme of which the sole or main purpose was the obtaining of any advantage which has the effect of avoiding, reducing or postponing liability to tax, or of obtaining any refund or set-off of tax.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 51(1) &amp; (2) of the ITA – Chapter 123 of the Laws of Malta</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when</p>	<p>6. <b>Prior to 2007 landmark decision</b> – Few cases, if at all, deal with the above Article 51(1) and (2). However, a landmark decision on general tax avoidance is in <b>Grove Enterprises Limited vs Frank Bowers</b>. The case specified that there is nothing</p>

## Part 2: General Information

relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

wrong if a person legitimately makes use of the methods available in the law to reduce the ultimate tax liability, provided naturally that any planning falls within the parameters allowed at law.

### Measure n°2: Share value shifting provisions

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General anti-abuse measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Where the market value of shares held by a person in a company has been reduced as a result of a change in the issued share capital of such company, or a change in voting rights attached to such shares, and such value passes into other shares in or rights over the company held by any other person, the transferor shall be deemed to have made a transfer of such value so reduced to the transferee.

Any gains or profits shall be calculated by taking into account the difference between the market value of the shares held immediately before and after the said change.

The purpose of such a measure is to avoid the possibility of having shareholders of a company dilute the shares of the company (or issuing additional shares in a company to new shareholders) for them to transfer the value of the company to another shareholder free from tax on the realised capital gains on transferred value of the company.

4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]

4. Article 5(13)(b)(i) and (ii) of the ITA

5. Please provide, if available, the (expected) quantitative impact of the identified

5. N/A

## Part 2: General Information

problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.

6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

6. N/A – This is a new measure and we are not aware of any court decisions or cases in this respect.

### Measure n°3: Transfer of Beneficial Interest in a Trust

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General anti-abuse measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Under Maltese law, the person transferring the beneficial interest in a trust which includes 'taxable' trust property is not obliged to disclose the existence of such gains or profits in any return made pursuant to the provisions of the Income Tax Acts and no further tax shall be payable on such gains or profits.

However, such benefit would not be allowed where the Commissioner is satisfied that an irrevocable disclaimer of a beneficial interest was effected with the sole or main purpose of avoiding, reducing or postponing liability to tax and where he has, at his discretion, ordered in writing that the provisions of this article are not applicable to such a disclaimer.

The purpose of this measure is to avoid having beneficial interests in trusts transferred

## Part 2: General Information

	with the sole purpose of avoiding tax.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Article 5(19)(h) of the ITA
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A – We are not aware of any court cases which deal specifically with this measure.
<b>Measure n°4: Company Group Relief</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General anti-abuse measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A

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<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. If a company is a member of a group of companies, and arrangements are in existence the sole or main purpose of which is to reduce any company's tax liability, then that company shall be treated as not being a member of that group of companies for any year preceding a year of assessment in which the said arrangements are in existence.</p> <p>In a nutshell, the purpose of this measure is to avoid the artificial creation of a group of companies the purpose of which would be the benefit from the company group relief regime.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 19 of the ITA</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A – We are not aware of any cases which deal with this measure.</p>
<p><b>Measure n°5: General anti-abuse provision relating to investment provisions</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General anti-abuse measure</p>

## Part 2: General Information

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. The Commissioner has the power of disregarding arrangements including a series of transactions effected with the sole or main purpose of reducing the amount of tax payable by a person by reason of the operation of the investment income provisions (which provisions broadly allow for a lower tax rate of 15%). In such case the particular person shall be assessable as if the aforesaid provisions did not apply.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Article 42 of the ITA
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A – We are not aware of any cases which deal with this measure.
<b>Measure n°6: Non-deductibility of certain payments made to non-resident persons</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General anti-abuse measure

## Part 2: General Information

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Persons may not deduct any interest, discount or premium paid or payable to a person not resident in Malta where :

1. the person not resident in Malta derives or benefits from the said interest, discount or premium, directly or indirectly, from the granting of loans or from any form of credit to finance the acquisition, development, construction, refurbishment, renovation of immovable property situated in Malta or any right thereon including professional fees related thereto (including fees related to the acquisition of finance) and any other matter which increases or enhances the value of such immovable property or any right thereon, provided that;
2. the said interest, discount or premium is exempt from tax on the basis that it is being received by a non-resident; and
3. the payor of the interest, discount or premium is a person related to the person not resident in Malta.

For the purpose of this specific and targeted anti-avoidance measure, a person is deemed to be related to a person not resident in Malta if:

1. that person and the person not resident in Malta are, directly or indirectly, controlled or beneficially owned to the extent of more than 10% by the same persons; or
2. that person owns, directly or indirectly, more than 10% of the ordinary share capital or voting rights of the person not resident in Malta.

The purpose of this measure is to prevent certain payments of interest and similar income relating to immovable property situated in Malta, which interest is exempt in terms of law by virtue of it being paid to a non-Maltese-resident person and which is paid to a related person, from also being tax-deductible for the payor.

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4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Article 26(h) of the ITA
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A – This is a relatively new measure and we are not aware of any court cases thereon.
<b>Measure n°7: Transfer pricing between resident and non-resident persons</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General anti-abuse measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A



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<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Where a non-resident person carried on business with a resident person, and it appears to the Commissioner that, owing to the close connection between the resident person and the non-resident person the course of business between those persons is arranged so that the business done by the resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from the business, the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person.</p> <p>Furthermore, if it appears to the Commissioner that the true amount of the gains or profits of any non-resident person chargeable to tax in the name of a resident person cannot in any individual case be readily ascertained, the Commissioner may, if he thinks fit, assess and charge the non-resident person on a fair and reasonable percentage of the turnover of the business.</p> <p>The above measure is set in place to tackle situations of abusive transfer pricing between resident and non-resident persons.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 5(6)&amp;(7) of the ITMA</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A – We are not aware of any cases which deal specifically with this measure.</p>

## Part 2: General Information

### Measure n°8: Schemes & arrangements to benefit from general deduction provisions

<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General anti-abuse measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Where as a direct or indirect result of:</p> <ul style="list-style-type: none"> <li>• any scheme; or</li> <li>• of any change in the shareholding of a company,</li> </ul> <p>income has been received by or has accrued to a company, then certain specific allowable deductions are only allowed if the said scheme or change in the shareholding of a company has not been effected, solely or mainly, for the purpose of obtaining the benefit of any loss, or of any capital allowances, so as to avoid liability to tax.</p> <p>The term “scheme” in this provision includes any disposition, agreement, arrangement, trust, grant, covenant, transfer of assets, increase in the share capital of a company and alienation of property, and irrespective of the date on which such a scheme was made, entered into or set up.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 51(4) and (5) of the ITA</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>

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6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

6. N/A – We are not aware of any cases which deal specifically with this measure.

### Measure n°9: Foreign tax credit – anti-channelling measure

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General anti-abuse measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. In case a Maltese registered company receives certain foreign sourced items of income, a tax credit may be available to that company, provided that certain conditions are met.

Further, the Maltese Income Tax Act provides specific calculations on how the credit is computed.

If however a series of transactions are effected with the sole or main purpose of reducing the amount of tax payable by any person in Malta by reason of the operation of this tax credit system, the Commissioner of Inland Revenue is permitted at law to assess that person to tax as though the provisions of the tax credit mechanism did not apply.

A series of transactions for the purposes of this Article means any two or more corresponding or circular transactions carried out by the same person, either directly or indirectly.

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<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 95 of the ITA</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A – We are not aware of any cases which deal specifically with this measure.</p>

## The Netherlands

### Part 1: Introduction

#### 1. Definition of NCJ

1.1. Is there any formal definition of “NCJ” in your country (or any other concept similar to “NCJ”)? No (no formal definition)

1.1. The Netherlands does not have a definition of NCJ. However, several notions could be linked to the NCJ, inter alia,:

- Art. 4.13(1)(a) in conjunction with Art. 4.14(8)(c) of the Dutch Personal Income Tax Act 2001 (‘PITA 2001’) provides that, in principle, an individual shareholder holding shares in a foreign ‘investment company’, under certain conditions, annually has to value its shareholding at its fair market value. An escape for this ‘mark-to-market’-obligation exists if the subsidiary is subject to a profit tax resulting in a degree of taxation that is reasonable according to Dutch standards.
- Art. 10a of the Dutch Corporate Income Tax Act 1969 (‘CITA 1969’) are the Dutch base erosion rules. Art. 10a(3)(b) CITA 1969 provides that, although a group loan was used for a ‘tainted transaction’ (e.g. a dividend distribution or a capital contribution), the interest is nevertheless deductible at the level of the Dutch debtor if the interest is subject at the level of the creditor to a profit or income tax that is reasonable according to Dutch standards and there no matter of compensation of losses or other entitlements for years prior to the conclusion of the loan agreement. ‘Reasonable’ is subsequently defined as at least 10% of a profit calculated according to Dutch standards, leaving art. 12b and 12c CITA 1969 out of application.
- Art. 13(11)(a) CITA 1969 contains an ‘escape’ to ensure that the Dutch participation exemption does apply to a subsidiary, although it is ‘held as a portfolio investment’. This ‘escape’ applies if the subsidiary is subject to a profit tax resulting in a degree of taxation that is reasonable according to Dutch standards. If, however, (i) the

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	<p>subsidiary is <u>not</u> subject to a profit tax resulting in a degree of taxation that is reasonable according to Dutch standards, (ii) the shareholding is at least 25% and (iii) the assets of the subsidiary consist, directly or indirectly, exclusively or almost exclusively of low-taxed free portfolio assets, an obligation exist to annually value the shareholding at its fair market value pursuant to art. 13a CITA 1969.</p> <ul style="list-style-type: none"> <li>• Art. 13ba CITA 1969 contains an anti-abuse rule that prevents a Dutch creditor from depreciating a loan receivable from an associated company (reducing Dutch taxable profits), followed by, inter alia, a relinquishment of the loan. In that case, the main rule is that the amount the depreciation is effectively clawed-back. An exception exists where the benefit at the level of the debtor is subject, at the level of the creditor, to a profit or income tax that is reasonable according to Dutch standards.</li> </ul>
1.2. If the answer under 1.1. is Yes, can you please provide the definition and the explanation how it operates? [Definition]	1.2. N/A
1.3. If the answer under 1.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]	<p>1.3. See, <i>inter alia</i>, the following provisions:</p> <p>Art. 10a CITA 1969 (anti-base erosion measures)</p> <p>Art. 13/13a/13aa/23c CITA 1969 (participation exemption / participation credit)</p> <p>Art. 4.14(8) PITA 2001 (mark-to-market rules low-taxed investment company)</p>
1.4. If there is no formal definition, are you aware of any problems caused by this?	1.4. N/A
<h3>2. Definition of ATP</h3>	
2.1. Is there any formal definition of “ATP” in your country (or any other concept similar to “ATP”)? [Yes/No]	2.1. There is no formal definition of ATP in the Netherlands. However, various concepts anti-abuse provisions may be invoked by the Dutch tax authorities to prevent undesirable types of ATP. Examples include:

## Part 1: Introduction

- The Dutch abuse of law (*Fraus Legis*) doctrine. According to this concepts, the tax consequences of a certain transaction of set of transactions may be negated, if:
  - the predominant motive for the transaction or set of transactions is the limitation of the tax burden;
  - the transaction or set of transactions, except for the tax consequences, lacks any practical meaning;
  - the object and purpose of the Dutch tax legislation would be denied if the desired application of the law would be followed.
- Article 10d CITA 1969 is the Dutch thin capitalization provision. This provision is aimed at the extraction of the Dutch taxable base by group companies.
- Article 15ad CITA 1969 seeks prevents the situation where a non-resident shareholder sets up a Dutch-resident acquisition company and also grants a loan to that company. The Dutch-resident acquisition company acquires an ‘active’ Dutch-resident target company and subsequently forms a fiscal unity. As a result, ‘active’ Dutch income is offset against the income expenses at the level of the acquisition company. Subject to certain conditions, interest-deduction is denied.
- Art. 4(7) and Art. 4(8) of the Dutch Dividend Withholding Tax Act 1965 (‘DWTA 1965’) contains a specific anti-dividend stripping measure and provides that in certain cases, the recipient of a dividend is not regarded as its ‘beneficial owner’ and hence, not entitled to an domestic / treaty exemption from the imposition of dividend withholding tax or a refund of dividend withholding tax.
- Several recently concluded/amended tax treaties, *inter alia*, the tax treaties with Hong Kong (signed in 2010) and Japan (2010) contain treaty-based anti-abuse provisions.

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2.2. If the answer under 2.1. is Yes, can you please provide the definition?	2.2. N/A
2.3. If the answer under 2.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]	<p>2.3. See, <i>inter alia</i>, the following provisions:</p> <ul style="list-style-type: none"> <li>• Art. 10d CITA 1969;</li> <li>• Art. 15ad CITA 1969;</li> <li>• Art. 4(7) and art. 4(8) DWTA 1965;</li> <li>• Art. 21 of the Netherlands-Japan tax treaty and art. 10(3) and 10(4) of the Netherlands-Hong Kong tax treaty.</li> </ul>
2.4. If there is no formal definition, are you aware of any problems caused by this?	2.4. N/A
<h3>3. New Specific Measures</h3>	
3.1. Are there any New Specific Measures in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2 <u>and</u> Part 3)</i>	3.1. No.
3.2. If the answer under 2.1. is Yes, are there any NCJ Measures amongst those New Specific Measures? [Yes/No]	3.2. N/A
3.3. If the answer under 2.1. is Yes, are there any ATP Measures amongst those New Specific Measures? [Yes/No]	3.3. N/A
<h3>4. Other Measures</h3>	
4.1. Are there any Other Specific Measures in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2)</i>	4.1. No.
4.2. Are there any General Anti-abuse Provisions in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2)</i>	<p>4.1. Essentially, there are two general anti-abuse concepts:</p> <ul style="list-style-type: none"> <li>• One is the Dutch abuse of law (<i>'Fraus Legis'</i>) doctrine. According to this concepts, the tax consequences of a certain transaction of set of transactions may be negated,</li> </ul>



## Part 1: Introduction

if:

- the predominant motive for the transaction or set of transactions is the limitation of the tax burden;
  - the transaction or set of transactions, except for the tax consequences, lacks any practical meaning;
  - the object and purpose of the Dutch tax legislation would be denied if the desired application of the law would be followed.
- The other general anti-abuse concept is the ‘fiscal requalification’ concept, according to which a certain transaction or set of transaction may be requalified for tax purposes into another transaction.
  - Art. 1(7) of the Dutch Dividend Withholding Tax Act 1965 (DWTA 1965) introduces a dividend withholding tax liability for a Dutch Coop (cooperative society) if a Coop is inserted in a corporate structure with the aim of avoiding (foreign) withholding tax. An example is where a Coop is interposed between ForeignCo1 and ForeignCo2. If a dividend payment by ForeignCo2 to ForeignCo1 would be subject to withholding tax in the State of ForeignCo2, the interposition of a Dutch Coop (assuming that under the treaty between the Netherlands and State of ForeignCo2 the amount of withholding tax is reduced to nil) would reduce the withholding tax liability.
  - Art. 10a of the Dutch Corporate Income Tax Act 1969 (‘CITA 1969’) are the Dutch base erosion rules. Art. 10(3)(a) CITA 1969 provides that interest deduction is nevertheless secured if both (i) the loan and (ii) the ‘tainted’ transaction were carried out for predominantly sound business purposes. Art. 10a(3)(b) CITA 1969 provides that, although a group loan was used for a ‘tainted transaction’ (e.g. a dividend distribution or a capital contribution), the interest is nevertheless deductible at the level of the Dutch debtor if the interest is subject at the level of the creditor to a profit or income tax that is reasonable according to Dutch standards and there no matter of compensation of losses or other entitlements for years prior to the conclusion of the

## Part 1: Introduction

loan agreement. ‘Reasonable’ is subsequently defined as at least 10% of a profit calculated according to Dutch standards, leaving art. 12b and 12c CITA 1969 out of application.

- Article 10d CITA 1969 is the Dutch thin capitalization provision. This provision is aimed at the extraction of the Dutch taxable base by group companies.
- Art. 13(11)(a) CITA 1969 contains an ‘escape’ to ensure that the Dutch participation exemption does apply to a subsidiary, although it is ‘held as a portfolio investment’. This ‘escape’ applies if the subsidiary is subject to a profit tax resulting in a degree of taxation that is reasonable according to Dutch standards. If, however, (i) the subsidiary is not subject to a profit tax resulting in a degree of taxation that is reasonable according to Dutch standards, (ii) the shareholding is at least 25% and (iii) the assets of the subsidiary consist, directly or indirectly, exclusively or almost exclusively of low-taxed free portfolio assets, an obligation exist to annually value the shareholding at its fair market value pursuant to art. 13a CITA 1969.
- The reorganisation provisions in the CITA 1969, relating to transfers of assets (art. 14 CITA 1969), divisions (art. 14a CITA 1969), and mergers (art. 14b CITA 1969) each contain a clause that carry-over relief is denied if the restructuring operation is aimed at the evasion or deferral of taxation. (This provision is thus slightly different phrased from art. 15(1)(a) of the Merger Directive, which states that the benefits of the Merger Directive may be refused if a restructuring operations has as one of its principal objectives tax evasion or tax avoidance).
- Generally, income from a foreign permanent establishment (‘PE’) is exempt at the level of the Dutch head office (the exemption, a so-called ‘object exemption’, applies to both profits and losses of the foreign PE). Under certain conditions, a (less favourable) tax credit instead of a tax exemption applies (art. 15g CITA 1969). This is the case, generally speaking, where: (i) the activities of the PE consist of ‘passive’

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financing activities and (ii) the PE's profits are not subject to a tax that is reasonable according to Dutch standards.

- Art. 15ad CITA 1969 seeks to prevent the situation where a non-resident shareholder sets up a Dutch-resident acquisition company and also grants a loan to that company. The Dutch-resident acquisition company acquires an 'active' Dutch-resident target company and subsequently forms a fiscal unity. As a result, 'active' Dutch income is offset against the income expenses at the level of the acquisition company. Subject to certain conditions, interest-deduction is denied.
- Art. 17(3)(b) CITA 1969 is the substantial interest provision for non-resident corporate shareholders holding significant ( $\geq 5\%$ ) shareholdings in Dutch-resident companies. The income from such a substantial interest is taxable with Dutch corporate income tax if (i) the non-resident shareholder holds the substantial interest with the principal objective or one of the principal objectives to avoid the imposition of personal income tax or dividend withholding tax with another and (ii) the substantial interest cannot be attributed to the business enterprise of the shareholder.
- Two specific anti-abuse provisions concern the utilization of outstanding losses:
  - Art. 20(4) CITA 1969 prevents the deduction of holding/financing losses against 'operating profits'.
  - Art. 20a CITA 1969 is the Dutch 'change of ownership' rule and seeks to prevent the trade in loss-making companies.
- Art. 4(7) and Art. 4(8) of the Dutch Dividend Withholding Tax Act 1965 ('DWTA 1965') contains a specific anti-dividend stripping measure and provides that in certain cases, the recipient of a dividend is not regarded as its 'beneficial owner' and hence, not entitled to an domestic / treaty exemption from the imposition of dividend withholding tax or a refund of dividend withholding tax.

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	<ul style="list-style-type: none"> <li>Several recently concluded/amended tax treaties, inter alia, the tax treaties with Hong Kong (signed in 2010) and Japan (2010) contain treaty-based anti-abuse provisions.</li> </ul>
<p>4.3. If the answer under 4.2. is Yes, are those measures generally equally applicable to EU Member States (including purely domestic situations) and Third Countries?</p> <p>4.3.1. [Yes/No] 4.3.2. [Please explain]</p>	<p>4.3.1. Yes.</p> <p>4.3.2.</p>
<h3>5. Legislative or administrative proposals</h3>	
<p>5.1. Are there currently any proposals aimed at introducing new measures in your country which could fall in scope of the current study?</p> <p>5.1.1. [Yes/No/Not exclusively] 5.1.2. [If Yes, please briefly explain]</p>	<p>5.1.1. Art. 13l CITA 1969 was proposed in June 2012 as a measure to reduce the <i>Bosal</i> gap. In the <i>Bosal</i> judgment (C-168/01), the ECJ held that the Netherlands should allow the deduction of interest expenses at the level of a Netherlands parent company if these interest expenses were used to finance the acquisition of/fund an non-resident, EU subsidiary. As the interest expenses are (generally) deductible, and the income is (generally) exempt, this had significant budgetary consequences. Consequently, the Dutch Government has now announced a measure to limit the deduction of interest expenses on a loan that was used to acquired/fund a subsidiary.</p> <p>5.1.2.</p>

## Part 2: General Information

### Measure n°1: Abuse of law doctrine (*Fraus Legis*)

<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure.</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A.</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Fraus Legis is a general anti-abuse interpretation method developed by case law. With the use of Fraus Legis, the tax authority has an instrument against a transaction / set of transactions by the tax payer which is/are in breach with the purpose of the law. Under this doctrine, the purpose of the law (objective criterion) and the intention of the taxpayer (subjective criterion) are decisive. If the taxpayer acts in breach of the tax law and has the intent to evade tax, Fraus Legis may be applied. This interpretation method is applied broadly and not only in the field of direct taxation.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. N/A : Case law doctrine.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. NA.</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. The first case where the Supreme Court applied Fraus Legis was HR 26 mei 1926, PW 12 157, NJ 1926, p. 723. The Supreme Court developed the objective and subjective criteria mentioned under 3 in the HR 21 november 1984, nr. 22.092, BNB 1985/32 case. These cases can be regarded as landmark decisions. Fraus Legis is applied by courts regularly, inter alia by the Supreme Court in the HR 11 juli 2008, BNB 2008/266 case and more recent in the HR 10-02-2012, V-N 2012/13.20 case and the HR 01-06-2012, ,</p>

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	11/00009, LNJ: BW7073 case.
<b>Measure n°2: Subject-to-tax clauses</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure.
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A.
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. The subject-to-tax test is applied at the level of the subsidiary in which the participation is held (when it concerns the application of the participation exemption) or at the level of the creditor (when it concerns the application of the Dutch base). The test regards taxes on profit only. In order to compare the tax regime applicable to the subsidiary to the Dutch tax regime, one has to take into account the tax rate, the tax base and other tax (policy) aspects that determine the effective tax rate. The purpose of this test is to avoid that taxpayers can apply for certain facilities, such as the participation exemption, in case of assumed abuse.</p> <p>Art. 10a of the Dutch Corporate Income Tax Act 1969 ('CITA 1969') are the Dutch base erosion rules. Art. 10a(3)(b) CITA 1969 provides that, although a group loan was used for a 'tainted transaction' (e.g. a dividend distribution or a capital contribution), the interest is nevertheless deductible at the level of the Dutch debtor if the interest is subject at the level of the creditor to a profit or income tax that is reasonable according to Dutch standards and there no matter of compensation of losses or other entitlements for years prior to the conclusion of the loan agreement. 'Reasonable' is subsequently defined as at least 10% of a profit calculated according to Dutch standards, leaving art. 12b and 12c CITA 1969 out of application.</p> <p>Art. 4.13(1)(a) in conjunction with Art. 4.14(8)(c) of the Dutch Personal Income Tax Act</p>

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	2001 ('PITA 2001') provides that, in principle, an individual shareholder holding shares in a foreign 'investment company', under certain conditions, annually has to value its shareholding at its fair market value. An escape for this 'mark-to-market'-obligation exists if the subsidiary is subject to a profit tax resulting in a degree of taxation that is reasonable according to Dutch standards.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Art. 10a CITA 1969 (restriction interest deduction), art. 13 CITA 1969 (participation exemption), 13a CITA 1969 (FMV portfolio investment), 13ba CITA 1969 (claw back participation exemption in case of conversion of impaired receivables), 13d CITA 1969 (liquidation loss), 15g CITA 1969 (object exemption PE's).
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. NA.
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. NA.
<b>Measure n°3: Anti-dividend stripping</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure.
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A.

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<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. There is an exemption of WHT on dividends, which is granted in participation situations. However, if the receiver of the dividend is not the beneficial owner, there is no WHT exemption granted. The purpose of this measure is the prevention of dividend stripping (i.e. the purchase of shares before the dividend is paid and the sale of those shares after the dividend payment with the purpose to avoid Dutch WHT on dividends). Under these circumstances the receiver of the dividend is deemed not to be the beneficial owner.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Art. 4 Dutch Dividend Withholding Tax Act.  Art. 4(7) and Art. 4(8) of the Dutch Dividend Withholding Tax Act 1965 ('DwTA 1965') contains a specific anti-dividend stripping measure and provides that in certain cases, the recipient of a dividend is not regarded as its 'beneficial owner' and hence, not entitled to an domestic / treaty exemption from the imposition of dividend withholding tax or a refund of dividend withholding tax.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. NA.</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. NA (except for (international) case law with respect to the beneficial owner concept, such as the <i>Royal Dutch</i> case, the <i>Prévost</i> case, the <i>Indofood</i> case and the <i>Velcro Canada</i> case).</p>
<p><b>Measure n°4: Restriction on the deduction of interest on acquisition debt</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General</p>	<p>1. General Anti-abuse Measure.</p>



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Anti-abuse Measure]	
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. The deduction of interest on acquisition debt will be restricted if a Dutch company is acquired by a Dutch holding company with which it subsequently joins in a fiscal unity. The restriction applies to interest (including costs) related to third and related party debt with which the acquisition is financed. Based on this measure it is no longer possible to offset interest costs incurred by the parent company on acquisition debt against profits generated by the acquired company.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. 15ad CITA 1969.
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. EUR 31 mln. (2012), EUR 62 mln. (2013), EUR 93 mln. (2014), EUR 124 mln. (2015), EUR 155 mln. (stuc. after 2015) [Kamerstukken II 2011-12, 33 003, nr. 3, p. 44].
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. NA.
<b>Measure n°5: Restriction on the deduction of interest on participation debt</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General	1. General Anti-abuse Measure.

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Anti-abuse Measure]	
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. The interest deduction limitation will apply to excessive interest expenses on debt relating to participations (“participation debt”). A mechanical formulaic rule determines the participation debt amount. The non-deductible interest expenses will equal the fraction (average participation debt / average total debt) multiplied by the total interest expenses of the Dutch taxpayer. This fraction is maximized at 1. a EUR 0.75 million threshold will apply meaning that up to this threshold interest expenses on participation debt are deductible, unless restricted by other provisions. The proposal applies to interest expenses on intercompany and third party debt. The restriction only applies to shareholdings to which the participation exemption applies. The purpose of this measure is to restrict interest deductions relating to Dutch and foreign subsidiaries only to the extent the Dutch taxpayer's debt level relating to subsidiaries is excessive and undesirable, i.e. in situations which are considered abusive.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Art. 13l CITA 1969 (proposed).
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. EUR 150 m. (struc.).
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level	6. N/A.

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summary of the given case law.	
<b>Measure n°6: Treaty based (Limitation on Benefits)</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. Several recently concluded/amended tax treaties, <i>inter alia</i> , the tax treaties with Hong-Kong (signed in 2010) and Japan (2010) contain treaty-based anti-abuse provisions (i.e. Limitation on benefits provision).
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. See, <i>inter alia</i> , Art. 21 of the Netherlands-Japan tax treaty and art. 10(3) and 10(4) of the Netherlands-Hong-Kong tax treaty.
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A

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### Measure n°7: Withholding tax liability for a Dutch Coop in case of abuse

<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure.</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. This measure introduces a dividend withholding tax liability for a Dutch Coop (cooperative society) if a Coop is inserted in a corporate structure with the aim of avoiding (foreign) withholding tax. An example is where a Coop is interposed between ForeignCo1 and ForeignCo2. If a dividend payment by ForeignCo2 to ForeignCo1 would be subject to withholding tax in the State of ForeignCo2, the interposition of a Dutch Coop (assuming that under the treaty between the Netherlands and State of ForeignCo2 the amount of withholding tax is reduced to nil) would reduce the withholding tax liability.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Art. 1(7) of the Dutch Dividend Withholding Tax Act 1965 (DWTA 1965)</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level</p>	<p>6. NA. ECJ case-law with respect to anti-abuse provisions (such as <i>Cadbury Schweppes</i>) is relevant for this provision.</p>

## Part 2: General Information

summary of the given case law.	
<b>Measure n°8: Base erosion rules</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure.
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. This measure contains base erosion rules. Interest deduction is restricted if certain transactions take place (tainted transactions). Art. 10(3)(a) CITA 1969 provides that interest deduction is nevertheless secured if both (i) the loan and (ii) the 'tainted' transaction were carried out for predominantly sound business purposes. Art. 10a(3)(b) CITA 1969 provides that, although a group loan was used for a 'tainted transaction' (e.g. a dividend distribution or a capital contribution), the interest is nevertheless deductible at the level of the Dutch debtor if the interest is subject at the level of the creditor to a profit or income tax that is reasonable according to Dutch standards and there no matter of compensation of losses or other entitlements for years prior to the conclusion of the loan agreement. 'Reasonable' is subsequently defined as at least 10% of a profit calculated according to Dutch standards, leaving art. 12b and 12c CITA 1969 out of application.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Art. 10a of the Dutch Corporate Income Tax Act 1969 ('CITA 1969')
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the	6. The courts apply a broad interpretation of this provision and abuse of this provision

## Part 2: General Information

main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

can be counteracted with the *fraus legis* doctrine (as described above).

### Measure n°9: Thin capitalization

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure.

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. This measure is the Dutch thin capitalization provision. This provision is aimed at the extraction of the Dutch taxable base by group companies. Interest deduction (on i/c loans) is restricted if the taxpayer is under-capitalized. According to this provision the taxpayer is under-capitalized if one of the two ratios are exceeded (i) debt-equity ratio of 3:1 or (i) the average concern ratio (a taxpayer may choose the more beneficial ratio).

4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]

4. Article 10d CITA 1969.

5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.

5. N/A

6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when

6. No significant case law. Opinion of the Advocate-General to the Dutch Supreme Court that this provision is not in breach with EU law.

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relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

### Measure n°10: Participation exemption – intention test – subject to tax test – asset test – fair market valuation

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure.

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. The participation exemption does not apply to participations held as a portfolio investments (intention test). The provision contains an 'escape' to ensure that the Dutch participation exemption does apply to a subsidiary, although it is 'held as a portfolio investment'. This 'escape' applies if the subsidiary is subject to a profit tax resulting in a degree of taxation that is reasonable according to Dutch standards (subject to tax test) or if it has sufficient 'active' assets (asset test). If, however, (i) the subsidiary is not subject to a profit tax resulting in a degree of taxation that is reasonable according to Dutch standards, (ii) the shareholding is at least 25% and (iii) the assets of the subsidiary consist, directly or indirectly, exclusively or almost exclusively of low-taxed free portfolio assets, an obligation exist to annually value the shareholding at its fair market value pursuant to art. 13a CITA 1969.

4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]

4. Art. 13 and 13a CITA 1969.

5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the

5. N/A

## Part 2: General Information

concerned MS of the effectiveness and sufficiency of the measures.	
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. No significant case-law on the anti-abuse aspects of the participation exemption. (In case the taxpayer questions whether the participation exemption applies, the taxpayer can file a request for an advanced tax ruling (ATR).)
<b>Measure n°11: Abuse of reorganization provision</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure.
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. The reorganization provisions in the CITA 1969 contain a clause that carry-over relief is denied if the restructuring operation is aimed at the evasion or deferral of taxation. (This provision is thus slightly different phrased from art. 15(1)(a) CITA 1969, which states that the benefits of the Merger Directive may be refused if a restructuring operations has as one of its principal objectives tax evasion or tax avoidance).
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Transfers of assets (art. 14 CITA 1969), divisions (art. 14a CITA 1969), and mergers (art. 14b CITA 1969).
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the	5. N/A



## Part 2: General Information

concerned MS of the effectiveness and sufficiency of the measures.	
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. The avoidance of the Dutch transfer tax is not a valid reason to refuse the application of the reorganization provisions in the Dutch CITA (ECJ - <i>Zwijenburg</i> case). Other ECJ case law with respect to the Merger Directive is also relevant, such as <i>Leur-Bloem</i> (a 'Dutch' case) and <i>Kofoed</i> .
<b>Measure n°12: Abuse of object exemption</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure.
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. Generally, income from a foreign permanent establishment ('PE') is exempt at the level of the Dutch head office (the exemption, a so-called 'object exemption', applies to both profits and losses of the foreign PE. Under certain conditions, a (less favourable) tax credit instead of a tax exemption applies (art. 15g CITA 1969). This is the case, generally speaking, where: (i) the activities of the PE consist of 'passive' financing activities and (ii) the PE's profits are not subject to a tax that is reasonable according to Dutch standards.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. 15g CITA 1969.
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the	5. N/A

## Part 2: General Information

concerned MS of the effectiveness and sufficiency of the measures.	
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A (provision in force since 1 January 2012).
<b>Measure n°13: Substantial interest provision for non-resident taxpayers</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure.
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. This measure contains the substantial interest provision for non-resident corporate shareholders holding significant (= >5%) shareholdings in Dutch-resident companies. The income from such a substantial interest is taxable with Dutch corporate income tax if (i) the non-resident shareholder holds the substantial interest with the principal objective or one of the principal objectives to avoid the imposition of personal income tax or dividend withholding tax with another and (ii) the substantial interest cannot be attributed to the business enterprise of the shareholder.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Art. 17(3)(b) CITA 1969.
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the	5. NA

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concerned MS of the effectiveness and sufficiency of the measures.	
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. N/A. ECJ case-law with respect to anti-abuse provisions (such as <i>Cadbury Schweppes</i> ) is relevant for this provision.
<b>Measure n°14: Abuse of provisions to utilize outstanding losses</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure.
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. Two specific anti-abuse provisions concern the utilization of outstanding losses:  Art. 20(4) CITA 1969 prevents the deduction of holding/financing losses against 'operating profits'.  Art. 20a CITA 1969 is the Dutch 'change of ownership' rule and seeks to prevent the trade in loss-making companies.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Art 20 and 20a CITA 1969.
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the	5. N/A

## Part 2: General Information

<p>concerned MS of the effectiveness and sufficiency of the measures.</p>	
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. No significant case-law.</p>

## Spain

### Part 1: Introduction

#### 1. Definition of NCJ

<p>1.1. Is there any formal definition of “NCJ” in your country (or any other concept similar to “NCJ”)? [Yes/No]</p>	<p>1.1. No</p> <p>The specific concept of NCJ does not exist in the Spanish tax legislation. However, similar concepts such as “tax haven” or “jurisdiction with nil taxation” are defined in the Spanish tax law:</p> <ul style="list-style-type: none"> <li>• Tax havens: the list is included in Royal Decree 1080/1991</li> <li>• Jurisdiction with nil taxation: defined in Law 36/2006, issued on November 29, that approves measures to prevent the tax fraud</li> </ul>
<p>1.2. If the answer under 1.1. is Yes, can you please provide the definition and the explanation how it operates? [Definition]</p>	<p>1.2. No</p> <ul style="list-style-type: none"> <li>• There is no definition of tax haven but a close list of jurisdictions (see below). Each jurisdiction will be excluded from the list if a double tax treaty with an exchange of information clause or a tax information exchange agreement is applicable between Spain and this country.</li> </ul> <p>List of Spanish Tax Havens (updated to May 3, 2012): The Royal Decree 1080/91, of July 5, lists the countries considered tax havens for Spanish tax purposes. Since 1991 some of these countries have signed exchange of information agreements or Double Taxation Treaties with Spain, therefore they are no longer considered tax havens for Spanish tax purposes.</p> <p>The following list has been updated to May 3, 2012.</p>

## Part 1: Introduction

- EUROPE

1. Isle of Man
2. Guernsey and Jersey (Channel Islands)
3. Gibraltar
4. Liechtenstein
5. Monaco
6. Republic of Cyprus (regarded as Tax Haven by the National Tax Authorities, as non-Tax Haven by the Tax Authorities of Biscay -Basque region of Spain-).

- AMERICA

7. Anguilla
8. Antigua and Barbuda
9. Bermuda
10. British Virgin Islands
11. Cayman Islands
12. Falkland Islands
13. Grenada
14. Montserrat
15. Republic of Dominica
16. San Vincent and the Grenadines
17. St Lucia
18. Virgin Islands- United States
19. Turkish Islands and Caicos

- AFRICA

20. Liberia
21. Seychelles
22. Mauritius

## Part 1: Introduction

	<ul style="list-style-type: none"> <li>- ASIA             <ul style="list-style-type: none"> <li>23. Bahrain</li> <li>24. Brunei</li> <li>25. Jordan</li> <li>26. Lebanon</li> <li>27. Macau</li> <li>28. Oman</li> </ul> </li> <li>- OCEANIA             <ul style="list-style-type: none"> <li>29. Cook Islands</li> <li>30. Fiji</li> <li>31. The Mariana Islands</li> <li>32. Nauru</li> <li>33. Solomon Islands</li> <li>34. Vanuatu</li> </ul> </li> <li>• Regarding “jurisdictions with nil taxation”, it is defined as a jurisdiction that does not apply a similar or analogous tax to the Spanish Personal Income Tax, Corporate Income tax or Non Resident Income Tax. A similar or analogous tax is a tax whose main purpose is the taxation of the income, even partially, regardless of whether the taxable event is the income, the profits or a similar element. This requirement would be deemed to be met if the jurisdiction has signed a DTT with Spain.</li> </ul>
<p>1.3. If the answer under 1.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]</p>	<p>1.3. See above.</p>
<p>1.4. If there is no formal definition, are you aware of any problems caused by this?</p>	<p>1.4. N/A</p>

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### 2. Definition of ATP

<p>2.1. Is there any formal definition of “ATP” in your country (or any other concept similar to “ATP”)? [Yes/No]</p>	<p>2.1. There is no definition of “aggressive tax planning” but the Spanish tax law defines the following concepts:</p> <ul style="list-style-type: none"> <li>• conflict in the application of the tax rules (the former called “tax fraud”): there is a conflict in the application of a tax law when a taxable event is wholly or partially avoided or when taxable income is reduced by acts by means of which one of the following objectives are met (i) the acts, whether individually or jointly, are contrived or unsuitable for the result attained; or (ii) as a result of the acts, there are no significant legal or economic consequences beyond tax savings.</li> <li>• simulation: there is no special definition in the law.</li> </ul>
<p>2.2. If the answer under 2.1. is Yes, can you please provide the definition? [Definition]</p>	<p>2.2. See above</p>
<p>2.3. If the answer under 2.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]</p>	<p>2.3. Articles 15 (conflict) and 16 (simulation) of the Spanish General Tax Act (Law 58/2003, issued on December 17, which approves the General Tax Act).</p>
<p>2.4. If there is no formal definition, are you aware of any problems caused by this?</p>	<p>2.4. The Spanish National Courts have provided with a definition of simulation:</p> <ul style="list-style-type: none"> <li>• total simulation: the parties agree to simulate a contract / transaction but the parties do not want to execute this transaction.</li> <li>• partial simulation: the parties agree to simulate a contract / transaction but, in fact, the parties want to execute another transaction.</li> </ul>
<h3>3. New Specific Measures</h3>	
<p>3.1. Are there any New Specific Measures in your country? [Yes/No] (If Yes, those measures must be described in Part 2 <u>and</u> Part 3)</p>	<p>3.1. Yes</p>



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3.2. If the answer under 2.1. is Yes, are there any NCJ Measures amongst those New Specific Measures? [Yes/No]

3.2. No

3.3. If the answer under 2.1. is Yes, are there any ATP Measures amongst those New Specific Measures? [Yes/No]

3.3. Yes (limitations regarding the deductibility of interest expenses).

### 4. Other Measures

4.1. Are there any Other Specific Measures in your country? [Yes/No]  
*(If Yes, those measures must be described in Part 2)*

4.1. Yes

4.2. Are there any General Anti-abuse Provisions in your country? [Yes/No]  
*(If Yes, those measures must be described in Part 2)*

4.1. Yes

4.3. If the answer under 4.2. is Yes, are those measures generally equally applicable to EU Member States (including purely domestic situations) and Third Countries?

4.3.1. It depends on the measures.

4.3.1. [Yes/No]

4.3.2. [Please explain]

4.3.2. Measures against tax havens usually include EU tax havens; however, in this case, the taxpayer can prove its incorporation and operations have a sound business purpose and the entity executes business transactions (no proof is acceptable with non-EU tax havens).

### 5. Legislative or administrative proposals

5.1. Are there currently any proposals aimed at introducing new measures in your country which could fall in scope of the current study?

5.1.1. Yes

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5.1.1. [Yes/No/Not exclusively]

5.1.2. [If Yes, please briefly explain]

5.1.2. See below.

## Part 2: General Information

### Measure n°1: Spanish Tax Residence of Tax Havens

<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. Other specific measures</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. NCJ measure</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. The Spanish Tax Authorities could presume that entities in tax havens or countries with low taxation has its tax residence in Spain when its main assets, directly or indirectly, consist on goods or rights located in Spain, or when its main business activity is executed in Spain, unless the entity proves that its effective management is executed in the tax haven or country with low taxation and the incorporation and operations of the entity are due to sound business purposes different than the mere management of securities or other assets.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 8.1 of the Corporate Income Tax Act</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A (the Spanish Authorities do not usually mention the expected quantitative impact of the identified problems or measures)</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. No relevant case law in this regard.</p>

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### Measure n°2: Non-Deductibility of Expenses Paid to Tax Havens

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. Other specific measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. NCJ measure
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. Expenses derived from transactions executed, directly or indirectly, with entities resident in tax havens or paid through entities resident in tax havens are not tax deductible unless the taxpayer proves that the transaction has been effectively carried out.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Article 14.1.g) of the Corporate Income Tax
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. There are a few courts' decisions in this regard. For example, National Court's decision dated Feb 23, 2012 or Supreme Court's decision dated January 19, 2011. Both decisions deal with the tax deductibility of expenses, which could be applied provided that the taxpayers prove that the expenses correspond to an effective transaction.

### Measure n° 3: Non-Deductibility of Certain Related-Party Interest Expenses

1. Is the measure a New Specific Measure, an Other Specific Measure or a General	1. General Anti-Abuse measure (effective for years starting on January 2012 and
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Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	onwards)
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. Interest expenses from debts with related parties (according to article 42 of the Spanish Commercial Code), regardless of its residence and obligation to prepare consolidated annual accounts, used to acquire, from other related parties, interest in entities or to make contributions to other group entities, are not tax deductible, unless the taxpayer proves that there are sound business purposes for the execution of these transactions.</p> <p>The limitation is applicable to interest from debt with related parties, when this debt is used to acquire companies from related-parties. For example, the Spanish company A obtains debt from its parent company in order to purchase from its sister company B (a Belgian company of the same group) shares in another company (which were held by B).</p>
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Article 14.1.h Corporate Income Tax Act
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level	6. The measure entered into force on March 2012 so there is no case yet in the regard. However, the measure is the consequence of some anti-debt-push-down cases derived from tax audits that ended in the Spanish Courts.

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summary of the given case law.	
<b>Measure n° 4: Transactions between Related Parties (Transfer Pricing)</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General anti abuse measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. The Tax Authorities can review whether transactions between related parties have been executed at fair market value and, if not, make the relevant valuations and tax adjustments.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Article 16 of the Corporate Income Tax Act
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. There are a lot of different cases in connection with this rule and each case analyzes a different scenario so it is difficult to provide with a summary of the main cases.

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### Measure n° 5: Interest Capping Rule

<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-Abuse measure (effective for years starting on January 2012 and onwards)</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. The new interest capping rule, which applies to both related and unrelated party debt, limits tax relief for net interest expense to 30% of the taxpayer's EBITDA (with some adjustments). For entities being part of a tax consolidation, this 30% limit will apply at the level of the tax group.</p> <p>Interest disallowed under the interest capping rule can be carried forward 18 years (similarly to tax net operating losses). On the other hand, when the interest expense in a given year is below the 30% limit, the new rule allows this unused capacity to be carried forward five years.</p> <p>The interest capping rule will not apply if:</p> <ul style="list-style-type: none"> <li>(i) the net interest expense does not exceed EUR 1M; or</li> <li>(ii) the taxpayer is not part of a group of companies (as defined in Spanish company law); or</li> <li>(iii) the taxpayer is a credit institution.</li> </ul>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 20 of the Spanish Corporate Income Tax</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the</p>	<p>5. N/A</p>

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concerned MS of the effectiveness and sufficiency of the measures.

6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

6. The measure entered into force on March 2012 so there is no case yet in the regard. However, the measure is the consequence of some anti-debt-push-down cases derived from tax audits that ended in the Spanish Courts.

### Measure nº 6: Participation Exemption for Dividends and Capital Gains

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. Other specific measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. NCJ measure

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. 100% participation exemption on dividends or capital gains from non resident entities provided that three requirements are met:

- a) Shareholding of, at least, 5% during 1 year.
- b) The non resident entity must be subject to a similar tax to the Spanish corporate income tax
- c) At least 85% of its income must derive from business activities outside of Spain

Besides, the exemption for capital gains required that requirements b) and c) above were met all years of tenancy. However, for tax years 2012 and onwards, capital gain will be exempt on a pro-rata basis (capital gains of the years when the requirements were met).



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	<p>The participation exemption rule is not applicable to income obtained from subsidiaries resident in a tax haven jurisdiction (except for EU tax havens provided that the taxpayer proves its incorporation and operations have a sound business purpose and the entity executes business transactions. This amendment was introduced by Law 4/2008 and entered into force on Jan 1, 2008. However, we have not treated this measure as “new specific measure” because the amendment refers to EU tax havens and the study is focused on Third Countries).</p> <p>Regarding capital gains, participation exemption cannot be applicable if the entity acquiring the interest in the non resident entity is resident in a tax haven.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 21 of the Corporate Income Tax Act</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. There is no relevant case law regarding the non-application of the rule to income from tax havens.</p>
<p><b>Measure n° 7: Participation Exemption for Branch Income</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. Other specific measure</p>

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<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. NCJ measure</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Income derived from branches can be exempt provided that the following requirements are met:</p> <ul style="list-style-type: none"> <li>a) Income obtained by the branch / PE derives from business activities outside of Spain.</li> <li>b) The branch / PE has been subject to a tax similar to the Spanish corporate income tax, and the branch / PE is not located in a tax haven.</li> </ul>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 22 of the Corporate Income Tax Act</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. There is no relevant case law regarding the non-application of the rule to income from tax havens.</p>
<p><b>Measure n° 8: Limitation on Transfers of Right of Use Intangible Assets to Tax Havens (Patent Box)</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. New Specific Measure</p>

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<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. NCJ Measure</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Income received from the transfer of the right of use of certain intangible assets (i.e. licensing of the intangible assets) can be partially exempt (50% of this income being excluded from the taxable base), provided that certain requirements are met:</p> <ul style="list-style-type: none"> <li>a. the transferring entity has created the intangible assets.</li> <li>b. the acquiring entity uses these assets for its business activity and, if related parties, no deductible expenses at the level of the transferring entity are generated.</li> <li>c. the acquiring entity cannot reside in a tax haven.</li> <li>d. If auxiliary services are included in the transfer agreement, its consideration must be differed.</li> <li>e. the transferring entity must have the required accounting books to determine the income and expenses correspondent to the transferred assets.</li> </ul>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 23 of the Corporate Income Tax Act</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. There is no relevant case law regarding the non-application of the rule to income from tax havens.</p>

**Measure n°9: Tax Deferral Regime for Mergers, Spin-Offs or Share for Share Exchange**

<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General anti abuse measure (sound business purposes) Other specific measures (rules for transactions with tax havens)</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. The other specific measure is a NCJ measure</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. The special tax deferral regime for mergers, spin-offs or share for share exchanges can be applied provided that the transaction has a sound business purpose (e.g., the restructuring or rationalization of the activities of the entities that are part of the transaction) other than tax savings.  Moreover, in general terms, no deferral would be applicable if the transactions were executed with/through tax havens.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Articles 88, 89 and 96.2 of the Corporate Income Tax</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. There are some court cases regarding the existence of a sound business purpose. The Tax and Administrative Courts state that the purpose of the transaction must correspond to economic purposes (not tax savings, tax fraud or tax evasion). If there is an economic purpose but there is also an implicit tax saving, the sound business purpose would, in principle, be valid. The analysis of the sound business purpose must be made on a case-by-case basis. In this regard, for example, some recent cases would be the National Court's decisions dated March 29, 2012, December 28, 2011 or June 1, 2011. The cases are based on article 11.1.a of the former Merger Directive / article 15 of the 2009 Directive.</p>

Measure n°10: CFC Rules	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. Other specific measures (assumptions for tax-haven subsidiaries) General Anti-abuse measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. The other specific measure would be a NCJ measure</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. The Spanish taxpayers would include in its taxable base (positive adjustment to the accounting result) certain types of positive income (passive income) obtained by a foreign company, provided that:</p> <ul style="list-style-type: none"> <li>a. The Spanish company or, together with its related parties, has an interest of at least 50% in the share capital, equity, results or voting rights of the foreign entity, at the year end of this latest.</li> <li>b. The tax paid by the foreign entity for this positive income, due to an analogous tax to the Spanish corporate income tax, is less than 75% of the amount that would have been paid in Spain on such income if this income had been obtained in Spain.</li> </ul> <p>The "passive income" would be the income derived from the following activities:</p> <ul style="list-style-type: none"> <li>1) Ownership of rural or urban real estate or real rights on these real estates, unless they are assigned to a business activity or transferred to related non-resident entities.</li> <li>2) Participations in the equity of any other company or remuneration of capital. The interest from a loan will be characterized as a lending activity of 3) below if lender and borrower are part of the same group of companies and the borrower obtained at least 85% of its revenue from entrepreneurial activities.</li> <li>3) Lending, financing, insurance and service activities (except those directly linked to the export activities) executed, directly or indirectly, with Spanish related entities, when</li> </ul>

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create tax deductible expenses for this related resident companies.

The positive income would not be included in the taxable base of the Spanish entity when more than 50% of the profits of the foreign entity derive from activities executed with non-related parties.

4) Transfer of assets and rights included in the above paragraphs 1) and 2) that generate positive income.

Income included in paragraphs 1, 2 and 4 above, obtained by a non resident entity, would not be included in the taxable base of the Spanish company when this income derives from entities in which the foreign entity has an interest of more than 5%, directly or indirectly, provided that the following requirements are met:

- The non-resident entity manages this interest through the relevant organization of human and material means, and
- The profits or the entities that obtain the income derive from business activities (at least 85%).

Income included in paragraphs 1, 2 and 4 above would not be included in the taxable base of the Spanish company when the sum of these incomes is less than 15% of the total income or less than 4% of the profits of the foreign entity.

This passive income would not be included in the taxable base of the Spanish company if it corresponds to non-deductible expenses for Spanish corporate income tax purposes.

For subsidiaries resident in a tax haven, it would be presumed that requirement b. above is met (taxation below 75%) and income is passive income.

Note: Please note that CFC rules do not apply to EU subsidiaries, provided that the taxpayer proves that the incorporation and operations have a sound business purpose and the entity executes business transactions. This rule entered into force on January 1, 2008. The rule before was that CFC rules did not apply to EU entities, except for EU tax

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	<p>havens.</p> <p>The amendment was introduced by Law 4/ 2008, which introduced some amendments to the tax law. The purpose of the amendment was (as per described in the law), to avoid a possible infringement of the EU Law regarding a restriction of the free movement of capital.</p>
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Article 107 of the Corporate Income Tax Act
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	<p>6. The purpose of this rule is to avoid that taxpayers in Spain put their capitals in low tax jurisdictions with the exclusive purpose of tax savings (i.e., to avoid the inclusion in its taxable base of income generated from this capitals and, therefore, deferred the taxation).</p> <p>There is no relevant case law in this regard.</p>
<b>Measure n°11: Limitations of the ETVE Regime for Tax Havens</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. Other specific measures
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. NCJ measures

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<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Dividends paid by an ETVE<sup>9</sup> to non-resident entities, out of income that has been exempted from Spanish corporate income tax under the provisions of the ETVE regime, should be considered as non-Spanish sourced income, and thus would fall outside the scope of Spanish dividend withholding taxation.</p> <p>Capital gains derived from the disposal of an ETVE would be considered non-Spanish sourced income, provided that the gain derives from (i) reserves out of exempted income or (ii) differences of value attributable to participations in foreign subsidiaries whose income is exempted according to the domestic participation exemption.</p> <p>These non subjections are not applicable when the non resident entity receiving the dividends or realizing the capital gains is resident in a tax haven.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 118 of the Corporate Income Tax Act</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. There is no relevant case law regarding the non application for tax havens.</p>

<sup>9</sup> An ETVE (Entidad de Tenencia de Valores Extranjeros) is a regular Spanish company that has opted for the application of the special ETVE regime. This ETVE regime is a regime applicable to companies whose business purpose is (among others) the management and administration of shares in foreign companies, through the correspondent material and human means. Generally speaking the ETVE regime is a special regime for holding companies (and the "ETVE" would be the name for the Spanish holding company).



## Part 2: General Information

Measure n°12: Portfolio Depreciation	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. Other specific measure  (the reference to the exception for EU tax havens was introduced in 2008 but, as above, we have not treated this measure as “new” because the study is focused on Third Countries).
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. NCJ measure
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. Portfolio depreciation is tax deductible up to the difference between the equity of the non-resident entity at the beginning of the year and at year end.  Portfolio depreciation correspondent to entities resident in a tax haven is not deductible unless (i) the entities are part of the same consolidated accounts or (ii) the non resident is resident in a EU tax haven and the taxpayer proves its incorporation and operations have a sound business purpose and the entity executes business transactions.  Portfolio depreciation is not tax deductible if the non-resident entity’s shares are listed in a stock exchange market of a tax haven.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Article 12.3 of the Corporate Income Tax Act
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when	6. There is no relevant case law in this regard.

## Part 2: General Information

relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

### Measure n°13: Valuation of Transactions with Tax Havens

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. Other specific measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. NCJ measure

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Transactions with entities in tax havens are valued at fair market value, provided that this value does not result in a taxation in Spain lesser to the one that would have corresponded with the agreed value or a deferral of the taxation.

It is compulsory to document these transactions according to the Spanish transfer pricing rules even if the amount thresholds, which normally exempt from the preparation of TP documentation, are not exceeded (the documentation should be ready in case of a tax audit). This rule would not apply to EU tax havens if the taxpayer proves that the incorporation and operations have a sound business purpose and the entity executes business transactions.

4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]

4. Article 17.2 of the Corporate Income Tax Act

5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.

5. N/A

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6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

6. There is no relevant case law in this regard.

### Measure n°14: Withholding Tax on Dividends to EU Entities

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse measure

Other specific measure (limitations for tax haven parent companies)

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. NCJ measure

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Dividends from Spanish entities to EU entities are exempt from withholding tax provided that the following requirements are met:

- Subjection and non exemption: both companies should be subject and non exempt from corporate tax.
- The distribution of dividends should not be the consequence of the liquidation of the Spanish subsidiary.
- Form of the companies: both companies should take one of the forms listed in the Annex of the Directive.
- Shareholding requirement: the status of 'parent company' is attributed to any EU company that has a direct or indirect holding of, at least, 5% in the capital of the subsidiary company.
- Holding period: the shareholding should be maintained, uninterrupted, for one year. If the day of the distribution, the shares have not been held for one year, the withholding tax should be paid and, in case the year is met afterwards, it should be

## Part 2: General Information

	<p>asked for the refund before the Spanish Tax Authorities.</p> <ul style="list-style-type: none"> <li>The parent company that receives the dividends could not be resident of a tax haven.</li> </ul> <p>There is an anti-abuse clause, by which the exemption would not apply when the majority of the voting rights in the parent company are held, directly or indirectly, by a non EU company or individuals, except when:</p> <ol style="list-style-type: none"> <li>The EU parent company effectively carries out business activities directly related to the activity of the Spanish subsidiary company; or</li> <li>The EU parent company's purpose is the management and administration of the subsidiary company through the appropriate organization of material and human resources; or</li> <li>The EU parent company proves that it was incorporated for valid economic reasons (not to unduly enjoy the exemption).</li> </ol> <p>The exemption is not applicable to parent entities resident in a tax haven.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Article 14.1.h of the Non Resident Income Tax Act</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. The Tax Authorities and the tax or Administrative Courts are making a very restrictive interpretation of the anti-abuse clause. The last two relevant cases in this regard are two Supreme Courts' decisions dated March 21 and March 22, 2012, which denies the application of the exemption because the three exceptions for the exemption (a, b and c above) were not met in the cases at hand.</p>

**Measure n°15: Information of Transactions with / Interest in Tax Havens in the Corporate Income Tax Return**

<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. Other specific measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. NCJ measure</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Transactions with entities in tax havens or interest in tax havens must be reported in the corporate income tax return:</p> <ul style="list-style-type: none"> <li>• Transactions: description of the transaction, entity in the tax haven, jurisdiction, amount of the transaction.</li> <li>• Interest: subsidiary entity, jurisdiction, acquisition value and % of interest.</li> </ul> <p>A penalty for submitting the tax return uncompleted (without all the required information) could be imposed (EUR 150).</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. It is included in the instructions of the corporate income tax return</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. There is no relevant case law in this regard.</p>

Measure n°16: Measures against Tax Fraud	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. Taxpayers must inform about the bank accounts and securities held abroad (third countries or EU entities). The penalty for not meeting these obligations would be EUR 10.000 (at the minimum) and those incomes that have not been declared would not lapse.</p> <p>According to the Tax Authorities, this amendment would be used to detect unjustified capital gains.</p>
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Draft bill of measures against tax fraud (draft approved on April 13, 2012)
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. No case law as the measure has not been yet approved or entered into force.

**Measure n°17: Non-Application of Withholding Tax Exemptions to Income Obtained Through Tax Havens**

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. Other specific measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. NCJ Measure
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. Certain exemptions from withholding taxes applicable to non-resident entities without a permanent establishment in Spain (eg, interest paid to EU entities, certain capital gains obtained by EU entities, capital gains from the disposal of securities in a stock exchange market, exemption for the first EUR 1.500 dividends) are not applicable if the income has been obtained through a tax haven.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Article 14.2 of the Non Resident Income Tax Act
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. There is no relevant case law in this regard.

**Measure n°18: Simulation**

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General anti-abuse measure
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## Part 2: General Information

Anti-abuse Measure]	
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. In the event of sham or simulation, the taxable event will be the transaction actually carried out by the parties:</p> <ul style="list-style-type: none"> <li>total simulation: the parties agree to simulate a contract / transaction but the parties do not want to execute this transaction.</li> <li>partial simulation: the parties agree to simulate a contract / transaction but, in fact, the parties want to execute another transaction.</li> </ul>
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Article 16 of the Spanish General Tax Act
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. There are many cases in this regard, such as the National Court's decisions dated December 22, 2011 or March 2, 2011 (simulation of the existence of two different legal entities in order to reduce the taxation in Spain). Each case should be analyzed on a case by case basis so it is difficult to provide with a summary of the main case law.
<b>Measure n°19: Conflict in the Application of the Tax Rules</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General	1. General Anti-abuse measure



## Part 2: General Information

Anti-abuse Measure]	
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. There is a conflict in the application of a tax law when a taxable event is wholly or partially avoided or when taxable income is reduced by acts by means of which one of the following objectives are met (i) the acts, whether individually or jointly, are contrived or unsuitable for the result attained; or (ii) as a result of the acts, there are no significant legal or economic consequences beyond tax savings. If a tax assessment is made under this rule, the tax is imposed on those acts or businesses that are avoided. Late interest payments would also be due, but no penalties are levied.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Article 15 of the Spanish General Tax Act
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. N/A
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. On an annual basis, the Spanish Tax Authorities publish a set of tax collection and audit objectives which are used as guidance and focus in their tax audits. One of the three main guidelines is the audit of the tax fraud. There are a lot of cases in this regard. Special consideration should be given to the anti debt-push-down resolutions, which have resulted in the elimination of the former thin capitalization rules and the inclusion of two new limitations of interest expenses effective for 2012 and onwards (see Measures No. 3 and No. 5 above).

Measure n°20: Change of Control	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. There is a limitation in the Spanish tax law for the offsetting of Net Operating Losses (below NOLs) in the event of a change of control. This limitation will apply provided that 3 requirements are met, being one of them that the Spanish company (with NOLs) must have been inactive the 6 months previous to the change of control.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4.
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5.
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6.

## Part 3: Detailed Information

### New Specific Measure n°1: Limitation on Transfers of Right of Use Intangible Assets to Tax Havens (Patent Box)

1. Is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

*(Same answer as in Part 2 for the New Specific Measure at stake)*

1. NCJ measure

2. Legal grounds governing this measure.

2.1. Legal provision(s)? [Reference] *(Same answer as in Part 2 for this measure)*

2.2. Practice notes? [Reference]

2.3. Parliamentary works? [Reference]

2.4. Other source? [Reference]

2.1. Article 23 of the Spanish Corporate Income Tax Act

2.2.

2.3.

2.4. Article introduced by Law 16/2007, issued on July 4.

3. Can you please provide a detailed description of the measure? This description should include in particular the following elements:

3.1. Main mechanisms? [Description]

3.2. Purpose (i.e. the problem and the countries which are supposed to be tackled by the measure)? [Description]

3.3. Scope Rationae Personae? [Description]

3.4. Scope Rationae Materiae? [Description]

3.5. Effects (sanctions, incentives linked to complying with the measure, etc.)? [Description]

3.6. Burden of proof? [Description]

3.7. Other relevant point? [Comments]

3.8. Is it a new measure / an amended measure or a possible future measure? [new measure / amended measure / possible future measure]

3.9. Are there any intentions or proposals to change the measure? [Comments]

3.1.

3.2. The patent box is not applicable if the right to use is transferred to an entity in a tax haven.

3.3.

3.4.

3.5. If the limitation is not met, the Tax Authorities would adjust the taxable base (50% of the income would not be exempt) and interest for late payment and penalties could be imposed for the amount of tax unpaid.

3.6. The party that applies the rule must prove it.

3.7.

3.8. When introduced in 2008, it was a new measure.

## Part 3: Detailed Information

	3.9. No according to our knowledge.
4. Impact assessment and evaluation	4.1.1. No
4.1. Before enactment: were there impact assessments made / issued / discussed during the preparation of the measure (including a quantitative impact)?	4.1.2. N/A
	4.1.3. N/A
4.1.1. [Yes/No]	4.2.1. No
4.1.2. [If Yes, please describe]	4.2.2. N/A
4.1.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]	
4.2. After enactment: are there evaluations (including effectiveness and sufficiency) of the measure issued or discussed during any parliamentary works or in any other official administrative doctrine publicly available?	4.2.3. N/A
4.2.1. [Yes/No]	
4.2.2. [If Yes, please describe]	
4.2.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]	
5. Litigations	5.1. No
5.1. Is there any litigation (pending or decided) before local Courts (first instance, appeal, Supreme Court, etc.) or before EU/international Courts (prejudicial question, infringement procedure, etc.) which questions the measure itself (i.e. not cases where the measure is just involved)?	5.2. N/A
5.2. If Yes, what is the reasoning used?	5.3. N/A
5.3. Please provide a quantification of the outcome of the Court decision (e.g.	

### Part 3: Detailed Information

penalties) when available.	
6. Other points that you would consider relevant to mention regarding this measure?	6. N/A

## Sweden

### Part 1: Introduction

#### 1. Definition of NCJ

1.1. Is there any formal definition of “NCJ” in your country (or any other concept similar to “NCJ”)? [Yes/No]	1.1. No explicit definition of NCJ is provided, but a definition of the term <i>foreign corporation</i> has an indirect effect.
1.2. If the answer under 1.1. is Yes, can you please provide the definition and the explanation how it operates? [Definition]	1.2. For Swedish income tax purposes, a <i>foreign corporation</i> is defined as a foreign legal entity subject to taxation similar to the Swedish corporation income tax. The term <i>similar taxation</i> is not only a reference to the existence of a corporation income tax, but also a reference to the level of taxation. For the purpose of the definition, a foreign corporation cannot be subject to a significantly lower tax. According to the way the term <i>similar taxation</i> is defined in the CFC-legislation, this would imply an effective tax rate of 14,5% (or 55% of the Swedish CIT). Companies formed and resident in a country with which Sweden has concluded a comprehensive double tax treaty are always considered as foreign corporation, if the company in question is covered by the tax treaty and is considered resident in that country under the tax treaty.
1.3. If the answer under 1.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]	1.3. Chapter 2, Paragraph 5a, Swedish Income Tax Act ( <i>Sw: Inkomstskattelagen (1999:1229)</i> ).
1.4. If there is no formal definition, are you aware of any problems caused by this?	1.4. N/A.

#### 2. Definition of ATP

2.1. Is there any formal definition of “ATP” in your country (or any other concept similar to “ATP”)? [Yes/No]	2.1. No.  The Swedish tax legislation does not have a specific definition of ATP as understood in
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## Part 1: Introduction

	the framework of this questionnaire, although anti-abuses rules can be used against tax planning's put in place with third countries (see Measures No. 4 and 6 below).
2.2. If the answer under 2.1. is Yes, can you please provide the definition? [Definition]	2.2. N/A.
2.3. If the answer under 2.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]	2.3. N/A.
2.4. If there is no formal definition, are you aware of any problems caused by this?	2.4. N/A.
<b>3. New Specific Measures</b>	
3.1. Are there any New Specific Measures in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2 <u>and</u> Part 3)</i>	3.1. Yes.
3.2. If the answer under 2.1. is Yes, are there any NCJ Measures amongst those New Specific Measures? [Yes/No]	3.2. Yes.
3.3. If the answer under 2.1. is Yes, are there any ATP Measures amongst those New Specific Measures? [Yes/No]	3.3. Yes.
<b>4. Other Measures</b>	
4.1. Are there any Other Specific Measures in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2)</i>	4.1. Yes.
4.2. Are there any General Anti-abuse Provisions in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2)</i>	4.1. Yes.
4.3. If the answer under 4.2. is Yes, are those measures generally equally applicable to EU Member States (including purely domestic situations) and Third	4.3.1. No.

## Part 1: Introduction

<p>Countries?</p> <p>4.3.1. [Yes/No]</p> <p>4.3.2. [Please explain]</p>	<p>4.3.2. Exception is made for entities located in EEA member states.</p>
<p><b>5. Legislative or administrative proposals</b></p>	
<p>5.1. Are there currently any proposals aimed at introducing new measures in your country which could fall in scope of the current study?</p> <p>5.1.1. [Yes/No/Not exclusively]</p> <p>5.1.2. [If Yes, please briefly explain]</p>	<p>5.1.1. Yes.</p> <p>5.1.2. Current legislative proposal to amend the existing interest stripping rules.</p>



## Part 2: General Information

### Measure n°1: Interest stripping rules

<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. New Specific Measure.</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. Both.</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. The Swedish interest stripping rules entered into force on January 1, 2009 after two landmark rulings by the Supreme Administrative Court. In these two rulings it was concluded that deductions on deemed artificial party debt could not be denied under the Tax Avoidance Act (GAAR). The interest stripping rules, which bear much similarity to the Dutch rules, restrict the tax base erosion of related party debts created through intra-group share transfers, where the interest income is allocated to a low tax jurisdiction.</p> <p>Under the main rule of these provisions, interest expenses due to a related party, used to finance the acquisition of shares from a related entity, are non-deductible for Swedish corporate income tax purposes. Deduction is nonetheless granted where it can be shown that i) the corresponding interest income is subject to an effective tax rate of at least 10% or ii) if it can be demonstrated that the related party debt <u>and</u> the acquisition were primarily based on sound business reasons.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Paragraph 10a-e, Chapter 24, Swedish Income Tax Act (<i>Sw: Inkomstskattelagen (1999:1229)</i>).</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Before the implementation of the interest stripping rules, the Swedish Tax Agency estimated that deductions for deemed artificial party debt reduced the Swedish tax base by SEK 25 billion and the tax income by SEK 7 billion. (government bill . 2008/09:65, p. 43)</p>

## Part 2: General Information

6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

6. The Supreme Administrative Court has ruled several times on the application of the sound business reason test (HFD 2011 ref. 90 I-V and also case no. 7649-09, , all dated November 30, 2011 and case no 4678-11 dated January 27, 2012.) The court has found that a restructuring operation carried out solely for administrative purposes is not considered made for valid business reasons for the purpose of the interest stripping restrictions. Exception is made for internal restructuring operations following external acquisitions of shares. The Court has also ruled that the rules apply to acquisitions through issuance of shares. On January 27, 2012, the Court also ruled that the Tax Avoidance Act could not be used to disallow an interest expense which otherwise would be deductible under the interest stripping rules (HFD 2012 ref. 6).

On May 21, 2012, the Supreme Administrative Court in case no. 6063-11 concluded that the effective tax-test should be applied on the beneficial owner of the interest income.

### Measure n°2: Reference to the definition of *foreign corporation*

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. Other Specific Measure.

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. NCJ Measure.

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. The scope of application for deferred Swedish income taxation on different forms of asset transfers (e.g. mergers) refers to the criteria *foreign corporation*. These deferrals of taxation do therefore not apply where the transferor or transferee company is subject to no or significantly lower income taxation than a Swedish corporation.

Sweden applies a 30 % dividend withholding tax on dividends paid to foreign legal entities. According to the domestic legislation, no withholding tax is levied where the Swedish participation exemption would have applied, had the receiving entity been

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	<p>resident in Sweden. This is a statutory relief from withholding tax on dividends from fully owned subsidiaries. However, the condition for the relief only applies where the receiving entity is a foreign corporation.</p> <p>The withholding tax would thus generally apply to foreign legal entities resident in NCJ's.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Reference to the definition of <i>foreign corporation</i> is made in i.a. Chapter 23, Paragraph 4; Chapter 39, Paragraph 9; Chapter 38, Paragraph 3; Chapter 38a, Paragraph 4, Swedish Income Tax Act (<i>Sw: Inkomstskattelagen (1999:1229)</i>); Paragraph 4, Section 6, Swedish Withholding Tax Act (<i>Sw: Kupongskattelagen (1970:624)</i>).</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available.</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. Not available.</p>
<p><b>Measure n°3: CFC-legislation</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. Other Specific Measure.</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. ATP Measure.</p>

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3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Sweden has had rules concerning controlled foreign companies in low taxed jurisdictions since 1990. The rules were expanded in 2004, to prevent circumvention of the rules through intermediary holding companies. The purpose of the CFC-legislation is to prevent or obstruct tax planning through low-taxed jurisdictions which erodes the Swedish tax base. Income allocated to the foreign entity (e.g. through intra-group loans or internal pricing policies) would otherwise be taxed low and the distribution to the Swedish parent tax exempt.

Under the Swedish CFC rules, a person taxable in Sweden with a participation (>25% of the share capital or voting power) in a foreign legal person may become subject to tax for the income of that person, if it is considered low-taxed. The foreign legal person is deemed low-taxed if the effective tax rate on the income in the jurisdiction is below 14.5% (on a basis calculated under Swedish tax rules). Even if a foreign legal entity is deemed low-taxed, taxation may be omitted for certain jurisdictions on a *list*. The list is divided into black-, white- and grey listed countries, whereby certain countries are entirely black listed (i.e. CFC taxation will take place), other are entirely white listed (i.e. no CFC taxation would take place) and finally some are grey listed (certain operations in a country may be black- or white listed).

The effect of CFC-taxation is essentially that the foreign legal person is regarded as a partnership for Swedish tax purposes.

List: The legislation says that even if the income is lowly taxed under the "normal" CFC rule, no CFC taxation should occur in Sweden if the foreign legal person is resident and subject to tax in an area mentioned in "Annex 39 a" and if the entity in question is not excluded from the list in the annex.

- All countries in **Africa**, **Asia** and **Europe** are on the white list, except the countries (or specific activities) specifically mentioned as excluded.
- When it comes to **Americas** and **Oceania** only those countries (or specific activities) specifically mentioned are accepted. All other are black listed.

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The list is as follows (free translation): Even if a foreign entity is not subject to tax, or effectively taxed below 55% of the Swedish income tax rate, it should not be considered low-taxed under the Swedish CFC-rules, if resident in any of the listed areas and not subject to any of the provided exemptions:

- **Africa**, except
  - Djibouti,
  - Liberia,
  - Morocco, in respect of such income from banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime as well as income from coordination centers, and
  - Seychelles,
- **America**, but only
  - United States
  - Argentina,
  - Barbados,
  - Belize, with the exception of income not taxed under the ordinary income tax regime
  - Bolivia,
  - Brazil,
  - Chile,
  - Colombia,
  - Costa Rica, with the exception of income considered to arise in another territory and not subject to tax
  - Cuba,
  - Dominican Republic,
  - El Salvador,
  - Ecuador,
  - Falkland Islands,

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- French Guiana,
- Guatemala,
- Guyana,
- Haiti,
- Honduras,
- Jamaica,
- Canada, with the exception of income from banking operations that are not taxed under the ordinary income tax regime
- Mexico,
- Nicaragua,
- Panama, with the exception of income considered to arise in another territory and not subject to tax
- Paraguay,
- Peru,
- Saint Pierre and Miquelon,
- Surinam,
- Trinidad and Tobago,
- Uruguay, and
- Venezuela,
- **Asia, except**
  - Bahrain,
  - Brunei Darussalam, with respect to income not taxed under the ordinary income tax regime
  - Cyprus, with respect to income from banking and finance, other financial and insurance services
  - United Arab Emirates,
  - Hong Kong SAR, with the exception of income considered to arise in another territory and not subject to tax
  - Lebanon, with respect to income from banking and finance, other financial and

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insurance services

- Macao SAR,
- Maldives,
- Singapore, with respect to income from such banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime
- Thailand, with respect to income from banking operations that are not taxed under the ordinary income tax regime there, and
- Turkey, with respect to income from such banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime

- **Europe, except**

- Andorra,
- Belgium, with respect to income from the coordination centers / coördinatiecentra and financial income from activities for which advance ruling of so-called informal capital has been issued
- Channel Islands,
- Bulgaria, with respect to income from banking and finance, other financial and insurance services
- Estonia, with respect to income from banking and finance, other financial and insurance services
- Gibraltar,
- Ireland, with respect to income from banking and finance, other financial and insurance services
- Isle of Man,
- Liechtenstein,
- Luxemburg, with respect to income from captive insurance business
- Monaco,
- Montenegro, with respect to income from such banking and finance, other financial and insurance services that are not taxed under the ordinary income

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	<p>tax regime</p> <ul style="list-style-type: none"> <li>– Netherlands, with respect to income from treasury financial activities where allocation to the special risk reserve is possible</li> <li>– San Marino, with respect to income from such banking and finance, other financial and insurance services that are not taxed under the ordinary income regime</li> <li>– Switzerland, with respect to income from banking and finance, other financial and insurance services;</li> <li>– Turkey, with respect to income from such banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime</li> <li>– Hungary, with respect to income from such banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime</li> </ul> <ul style="list-style-type: none"> <li>• <b>Oceania</b>, but only as far as <ul style="list-style-type: none"> <li>– Australia, with the exception of income from banking operations that are not taxed under the ordinary income tax regime</li> <li>– Hawaii, and</li> <li>– New Zealand.</li> </ul> </li> </ul>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Chapter 39 a, Swedish Income Tax Act (<i>Sw: Inkomstskattelagen (1999:1229)</i>).</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available.</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level</p>	<p>6. The Supreme Administrative Court has in two cases, RÅ. 2008 ref 24 and RÅ 2008 not. 61, applied the Swedish CFC-legislation over the applicable double taxation treaty (treaty override). After severe criticism the Supreme Administrative Court in a case (RÅ 2010 ref. 112) , took a step back and affirmed that the applicable treaty should generally</p>



## Part 2: General Information

summary of the given case law.	be applied over the domestic legislation.
<b>Measure n°4: Tax Avoidance Act</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure.
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A.
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. A general anti-avoidance rule was introduced in the Swedish legislation in 1980. It has since then been abolished and reintroduced and also revised several times. The current Act dates back to 1995. The purpose of the legislation has all the time been to counter unforeseen tax planning which circumvents the legislation.</p> <p>Under the Swedish GAAR, a legal action undertaken by the taxpayer may be overlooked if four criteria are met. The taxpayer must have performed a legal action which resulted in a significant tax benefit for the taxpayer and the tax benefit must have been the main reason for the legal action. The final, decisive, criterion is that taxation on the present circumstances would contradict the purpose of the legislation, as it appears in the context of the legislation in general and in the applicable/circumvented statutes.</p> <p>The GAAR may only be applied in court trial; the Tax Agency may not apply it in the taxation without a court ruling. The Agency thus has to request the court to apply the law.</p>
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Tax Avoidance Act ( <i>Sw: Skatteflyktslagen (1995:575)</i> ).
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the	5. Not available.

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concerned MS of the effectiveness and sufficiency of the measures.

6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

6. The available judgements give little guidance to the interpretation of the statute, since the application will always depend on the specific circumstances at hand. HFD 2012 ref 6 is the most recent case, where the Supreme Administrative Court refused to apply the GAAR in a case relating to interest deductions where it was clear that the interest stripping rules were not applicable.

### Measure n°5: Arm's length principle

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure.

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. The Swedish tax legislation has included a codification of the arm's length principle since 1965. The purpose of the statute is to prevent incorrect pricing of goods and services between related parties. According to Swedish codification, agreements between related parties may be overlooked for the part they depart from what would have been agreed upon between unrelated parties.

4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]

4. Paragraph 19-20, Chapter 14, Swedish Income Tax Act (*Sw: Inkomstskattelagen (1999:1229)*).

5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.

5. Not available.

## Part 2: General Information

6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

6. No general guidance can be drawn from the existing case law, but reference is often made to OECD's Transfer Pricing Guidelines and the Supreme Administrative Court has often referred to these guidelines in its case law (see inter alia RÅ 1991 ref. 107).

### Measure n°6: Substance over form

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure.

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Where an agreement or transaction is incorrectly labelled, the Tax Agency or Administrative Court may tax the agreement or transaction according to its true meaning, through application of the ordinary interpretive methods of civil law.

The Swedish tax legislation does not include a general substance-over-form provision, but the Swedish courts have found that the taxpayer may not label a transaction incorrectly to avoid taxation. The arm's length principle may be applied to adjust the level of compensation in an agreement between related party, but it may not be used to recharacterize the agreement itself (e.g. characterize debt as equity). The legal form of an agreement is thus generally upheld for tax purposes.

4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]

4. Civil law / Interpretive method applied by the Tax Agency and courts.

## Part 2: General Information

5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.

5. Not available.

6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

6. In lack of an express statute, the Tax Agency and first and second instance courts have sometimes interpreted agreements on a stand-alone basis for tax purposes. Through applying the "true meaning", an agreement may then have been deemed something else for tax purposes than according to civil law. This method has been rejected by the Supreme Administrative Court (case no. RÅ 2004 ref. 27 and RÅ 2008 not. 169), but nevertheless the Swedish Tax Agency still tries to attack taxpayers using substance over form arguments..

## Part 3: Detailed Information

### New Specific Measure n°1: Interest stripping rules

1. Is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

(Same answer as in Part 2 for the New Specific Measure at stake)

1. Both.

2. Legal grounds governing this measure.

2.1. Legal provision(s)? [Reference] (Same answer as in Part 2 for this measure)

2.2. Practice notes? [Reference]

2.3. Parliamentary works? [Reference]

2.4. Other source? [Reference]

2.1. Paragraph 10a-e, Chapter 24, Swedish Income Tax Act (*Sw: Inkomstskattelagen (1999:1229)*).

2.2. N/A.

2.3. Government bill 2008/09:65 *Sänkt bolagsskatt och vissa andra skatteåtgärder för företag*. Ministry of Finance memorandum *Förslag om begränsningar i avdragsrätten för ränta m.m. på vissa skulder*, dnr Fi2008/4093. Tax Agency memorandum *Förslag om begränsningar i avdragsrätten för ränta m.m. på vissa skulder*, dnr 131-348803-08/113.

2.4. N/A.

3. Can you please provide a detailed description of the measure? This description should include in particular the following elements:

3.1. Main mechanisms? [Description]

3.2. Purpose (i.e. the problem and the countries which are supposed to be tackled by the measure)? [Description]

3.3. Scope Rationae Personae? [Description]

3.4. Scope Rationae Materiae? [Description]

3.5. Effects (sanctions, incentives linked to complying with the measure, etc.)? [Description]

3.6. Burden of proof? [Description]

3.7. Other relevant point? [Comments]

3.1. Under the main rule of the interest stripping provisions, interest expenses due to a related party, used to finance the acquisition of shares from a related entity, are non-deductible for Swedish corporate income tax purposes. Deduction is nonetheless granted where it can be shown that i) the corresponding interest income is subject to an effective tax rate of at least 10% or ii) if it can be demonstrated that the related party debt and the acquisition were primarily based on sound business reasons.

The effective tax rate under the 10%-test is determined according to Swedish standards. The applicable tax rate is determined on the interest income viewed separately from other income and expenses of the creditor. Basic tax allowances affect the calculation – but not losses incurred in the regular business activities. The test should be made for the beneficial owner of the interest income.

## Part 3: Detailed Information

3.8. Is it a new measure / an amended measure or a possible future measure?  
[new measure / amended measure / possible future measure]  
3.9. Are there any intentions or proposals to change the measure?  
[Comments]

Under the sound business reason-test, the transactions are deemed to be undertaken primarily for sound business reasons if these reasons comprise at least 75% of the purpose of the transactions, without taking tax reasons into account. Restructuring operations carried out solely for administrative purposes are not considered made for valid business reasons for the purpose of the interest stripping restrictions. Exception is made for internal restructuring operations, relatively close in time to a previous external acquisition of shares.

3.2. The Swedish interest stripping rules were introduced after three landmark rulings by the Supreme Administrative Court (RÅ 2001 ref. 79 and RÅ 2007 ref. 84-85). In these rulings, legal persons effectively tax exempt for Swedish corporate income tax purposes (a municipality and an investment company) had undertaken intra-group transactions between fully owned subsidiaries (subject to CIT). The acquisitions were financed by loans from the tax exempt parent. The interest cost on the debt financing was thus deductible for income tax purposes, but the corresponding income tax exempt in the hands of the parent. The Supreme Administrative Court found that the Swedish Tax Avoidance Act could not be applied to the transactions.

The interest stripping rules were introduced to tackle the described tax arbitrage where the debtor receives a deduction but the income is tax exempt or taxed low in the hands of the creditor. It only applies to debt related to internal transactions. Although the rules came into force following the court cases on domestic group tax planning, they apply equally, and foremost, in cross-border situations.

3.3. The interest stripping rules apply to companies subject to Swedish corporate income tax.

3.4. The interest stripping rules apply to all deductions claimed for interest costs on intra-group debt related to acquisitions of shares from a related party.

3.5. Denied deduction.

## Part 3: Detailed Information

	<p>3.6. The person subject to tax must generally show that the circumstances for a deduction are at hand. Since a deduction for interest costs on intra-group debt related to internal restructuring will generally be denied, the taxpayer must prove that either of the exceptions is at hand (i.e. the effective tax-test or the sound business reason-test). – If the taxpayer discloses all relevant information in its tax return, the Tax Agency has two years to challenge the deduction. If relevant information is omitted, or if no information is disclosed in the tax return, the Tax Agency has six years to challenge the deduction.</p>
	<p>3.7. N/A.</p>
	<p>3.8. New measure.</p>
	<p>3.9. In March 2012, the Ministry of Finance issued a proposal for amendment of the Swedish interest stripping restrictions (Ministry of Finance memorandum <i>ektivare ränteavdragsbegränsningar</i>, dnr. Fi2012/1349). This proposal has, with minor alterations, been sent to the Council on Legislation (Lagrådsremiss: <i>Effektivare ränteavdragsbegränsningar</i>, Ministry of Finance, 8 June 2012). The proposed amendments should enter into force 1 January 2013. Note that the proposed changes will not be adopted until later this year (probably in October or November).</p> <p>The new amendments extend the scope of the current restrictions to apply in respect of interest expenses on all intra-group loans, whatever its purpose. The minimum 10% tax-test at the creditor level will still allow interest deduction, but the taxpayer must also show that the reason for taking up the intra group debt was not to create a substantial tax benefit for the company or other related companies. Sound business reasons still an alternative test for deduction, but according to the proposal only if the creditor is resident within the EEA or in a jurisdiction which has signed a full tax treaty with Sweden. Interest payment to NCJ's would thus not be deductible.</p>
<p>4. Impact assessment and evaluation</p>	<p>4.1.1. Yes.</p>
<p>4.1. Before enactment: were there impact assessments made / issued /</p>	<p>4.1.2. The Swedish Tax Agency released a survey of the described tax planning through</p>

## Part 3: Detailed Information

<p>discussed during the preparation of the measure (including a quantitative impact)?</p> <p>4.1.1. [Yes/No] 4.1.2. [If Yes, please describe] 4.1.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p> <p>4.2. After enactment: are there evaluations (including effectiveness and sufficiency) of the measure issued or discussed during any parliamentary works or in any other official administrative doctrine publicly available?</p> <p>4.2.1. [Yes/No] 4.2.2. [If Yes, please describe] 4.2.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p>	<p>intra-group debt after the judgements from the Administrative Supreme Court. In their report, the Agency estimated that deductions for deemed artificial party debt reduced the Swedish tax base by SEK 25 billion and the tax income by SEK 7 billion.</p> <p>4.1.3. Tax Agency memorandum <i>Förslag om begränsningar i avdragsrätten för ränta m.m. på vissa skulder</i>, dnr 131-348803-08/113.</p> <p>4.2.1. Yes.</p> <p>4.2.2. The Swedish Tax Agency has been assigned to continue its survey of deductions on interest cost. In the latest report, the total interest deductions were said to be back at the level of the years 2003-2006. The Agency had not been able to specify to which degree these costs stemmed from aggressive tax planning. According to the report, there are however reasons to believe that similar tax arbitrage through intra-group debt financing is still carried out to a large extent. In the current legislative proposal, the amended restrictions on interest deductions are estimated to generate an increased tax income of SEK 6.29 billion.</p> <p>4.2.3. Tax Agency memorandum <i>Ränteavdrag i företagssektorn – Fortsatt kartläggning</i>, dnr 131-836251-11/113.</p>
<p>5. Litigations</p> <p>5.1. Is there any litigation (pending or decided) before local Courts (first instance, appeal, Supreme Court, etc.) or before EU/international Courts (prejudicial question, infringement procedure, etc.) which questions the measure itself (i.e. not cases where the measure is just involved)? 5.2. If Yes, what is the reasoning used? 5.3. Please provide a quantification of the outcome of the Court decision (e.g. penalties) when available.</p>	<p>5.1. Yes.</p> <p>5.2. The Supreme Administrative Court has found that the interest stripping rules do not infringe the EU rights of free establishment and free movement of capital or the EU interest and royalty directive. The interest stripping rules were neither found to conflict with the double taxation treaty in question (see cases referred to in Part 1, measure no 1, section 6 above)</p> <p>5.3. N/A.</p>
<p>6. Other points that you would consider relevant to mention regarding this</p>	<p>6. N/A.</p>



## Part 3: Detailed Information

measure?	
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## The United Kingdom

### Part 1: Introduction

#### 1. Definition of NCJ

<p>1.1. Is there any formal definition of “NCJ” in your country (or any other concept similar to “NCJ”)? [Yes/No]</p>	<p>1.1. There is no formal definition of “NCJ” (or similar concept) in the UK.  Informally, an NCJ would generally be considered to be any country with which the UK does not have a Double Tax Treaty or Tax Information Exchange Agreement. However, there are exceptions to this.</p>
<p>1.2. If the answer under 1.1. is Yes, can you please provide the definition and the explanation how it operates? [Definition]</p>	<p>1.2. N/A</p>
<p>1.3. If the answer under 1.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]</p>	<p>1.3. N/A</p>
<p>1.4. If there is no formal definition, are you aware of any problems caused by this?</p>	<p>1.4. No</p>

#### 2. Definition of ATP

<p>2.1. Is there any formal definition of “ATP” in your country (or any other concept similar to “ATP”)? [Yes/No]</p>	<p>2.1. There is no formal definition of Aggressive Tax Planning.  However, there are several pieces of anti-avoidance legislation which are not applicable unless the main purpose of the scheme, or one of the main purposes of the scheme is to achieve a UK tax advantage (for example the current Controlled Foreign Companies rules and the Anti-Arbitrage rules). Therefore one could conclude that a scheme with a main purpose of achieving a tax advantage is an aggressive scheme.  Section 1139 CTA 2010 defines a “tax advantage”, for the purposes of the Corporation Tax</p>
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## Part 1: Introduction

	<p>Acts as:</p> <ul style="list-style-type: none"> <li>(a) a relief from tax or increased relief from tax,</li> <li>(b) a repayment of tax or increased repayment of tax,</li> <li>(c) the avoidance or reduction of a charge to tax or an assessment to tax,</li> <li>(d) the avoidance of a possible assessment to tax, or</li> <li>(e) the avoidance or reduction of a charge or assessment to the bank levy under Schedule 19 to Finance Act 2011 (the bank levy).</li> </ul>
<p>2.2. If the answer under 2.1. is Yes, can you please provide the definition? [Definition]</p>	<p>2.2. N/A</p>
<p>2.3. If the answer under 2.1. is Yes, can you please provide the reference to the provision in which the definition is included? [Reference]</p>	<p>2.3. N/A</p>
<p>2.4. If there is no formal definition, are you aware of any problems caused by this?</p>	<p>2.4. No</p>
<h3>3. New Specific Measures</h3>	
<p>3.1. Are there any New Specific Measures in your country? [Yes/No] <i>(If Yes, those measures must be described in Part 2 <u>and</u> Part 3)</i></p>	<p>3.1. Yes (Note: as we have explained in our cover email, the TIEA point is not really considered a New Specific Measure so the answer to this question should perhaps be “No”)</p>
<p>3.2. If the answer under 2.1. is Yes, are there any NCJ Measures amongst those New Specific Measures? [Yes/No]</p>	<p>3.2. Yes</p>
<p>3.3. If the answer under 2.1. is Yes, are there any ATP Measures amongst those New Specific Measures? [Yes/No]</p>	<p>3.3. No</p>

## Part 1: Introduction

### 4. Other Measures

4.1. Are there any Other Specific Measures in your country? [Yes/No]  
(If Yes, those measures must be described in Part 2)

4.1. Yes

4.2. Are there any General Anti-abuse Provisions in your country? [Yes/No]  
(If Yes, those measures must be described in Part 2)

4.1. Yes

4.3. If the answer under 4.2. is Yes, are those measures generally equally applicable to EU Member States (including purely domestic situations) and Third Countries?

4.3.1. Yes

4.3.1. [Yes/No]

4.3.2. [Please explain]

4.3.2.

- Current CFC rules: one of the exemptions to the CFC apportionment is that the CFC is resident in an excluded territory. The list of excluded territories lists most EU territories and many non-EU territories.
- For other anti-avoidance legislation, there is generally no distinction made between non-UK resident entities which are resident in EU Member States or which are resident in Third Countries.

### 5. Legislative or administrative proposals

5.1. Are there currently any proposals aimed at introducing new measures in your country which could fall in scope of the current study?

5.1.1. Yes

5.1.1. [Yes/No/Not exclusively]

5.1.2. [If Yes, please briefly explain]

5.1.2.

- CFC reform: the rules regarding Controlled Foreign Companies are being amended for accounting periods beginning on or after 1 January 2013. These rules are described below (Measure no.2)

## Part 1: Introduction

- There are proposed changes to taxation of interest which include removing the distinction between yearly interest and interest that is not yearly, such that all interest would be subject to withholding tax. This would mean that interest to territories without a Double Tax Treaty would be subject to withholding tax (and therefore this would apply only to third countries without a Double Tax Treaty). These rules are described below (Measure no.4).

## Part 2: General Information

### Measure n°1: Controlled Foreign Companies – current legislation

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. The CFC legislation aims to prevent UK profits being artificially diverted outside the UK through a non-UK company. If a foreign company is controlled in the UK and subject to a lower level of taxation (less than 75% of the comparable UK rate) then the company is a CFC. If none of the exemptions apply, then the profits of the company will be apportioned to the UK and therefore taxed in the UK.

There are several exemptions which act to prevent an apportionment of profits being made to the UK. These include:

- If the company is involved in exempt activities
- If the relevant profits of the company for the period do not exceed a certain amount
- If the company is resident in one of the territories specified in the regulations. (Note: this list includes most EU territories and many non-EU territories; see below)
- If the accounting period ends during an “exempt period”
- If the reduction in UK tax was minimal or was not the main purpose or one of the main purposes of the transaction(s)

Note: There are equivalent measures to the CFC rules for individuals (section 720 of Income Taxes Act – Charge to tax on individuals with power to enjoy income as a result of relevant transactions) and for capital gains (section 13 of the Taxation of Chargeable Gains Act 1992). Broadly, s13 provides that chargeable gains in a company are treated as accruing to the UK participators in the company, where the company is not resident in

## Part 2: General Information

the United Kingdom and would be classified as a close company (one controlled by only a specified number of people) if it were.

Please note that the CFC rules described above do not extend to chargeable gains.

**Statutory Instrument 1998/3081: Controlled Foreign Companies (Excluded Countries), Regulations 1998: Schedule 2: Accounting periods beginning on or after 9th July 1998:**

- Part I: Specified Territories**

Australia	Ivory Coast
Austria	Japan
Bangladesh	Korea, Republic of
Bolivia	Lesotho
Botswana	Malawi
Brazil	Mexico
Bulgaria	New Zealand
Canada	Nigeria
Colombia	Norway
Czech Republic	Papua New Guinea
Denmark	Poland
Dominican Republic	Romania
Falkland Islands	Senegal
Fiji	Sierra Leone
Finland	Slovak Republic
France	Solomon Islands
Gambia	South Africa
Germany	Swaziland
Ghana	Sweden
Honduras	Trinidad and Tobago
Iceland	Turkey
India	Zambia
Indonesia	Zimbabwe

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- **Part II: Specified Territories with Qualifications**

Argentina	Companies obtaining exemption from tax on income from transactions, activities or operations carried on in, or from goods located in, tax free areas in accordance with Law 19640 of 16th May 1972.
Belgium	1. Companies which are regarded as Foreign Sales Corporations in section 922(a) of the United States Internal Revenue Code 1954 and which accordingly qualify for reduced Belgian taxation. 2. Companies approved under Royal Decree No. 187 of 30th December 1982 as Co-ordination Centres.
Brunei	Companies qualifying as “pioneer companies” under the Investment Incentives Enactment 1975.
Chile	Companies obtaining exemption from tax under Law 16,441 of 1st March 1966 on income from property located in the Department of Isla da Pascua or from activities developed in that Department.
China	1. Companies deriving income in or from the Hong Kong Special Administrative Region and submitting tax returns to the authorities of that Region. 2. From 20th December 1999, companies deriving income in or from the Macao Special Administrative Region and submitting tax returns to the authorities of that Region.
Egypt	Companies which do not fall within the scope of Article 111, Book 2 of Law 157 of 1981 because they do not operate in Egypt.
Faroe Islands	Companies deriving interest from Faroese financial institutions from which tax is deducted at source under Law 4 of 26th March 1953.
Greece	1. Companies whose profits are exempt from tax under Article 6(2)(c) of Law 3843/1958 (profits from the operation of ships under the Greek flag). 2. Companies having profits exempt from company income tax by virtue of Article 25 of Law 25/1975 or by virtue of Law 89/1967 (profits from shipping and associated activities).
Hungary	Companies benefiting from the reduced rate of tax for extra-territorial companies under section 19(2) of Act LXXXI of 1996 on Corporate Tax and Dividend Tax.
Italy	Companies benefiting from paragraphs 12 to 14 of Article 11 of Law 413 of 30th December 1991 (Trieste Free Zone Financial and Insurance Centre).
Kenya	Companies having income exempted from tax under paragraph 11 of Schedule 1 to the Income Tax Act 1973.
Luxembourg	1. Companies obtaining any special tax benefit under the Law of 31st July 1929, the decree of 17th December 1938 or the Grand Ducal Regulation of 29th July 1977 (holding companies). 2. Any reinsurance company established in Luxembourg requiring authorisation under



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	Article 92 of the Law of 6th December 1991.
Malaysia	<p>1. Companies exempt from tax in accordance with section 54A of the Income Tax Act 1967 (shipping).</p> <p>2. Companies subject to tax at 5 per cent in accordance with sections 60A and 60B of the Income Tax Act 1967 (inward reinsurance and offshore insurance).</p> <p>3. Companies deriving dividends from a company or companies deriving income from one or more of the activities referred to in paragraphs 1 and 2 above.</p> <p>4. Companies obtaining a tax benefit under the Offshore Companies Act (Island of Labuan) 1990.</p>
Malta	<p>1. Companies entitled to exemption or relief from tax at the discretion of the Minister responsible for finance under section 12(2) of the Income Tax Act 1948.</p> <p>2. Companies obtaining exemption from tax under section 86 of the Merchant Shipping Act 1973.</p> <p>3. Companies obtaining exemption or relief from tax under section 30 of the Malta International Business Activities Act 1988 or section 30 of the Malta Financial Services Centre Act 1988.</p> <p>4. Companies obtaining exemption or relief from tax under section 18 of the Malta Freeports Act 1989.</p>
Morocco	Companies receiving a tax benefit under Law 58–90 of 1992 (offshore financial centres).
Netherlands	<p>1. Companies which are regarded as Foreign Sales Corporations under section 922(a) of the United States Internal Revenue Code 1954.</p> <p>2. A company (“The first company”) receiving interest, rents or royalties in an accounting period directly or indirectly from a Dutch company (“the second company”) which is connected with the first company within the meaning of section 839 of the Taxes Act, in circumstances where–</p> <p>(a) the second company does not satisfy the income and gains requirement in regulation 5 as respects its accounting period in which the interest, rents or royalties were paid, and</p> <p>(b) the aggregate of the non-local source income of the first company in its accounting period in question and the interest, rents and royalties received by it from the second company in that period exceeds whichever is the greater of–</p> <p>(i) £50,000 or, where that period is less than twelve months in duration, that amount proportionately reduced, and</p> <p>(ii) an amount equal to ten per cent of its commercially quantified income arising in that period.</p>
Pakistan	Companies deriving royalties, commissions or fees which are exempt from tax under paragraph 139 in Part I of the second Schedule to the Income Tax Ordinance 1979.
Philippines	1. Companies authorised under Presidential Decree 1034 of 30th September 1976, or

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	<p>under Presidential Decree 1035 of 30th September 1976, to operate an offshore Banking Unit or a Foreign Currency Deposit Unit as defined in those Decrees.</p> <p>2. Companies receiving interest on deposits with a Foreign Currency Deposit Unit, or other interest subject to the reduced rates of tax under section 27(D) of the National Internal Revenue Code 1997.</p>
Portugal	<p>Companies obtaining tax benefits under Decree Law 502/85 of 30th December 1985, Articles 41 and 51(g) of the Tax Benefits statute (EBF) approved by Decree Law 215/90 of 31st August 1989 (free zone in Madeira), or Decree Law 501/85 of 28th December 1985 as implemented by Decree Law 63/87 of 5th February 1987 (free zone in the Azores).</p>
Puerto Rico	<p>1. Companies obtaining a tax benefit under section 2(o) of the Industrial Incentive Act 1978 (designated service industries).</p> <p>2. Companies obtaining a tax benefit under section 25 of the International Banking Centre Regulatory Act 1989 (International Banking Entities).</p>
Singapore	<p>1. Any company obtaining tax concessions under Ministry of Finance Regulations pursuant to section 43A, and sections 43C to 43K, of the Income Tax Act.</p> <p>2. Companies obtaining exemption from tax on the income of a shipping enterprise in accordance with section 13A of the Income Tax Act.</p> <p>3. Companies obtaining relief from tax in accordance with sections 45 to 55 (international trade incentives), and sections 75 to 84 (warehouse and service incentives), of the Economic Expansion Incentives (Relief from Income Tax) Act.</p> <p>4. Companies deriving dividends from a company or companies deriving income from one or more of the activities falling within paragraphs 1 to 3 above.</p>
Spain	<p>1. Companies which are registered in the official register of the Canary Islands Special Zone (Zona Especial Canaria) established under Law 19/1994 and which benefit from the special low tax rate applied to such companies.</p> <p>2. Companies benefiting from the alternative taxation regime for co-ordination centres established by the provincial governments of the Basque Country under laws pursuant to Norma Foral 3/1996 of 26th June 1996, Norma Foral 7/1996 of 4th July 1996, and Norma Foral 24/1996 of 5th July 1996.</p>
Sri Lanka	<p>Companies obtaining relief or exemption from income tax under any of the following provisions of the Inland Revenue Act 1979–</p> <ul style="list-style-type: none"> <li>(a) section 8(c)(iv) (foreign currency banking units);</li> <li>(b) sections 10(d) and 15(b) (income derived from approved bank accounts);</li> <li>(c) section 10(e) (interest of newly resident companies);</li> <li>(d) section 15(cc) (services rendered outside Sri Lanka);</li> <li>(e) section 15(p) (re-export of approved products).</li> </ul>
Tanzania	<p>Companies relieved or exempted from income tax under section 15(1) or (1A) of the Income Tax Act 1973.</p>

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	<p>Thailand Companies obtaining a tax benefit under Royal Decree 280 of 22nd September 1992 (offshore banking units).</p> <p>Tunisia Companies obtaining exemption from, or reduction of, tax under Law 76/63 of 12th July 1976 (financial and banking institutions dealing with non-residents).</p> <p>United States Domestic International Sales Corporations as defined in section 992(a) of the Internal Revenue Code 1954.</p> <p>History: Entry in respect of Ireland omitted by SI 2002/2406, reg. 2 with effect from 11 October 2002 in relation to accounting periods beginning on or after that date.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Section 747-756 of ICTA 1988 and Schedules 24-26.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. The CFC rules have been subject to litigation, regarding whether it is contrary to EU law to tax profits arising in other territories. The relevant question relates to whether the arrangement is artificial and this has led to the CFC reform described in the below section for Measure no.2. The new CFC regime (described in the below section for Measure no.3) will replace the above-described rules for accounting periods beginning on or after 1 January 2013.</p> <p>There have been 3 separate cases litigated in relation to CFCs:</p> <p>(a) <i>Cadbury Schweppes case</i> - The ECJ held that the UK CFC rules are contrary to the EC Treaty, unless they only relate to "wholly artificial arrangements intended to escape the national tax normally payable".</p> <p>(b) <i>Vodafone 2 case</i> - The Court of Appeal held that the UK CFC regime is capable of being interpreted in a way which conforms with the EC Treaty and cannot therefore be disapplied.</p>

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	<p>(c) <i>CFC and Dividend Group Litigation</i> – awaiting judgement</p> <p>This case should address the complex interaction of the CFC regime with the FII GLO in relation to ADP dividends (Note: ADP was a previous exemption whereby if enough dividends were paid from the CFC to the UK company then the CFC was excluded from the CFC charge). We understand that in the High Court hearing (test case Prudential) HMRC accepted that the UK taxation of third country (i.e. non-EU) portfolio dividends is contrary to the EC Treaty. The High Court case was suspended pending the Supreme Court judgement in FII GLO 23 May 2012 and is now expected to recommence with judgment expected in early 2013.</p>
<p><b>Measure n°2: Controlled Foreign Companies – Reform</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. The CFC (Controlled Foreign Companies) legislation is currently undergoing reform. Finance Bill 2012 was published on 29 March 2012 and includes the draft legislation for the new CFC regime, which is subject to consultation. The new CFC regime will apply for accounting periods beginning on or after 1 January 2013, and, as before, aims to prevent UK profits being artificially diverted outside the UK. HMRC have described the policy objective for the reform as to introduce “a modernised CFC regime that better reflects the way that businesses operate in a global economy whilst maintaining adequate protection against artificial diversion of UK profits.”</p> <p>Under the new (draft) legislation, a non-UK resident company is a CFC if it is controlled by a UK resident person or persons, and only those profits which are attributable to the</p>

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UK will be apportioned to and taxed in the UK (i.e. those profits which are determined to have been artificially diverted from the UK). The legislation sets out several factors which are used to determine which profits should be apportioned to the UK.

The factors are different depending on the type of profits in question (i.e. whether they are profits attributable to UK activities, non-trading finance profits, profits deriving from captive insurance business, etc).

The draft legislation still includes entity level exemptions, whereby entities falling within these exemptions are excluded from the CFC charge. These entity level exemptions include the “low profit exemption”, “low profit margin exemption”, “tax exemption” (broadly, if the local tax is at least 75% of the corresponding UK tax), and the “excluded territories exemption”. Under the excluded territories exemption, a CFC is excluded from the CFC if it meets certain conditions including being resident in an excluded territory (i.e. one specified as such in regulations made by the HMRC Commissioners). This list of territories is included in the December 2011 draft of the new legislation but could be subject to amendments.

The draft list includes most EU territories and many Third Countries:

- Part I: Excluded Territories**

Afghanistan	Algeria	Angola
Argentina	Armenia	Aruba
Australia	Austria	Azerbaijan
Bangladesh	Barbados	Belarus
Belgium	Belize	Benin
Bolivia	Botswana	Brazil
Brunei	Burundi	Cameroon
Canada	China	Coast Spain
Colombia	Croatia	Cuba
Czech Republic	Democratic Republic of the Congo	Denmark
Dominican	Ecuador	Egypt

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	<p>El Salvador Faroe Islands France Germany Guyana India Israel Jamaica Lesotho Malawi Mexico Namibia Nigeria Panama Philippines Puerto Rico Russia Sierra Leone Solomon Islands Swaziland Thailand Turkey United States Vietnam</p> <p>Estonia Fiji Gabon Ghana Honduras Indonesia Italy Japan Libya Malaysia Monaco Netherlands Norway Papua New Guinea Poland Republic Saudi Arabia Slovakia South Africa Sweden Trinidad and Tobago Uganda Uruguay Zambia</p> <p>Falkland Islands Finland Gambia Greece Iceland Iran Ivory Kenya Luxembourg Malta Morocco New Zealand Pakistan Peru Portugal Republic of Korea Senegal Slovenia Sri Lanka Tanzania Tunisia Ukraine Venezuela Zimbabwe</p> <p>• <b>Part II: Specified cases</b></p> <p>1. For the purposes of regulation 4 a specified case is a CFC which, (a) is authorised and regulated to carry on insurance business, and (b) carries on that insurance business in Luxembourg.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. This is a future measure – draft legislation is contained in Schedule 20 of Finance Bill 2012. This legislation will be inserted as Part 9A of TIOPA 2010.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. The 2011 budget report sets out the expected cost of the full reform to the CFC rules: £210m in 2012-13, £540m in 2013-14, £770m in 2014-15 and £840m in 2015-16.</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this</p>	<p>6. Not applicable as this is a future measure. Case law regarding the current CFC legislation is described for Measure no. 1 above.</p>

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measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

### Measure n°3: Future measure - General Anti Avoidance Rule

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. The introduction of a new general anti-avoidance provision (or GAAR) for corporation tax has been proposed by the UK government.

A study was carried out by Graham Aaronson QC into whether a GAAR is feasible in the UK and the report was published on 21 November 2011. The report recommends that a narrowly focussed GAAR would be beneficial for the UK tax system.

Mr Aaronson recognises that in a complex tax system such as the UK, business and individuals are entitled to undertake "sensible and responsible tax planning". He proposes a narrowly targeted GAAR to be targeted at abusive arrangements, and initially covering income tax, corporation tax, capital gains tax, petroleum revenue tax and national insurance contributions. The overarching principle is that the GAAR "should target those highly abusive contrived and artificial schemes which are widely regarded as intolerable".

The draft legislation describes reasonable tax planning as an arrangement which "can reasonably be regarded as a reasonable exercise of choices afforded by the provisions of

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	<p>the Acts".</p> <p>The government are re-launching the GAAR proposals 22 June 2012, which are subject to consultation with a view to legislation in Finance Bill 2013.</p>
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. N/A. This is a future measure – the consultation document is expected to be released shortly.
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. Before the May 2010 election the Liberal Democrats had estimated that a general anti-avoidance rule could raise £2.1bn per year in corporation tax. However, this figure is likely to be smaller if the scope of the GAAR is narrowed (as suggested in Graham Aaronson's report).
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. Not applicable as this is a future measure.
<b>Measure n°4: Possible changes to income tax rules on interest – Yearly interest</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. Currently, whether interest is "yearly interest" relates to the duration of the loan. Withholding tax is levied by the UK on yearly interest but not on interest relating to loans



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	<p>of less than one year. The withholding tax charged is usually reduced to zero where the UK has a Double Tax Treaty with the territory in question where the company in receipt of the interest resides.</p> <p>HMRC has released a document entitled “possible change to income tax rules on interest”. Within this document it is proposed that references to “yearly interest” are removed from the tax legislation such that there is no longer a distinction between yearly interest and interest on loans of less than one year. If this change were to be implemented, this would significantly increase the administrative burden on all loans from non-UK lenders. Additionally, withholding tax would be charged on loans of less than one year from countries with which the UK does not have a Double Tax Treaty which reduces UK withholding tax down to nil. As the UK has a Double Tax Treaty with each of the EU Member States, the withholding tax would mainly be chargeable with respect to loans from third countries.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. N/A – possible future change</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not yet available</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. Not applicable as this is a future measure.</p>

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### Measure n°5: Anti-arbitrage

<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Under these rules, HMRC can give a UK company notice under this section if they consider that certain conditions are satisfied: that the company is engaged in a “deduction scheme” which is such that the company is able to claim a deduction against its profits, the main purpose (or one of the main purposes) of the scheme is to achieve a UK tax advantage for the company, and the UK tax advantage is more than a minimal amount. There are several types of “deduction scheme”, but these broadly involve the use of a hybrid entity or hybrid instrument.</p> <p>The effect of a notice from HMRC is broadly that the company in question must calculate (or recalculate) its corporation tax liability or its income/ chargeable gains for the purposes of corporation tax, such that no deductions are taken (in respect of the specified transaction) so far as an amount is otherwise deductible/allowable in relation to the expense in question.</p> <p>The purpose of this legislation, as stated in the 2005 Budget report, is to “tackle arbitrage, where companies seek to gain a tax advantage by exploiting differences within and between tax codes and excessive claims for double taxation relief.”</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Part 6 TIOPA 2010.</p> <p>Chapter 4 of Part 2 of Finance (No 2) Act 2005 sets out the rules regarding “Avoidance involving tax arbitrage” for periods ending before 1 April 2010. Chapter 4 of F(No2)A</p>

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	<p>2005 was repealed by TIOPA 2010 which has effect for accounting periods ending on or after 1 April 2010. The “Tax Arbitrage” rules in Part 6 TIOPA 2010 are more detailed than those in F(No2)A 2005 but broadly include the same rules and are aiming to achieve the same objective. The rules described above are the current rules (i.e. those in TIOPA 2010).</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. The Budget 2005 report sets out the expected Exchequer yield as a result of this policy: £130m in 2005-6, £200m in 2006-7, £200m in 2007-8 (indexed figures).</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. None</p>
<p><b>Measure n°6: Transfer pricing – relaxation of requirements for SMEs</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. Other Specific Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. NCJ measure</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Under the Transfer Pricing basic rule, where a transaction occurs with non-arm's length terms then the profits and losses of a potentially advantaged person are to be calculated for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision.</p>

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	<p>However, there is an exemption to this rule for small and medium companies (Section 166), unless an exception in Section 167 applies. One such exception is that the other affected person or a party to a relevant transaction is a resident of a non-qualifying territory, where a qualifying territory is defined as one with double taxation agreements in place including a non-discrimination provision (or a territory defined as a qualifying territory in the regulations).</p> <p>Therefore, a small/medium sized company may be subject to the Transfer Pricing requirement explained above (where it may otherwise have been excluded from these requirements) if it is resident in a territory which does not have a double taxation agreement in place with the UK which contains a non-discrimination provision. The UK has Double Tax Treaties in place with all the EU Member States which contain a non-discrimination provision. Therefore it is expected that only Third Countries will be affected by this rule.</p> <p>The purpose of this legislation was to ensure that SMEs still abide by the basic Transfer Pricing principle in the case of a transaction where there is a control relationship with a party in a territory without a Double Tax Treaty that contains a non-discrimination provision.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Section 166 and 167 of TIOPA 2010.</p> <p>The transfer pricing regulations are set out in Part 4 of TIOPA 2010 (previously Schedule 28AA of ICTA 1988). This section was inserted by Finance Act 2004.</p> <p>The basic transfer-pricing rule is explained in section 147 of TIOPA 2010.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the</p>	<p>6. None</p>

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main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

### Measure n°7: Thin Capitalisation - overview

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. The Thin Capitalisation rules apply the Transfer Pricing rules to loan relationships between connected parties.

A company is "thinly capitalised" if its debt is higher than it would be on arm's length terms (for example if it has borrowed from connected parties, and therefore has debts higher than the amounts that would be lent by third parties). In this situation the company with the excessive debt must calculate what its debt would be under arm's length terms, and use only this amount in calculating their UK tax liability.

The transfer pricing rules aim to prevent parties who have a control relationship entering into transactions on a non-arm's length basis to obtain a tax advantage.

Therefore the aim of the Thin Cap legislation is to prevent groups making excessive loans to UK companies (who would not be able to borrow this amount / borrow on these terms on an arm's length basis) in order to obtain a deduction for UK tax purposes.

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<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. The thin cap rules are within the Transfer Pricing legislation (Part 4 of TIOPA 2010 for accounting periods ending on or after 1 April 2010; previously Schedule 28AA of ICTA 1988 – this Schedule was inserted by Finance Act 1998).</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. Thin Cap GLO:</p> <p>The Court of Appeal judgement of February 2011 largely equated an “arm’s length” test with the question of whether an arrangement was wholly artificial.</p> <p>The claimants have been refused permission to appeal, meaning that the Court of Appeal decision is final.</p> <p>We consider that the Court of Appeal decision is wrong as a matter of EU law, being in conflict with the ECJ’s decision against the UK in the Thin Cap GLO case.</p>
<p><b>Measure n°8: Thin Capitalisation – “acting together” rules</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. These rules apply the transfer pricing rules where persons have “acted together” regarding the financing of a company or partnership.</p> <p>Under these rules, a person (“P”) is indirectly participating in the management, control</p>

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	<p>or capital of a company at the time of the making of a financing arrangement in that company if: P and other persons acted together in relation to the financing arrangements; and P would be taken to have control of the company if, at any relevant time, there were attributed to P the rights and powers of each of these other persons.</p> <p>In these cases the participation condition is therefore met, which is a pre-condition to the basic Transfer Pricing rules. i.e. the Transfer Pricing rules will therefore be in point.</p> <p>The aim of this legislation is to prevent persons who indirectly participate in the management of companies avoiding the Transfer Pricing rules in arrangements with these companies.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Sections 161 and 162 of TIOPA 2010.</p> <p>These rules have been rewritten from Para 4A Schedule 28AA of ICTA 1988, which was inserted by F(No2)A 2005.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. None</p>
<p><b>Measure n°9: Unallowable purpose</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General</p>	<p>1. General Anti-abuse Measure</p>

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Anti-abuse Measure]	
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. The aim of this legislation is to prevent companies obtaining tax relief as a result of an arrangement that they are party to for a non commercial reason (e.g. for tax purposes). The aim of the legislation is therefore to prevent tax avoidance for interest or a manufactured payment to the extent it is attributable to an unallowable purpose.</p> <p>Under this legislation, a company is not entitled to any relevant tax relief so far as this is in respect of interest or a manufactured payment where the payment is attributable to the unallowable purpose. These rules are applicable if an interest payment or a manufactured payment (defined as a manufactured dividend/interest payment or a payment which constitutes a fee) is made by a company as part of arrangements which have an unallowable purpose, and any of the interest or manufactured payment is attributable to the unallowable purpose, and the company is not subject to another relevant tax relief restriction.</p> <p>An arrangement has an unallowable purpose if one of the reasons why the company is party to them (or why it is party to any related transaction or any transaction in pursuance of the arrangements) is not among the business/commercial purposes of the business.</p>
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	<p>4.</p> <ul style="list-style-type: none"> <li>• Interest: Sections 441 and 442, CTA 2009</li> <li>• Manufactured payments: Sections 799 and 800 of CTA 2010.</li> <li>• The unallowable purpose interest rules were introduced in Para 13 of Schedule 9 Finance Act 1996.</li> <li>• The unallowable purpose manufactured payment rules were introduced by Finance</li> </ul>



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	<p>Act 2004 as an addition to Schedule 23 of ICTA 1988. These rules have since been re-written to sections 799 and 800 of CTA 2010.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. A.H. Field (Holdings) Limited v HMRC – in March 2012 the First Tier Tribunal (FTT) found in HMRC's favour when considering the application of the unallowable purpose rules. The taxpayer appeared to have weak commercial grounds for entering into the loan note (which was part of a series of circular funding transactions and had the result of reducing the group's overall tax liability). The FTT determined that tax avoidance was a main purpose of entering into the loan note and therefore that the borrowing costs were not deductible for tax purposes.</p>
<p><b>Measure n°10: Worldwide Debt Cap</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. The Worldwide Debt Cap rules impose a restriction on interest deductions where the UK interest expense of a group is high compared to the group's worldwide interest expenses. The debt cap rules apply to accounting periods beginning on or after 1 January 2010. The aim of this legislation is to ensure that the deductions for UK interest expenses are not higher than the interest expenses of the group as a whole, and therefore that the interest deductions taken in the UK (for tax purposes) are not excessive.</p>

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	<p>Under this legislation, the total UK interest deductions are capped at the sum of the interest expenses (and similar expenses) in the financial statements of the worldwide group, i.e. the group's aggregate UK tax deduction (for UK companies with net finance expenses) is limited to the consolidated gross finance expense of the group.</p> <p>However, these calculations are only required if the UK net debt of the group (i.e. the aggregate of the net debt of each relevant UK company, where net debt is the relevant liabilities less the relevant assets) exceeds 75% of the worldwide gross debt of the group (the sum of the relevant liabilities of the group). If the UK net debt does not exceed the worldwide gross debt then the Debt Cap rules do not apply to the group.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Part 7 of TIOPA 2010</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A as the measure applies to accounting periods starting on or after 1 January 2010 and the first relevant computations have only just been filed.</p>
<p><b>Measure n°11: Disallowance of trading losses on a change of company ownership</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure</p>

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<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Generally, when a UK company incurs trading losses in a period, these losses can be carried forward to be offset against future losses of the same trade.</p> <p>There is however a restriction on these trading losses on a change in company ownership. The rules apply if there is a company experiences a change in ownership, and then there is a major change in the nature or conduct of the company's trade within 3 years of the change in ownership. Alternatively the rules apply if the change in ownership occurs after the scale of the trading activities of the company becomes small/ negligible.</p> <p>The effect of these rules is that any losses which the company had carried forward cannot be used to offset profits arising after the date of the change in ownership.</p> <p>The purpose of this legislation is to prevent a group buying a loss-making company so that they can access the trading losses of this company to reduce their tax liability.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Chapter 2 – Chapter 8 of Part 14 CTA 2010, i.e. sections 672 - 730 (formerly section 768 of ICTA 1988). Originally enacted in Finance Act 1961.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. We are not aware of any case law in relation to this rule.</p>

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### Measure n°12: De-grouping charge (capital gains)

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. This rule applies to the situation where a company (company A) has acquired an asset from another UK group company under section 171 TCGA (i.e. for proceeds giving rise to neither a gain nor a loss). Where this is the case, if company A then leaves the group within 6 years of the s171 acquisition, a de-grouping charge will arise.

The charge is calculated by calculating the gain that would have arisen if, at the time of the s171 acquisition, company A had disposed of the acquired asset for market value and then immediately reacquired this asset at market value.

The aim of this legislation is to prevent groups from transferring an asset to a “shell” company with no tax consequences and then selling the shell company to a third party, as a way of avoiding paying tax on the sale of the asset to the third party.

The mechanics of the charge have changed as part of Finance Act 2011. Under the previous legislation (which had effect up until 19 July 2011), this amount was chargeable on company A. However, since 19 July 2011, this is chargeable in company A’s parent – the amount is calculated in the same way but is then added to the parent’s gain on its disposal of company A (instead of being charged in company A). This means that if the Substantial Shareholding Exemption applies to the disposal of company A then the de-grouping charge will also be exempted from the charge to tax. This allows a group to sell one of its trades without incurring a tax charge, which is considered fair as this is the

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	result they would have achieved if they had structured the sale in a different way.
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Section 179 of TCGA 1992
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. Not available
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	<p>6. Johnston Publishing (North) –v- HMRC:</p> <p>This case concerned an exemption for the de-grouping charge where associated companies left a group together (section 179(2) of TCGA 1992). The Court of Appeal held that the exemption for transfers between associated companies leaving the group together requires the companies to have been associated - i.e. would by themselves have formed a group - not only when they left the group, but also earlier when the asset was transferred between them (or any two of them).</p> <p>The wording of Section 179(2) has since been amended to clarify that this is the case.</p>
<b>Measure n°13: Treasury Consent (now repealed)</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. Other Specific Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. NCJ Measure
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	3. The Treasury Consent rules were introduced in 1951 alongside the Exchange Control requirements. This was to provide HMRC with a means of controlling overseas activities

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	<p>of UK groups.</p> <p>The Treasury Consent rules (repealed in FA 2009) contained the rules regarding the “migration etc” of companies. Under these rules, certain transactions (such as for a body corporate to cause/permit the issue or transfer of shares/debentures in a non-UK company in which it has control) were unlawful unless Treasury consent was obtained for the transaction beforehand. For transactions carried out on or after 1 July 1990, FA 1990 inserted Section 765A. Section 765A provided that these rules shall not apply to an EU member state. Therefore only transactions concerning entities in non-EU territories were subject to these requirements.</p> <p>In FA09 these rules were repealed with effect in relation to transactions carried out on or after 1 July 2009. For transactions carried out on or after these dates, the International Movement of Capital rules are in point – these are described below.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Section 765 and 765A of ICTA 1988. Section 765A was inserted by Finance Act 1990.</p> <p>Sections 765 and 765A were repealed by FA 2009.</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. The Treasury stated that they estimated that £300m was saved per year through the protection of the tax base due to the Treasury Consent rules.</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. We are not aware of any case law in relation to the Treasury Consent rules. There was a panel which taxpayers could appeal to if their request was refused; however these appeals were rare.</p>

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### Measure n°14: International Movement of Capital

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. General Anti-abuse Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. N/A

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. Under the International Movement of Capital rules, the “reporting body” must report a “reportable transaction” to an officer of Revenue and Customs within 6 months of the transaction.

“Reportable transactions” include transactions such as the issue/transfer of shares/debentures in a foreign subsidiary where the value of the transaction exceeds £100m (when aggregated with other transactions in a series of transactions). However, such transactions are not “reportable transactions” if they meet certain conditions, for example if the issue/transfer of debentures/shares is to a UK group company or to a person not connected with the reporting body (note that the definition of “person” includes corporate entities).

These rules were brought in as part of Finance Act 2009, and have effect in relation to transactions carried out on or after 1 July 2009. Finance Act 2009 also repealed the Treasury Consent rules described above.

The purpose of the International Movement of Capital rules is to gather information. Through these rules, HMRC are kept informed of the major international transactions of UK groups.

4. In which legal/regulatory/administrative provision(s) is the measure provided?

4. Schedule 17 of Finance Act 2009

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[Reference]	
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. None
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. None.
<b>Measure n°15: Tax Avoidance Disclosure regime</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. The rules are aimed at those marketing certain tax avoidance schemes and arrangements. They are designed to improve transparency in the tax system and to allow early detection of tax avoidance schemes.</p> <p>These rules are relevant to arrangements which fall within a description prescribed by the Treasury by regulations which enable (or might be expected to enable) a person to obtain a tax advantage, where the main benefit (or one of the main benefits) that might be expected to arise from the arrangements is a tax advantage.</p>



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	<p>Broadly, a scheme needs to be disclosed to HMRC if it meets any of the applicable “Hallmarks”, such as where the promoter strives to keep the scheme confidential, or where the promoter charges a premium fee. There are also hallmarks in relation to certain pension schemes, certain loss schemes, and others.</p> <p>[NB. In the OECD’s March hybrids report, the working party recommended that countries without a TAD system (or similar) should implement a similar system.]</p> <p>Note: According to Section 307(1), a person is a promoter–</p> <ul style="list-style-type: none"> <li>(a) in relation to a notifiable proposal, if, in the course of a relevant business, the person (“P”)– <ul style="list-style-type: none"> <li>(i) is to any extent responsible for the design of the proposed arrangements,</li> <li>(ii) makes a firm approach to another person (“C”) in relation to the notifiable proposal with a view to P making the notifiable proposal available for implementation by C or any other person, or</li> <li>(iii) makes the notifiable proposal available for implementation by other persons, and</li> </ul> </li> <li>(b) in relation to notifiable arrangements, if he is by virtue of paragraph (a)(ii) or (iii) a promoter in relation to a notifiable proposal which is implemented by those arrangements or if, in the course of a relevant business, he is to any extent responsible for– <ul style="list-style-type: none"> <li>(i) the design of the arrangements, or</li> <li>(ii) the organisation or management of the arrangements.</li> </ul> </li> </ul>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>Part 7 of Finance Act 2004 (i.e. sections 306 – 319).</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the</p>	<p>5. Not available</p>

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concerned MS of the effectiveness and sufficiency of the measures.

6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.

6. None

### Measure n°16: TIEAs with offshore financing centres

1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]

1. New Specific Measure

2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

2. NCJ Measure

3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)

3. At the April 2009 G20 summit, Gordon Brown (then the UK Prime Minister) put forward the suggestion for the G20 countries to put pressure on offshore financing centres to enter into a minimum of 12 Tax Information Exchange Agreements (TIEAs) with larger territories in order to avoid being categorised as NCJs.

This measure was not confined to the UK, but was a partly UK-led initiative.

Annex II to the TFEU lists the “overseas countries and territories to which the provisions of part four of the treaty on the functioning of the European Union apply”. 12 out of the 26 territories listed are overseas territories of the UK (listed below). The UK is therefore in some ways responsible for the conduct of these territories.

- Anguilla,

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	<ul style="list-style-type: none"> <li>• Cayman Islands,</li> <li>• Falkland Islands,</li> <li>• South Georgia and the South Sandwich Islands,</li> <li>• Montserrat,</li> <li>• Pitcairn,</li> <li>• Saint Helena and Dependencies,</li> <li>• British Antarctic Territory,</li> <li>• British Indian Ocean Territory,</li> <li>• Turks and Caicos Islands,</li> <li>• British Virgin Islands,</li> <li>• Bermuda.</li> </ul>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. N/A (TIEA)</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. N/A</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6. N/A</p>
<p><b>Measure n°17: Disclosure of interest paid by banks, etc.</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure</p>

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<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. Section 17 TMA 1970: Where interest is paid without the deduction of income tax or after the deduction of income tax, the bank shall, if required to do so by notice from an inspector, make and deliver to the inspector a return of all interest paid or credited by them. This must include specified information including the names and addresses of all persons to whom interest was paid/credited, and the amount of interest. This only applies to money received or retained in the UK (i.e. to UK bank accounts).</p> <p>Section 18 TMA 1970: Any person by whom (or through whom) any interest is paid in the year without deduction of income tax or after deduction of income tax, may be required by a notice from the inspector to disclose details including the name and address of the person receiving/paying the interest and the amount of the interest.</p> <p>The purpose of this legislation is that HMRC can demand information on interest if they feel that the full amount of tax has not been paid on this interest.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]</p>	<p>4. Sections 17 and 18 of Taxes Management Act 1970</p>
<p>5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.</p>	<p>5. Not available</p>
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level</p>	<p>6. HMRC won a procedural case against Barclays c 2008 whereby Barclays were ordered to provide details of offshore bank accounts customers had with them – i.e. they were defending whether or not they did indeed need to disclose the customers' details. Barclays lost this case i.e. the Court ruled that Barclays were obliged to disclose this information.</p>

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summary of the given case law.	
<b>Measure n°18: Deemed disposal of assets on company ceasing to be resident in UK (i.e. exit tax)</b>	
1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]	1. General Anti-abuse Measure
2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]	2. N/A
3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)	<p>3. If a company ceases to be resident in the United Kingdom, then the company is deemed to dispose of all its assets at market value (except those specifically exempted) immediately beforehand, and to reacquire them immediately. This results in a chargeable gain/loss based on the market value at the time that the company leaves the UK.</p> <p>This is to ensure that where a company leaves the UK, HMRC still get tax in respect of the assets that are no longer held in the UK.</p> <p>Note: There are equivalent exit tax provisions for Chargeable Intangible Assets (section 859 CTA 2009 – treated as disposing of the asset for market value immediately before company ceases to be UK resident, and reacquiring for same value), Loan Relationships (section 333 of CTA 2009 – i.e. treated as disposing of assets and liabilities for fair value beforehand and immediately reacquiring for same amount), and Derivatives (section 609 of CTA 2009 – same treatment as for Loan Relationships).</p>
4. In which legal/regulatory/administrative provision(s) is the measure provided? [Reference]	4. Section 185 of the Taxation of Capital Gains Act 1992.
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the	5. Not available

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concerned MS of the effectiveness and sufficiency of the measures.	
<p>6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.</p>	<p>6.</p> <ul style="list-style-type: none"> <li>National Grid Indus (C-371/10): This case concerned a Dutch company which transferred its effective management to the UK.</li> <li>Judgement of November 2011: The Court of Justice of the European Union confirmed that the company has access to the "Freedom of Establishment" principle. The ECJ said that an exit tax may be justified; however the taxpayer should have the option of deferring the tax.</li> </ul>
<p><b>Measure n°19: HMRC's new penalties regime</b></p>	
<p>1. Is the measure a New Specific Measure, an Other Specific Measure or a General Anti-abuse Measure? [New Specific Measure / Other Specific Measure / General Anti-abuse Measure]</p>	<p>1. General Anti-abuse Measure</p>
<p>2. If the answer under 1. is New Specific Measure or Other Specific Measure, is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]</p>	<p>2. N/A</p>
<p>3. Please provide a general description of the measure including also the purpose of the measure (approx. 15 lines)</p>	<p>3. In 2007 HMRC introduced a new regime regarding penalties for errors in tax returns. This regime sets out a formula for calculating the size of the penalty payable. A penalty is based on the potential lost revenue caused by the mistake, and is adjusted according to the actions of the taxpayer. For example, deliberate action results in a higher penalty than careless action, and deliberate and concealed actions result in higher penalties than if the action was deliberate but not concealed.</p> <p>The aim of these rules is to encourage taxpayers to be honest in their tax returns and, if a mistake is discovered, to be honest and cooperative with HMRC regarding the mistake.</p>
<p>4. In which legal/regulatory/administrative provision(s) is the measure provided?</p>	<p>4. Schedule 24 of Finance Act 2007</p>

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[Reference]	
5. Please provide, if available, the (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues), and the evaluation made by the concerned MS of the effectiveness and sufficiency of the measures.	5. Not available.
6. Please provide, if available, a non-exhaustive and high-level summary of the main case law issued since 1 January 2007 (final or pending) in relation to this measure. The summary should include the main tendencies of the case law, when relevant in order to have a full understanding of the measure. Also in case of "landmark" decisions prior to 1 January 2007, please provide a high-level summary of the given case law.	6. We are not aware of any case law.

## Part 3: Detailed Information

### New Specific Measure n°1: TIEAs with offshore financing centres

1. Is the measure an ATP Measure and/or a NCJ Measure? [ATP Measure / NCJ Measure / Both]

*(Same answer as in Part 2 for the New Specific Measure at stake)*

1. NCJ Measure

2. Legal grounds governing this measure.

2.1. Legal provision(s)? [Reference] *(Same answer as in Part 2 for this measure)*

2.2. Practice notes? [Reference]

2.3. Parliamentary works? [Reference]

2.4. Other source? [Reference]

2.1. N/A (TIEA)

2.2.

2.3.

2.4.

3. Can you please provide a detailed description of the measure? This description should include in particular the following elements:

3.1. Main mechanisms? [Description]

3.2. Purpose (i.e. the problem and the countries which are supposed to be tackled by the measure)? [Description]

3.3. Scope Rationae Personae? [Description]

3.4. Scope Rationae Materiae? [Description]

3.5. Effects (sanctions, incentives linked to complying with the measure, etc.)? [Description]

3.6. Burden of proof? [Description]

3.7. Other relevant point? [Comments]

3.8. Is it a new measure / an amended measure or a possible future measure? [new measure / amended measure / possible future measure]

3.9. Are there any intentions or proposals to change the measure? [Comments]

At the April 2009 G20 summit, Gordon Brown (then the UK Prime Minister) put forward the suggestion for the G20 countries to put pressure on offshore financing centres to enter into a minimum of 12 Tax Information Exchange Agreements (TIEAs) with larger territories in order to avoid being categorised as NCJs.

This measure was not confined to the UK, but was a partly UK-led initiative.

Annex II to the TFEU lists the “overseas countries and territories to which the provisions of part four of the treaty on the functioning of the European Union apply”. 12 out of the 26 territories listed are overseas territories of the UK (listed below). The UK is therefore in some ways responsible for the conduct of these territories.

- Anguilla,
- Cayman Islands,
- Falkland Islands,
- South Georgia and the South Sandwich Islands,
- Montserrat,
- Pitcairn,



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	<ul style="list-style-type: none"> <li>• Saint Helena and Dependencies,</li> <li>• British Antarctic Territory,</li> <li>• British Indian Ocean Territory,</li> <li>• Turks and Caicos Islands,</li> <li>• British Virgin Islands,</li> <li>• Bermuda.</li> </ul> <p>3.2.</p> <p>3.3.</p> <p>3.4.</p> <p>3.5.</p> <p>3.6.</p> <p>3.7.</p> <p>3.8. New measure.</p> <p>3.9.</p>
<p>4. Impact assessment and evaluation</p> <p>4.1. Before enactment: were there impact assessments made / issued / discussed during the preparation of the measure (including a quantitative impact)?</p> <p>4.1.1. [Yes/No]</p> <p>4.1.2. [If Yes, please describe]</p> <p>4.1.3. [If Yes, please enclose the documentation you are referring to (e.g.</p>	<p>4.1.1.</p> <p>4.1.2.</p> <p>4.1.3.</p> <p>4.2.1.</p> <p>4.2.2.</p>

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<p>report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p> <p>4.2. After enactment: are there evaluations (including effectiveness and sufficiency) of the measure issued or discussed during any parliamentary works or in any other official administrative doctrine publicly available?</p> <p>4.2.1. [Yes/No] 4.2.2. [If Yes, please describe] 4.2.3. [If Yes, please enclose the documentation you are referring to (e.g. report from the Parliament, study made by a public body, communications from the tax authorities, etc.)]</p>	<p>4.2.3.</p>
<p>5. Litigations</p> <p>5.1. Is there any litigation (pending or decided) before local Courts (first instance, appeal, Supreme Court, etc.) or before EU/international Courts (prejudicial question, infringement procedure, etc.) which questions the measure itself (i.e. not cases where the measure is just involved)? 5.2. If Yes, what is the reasoning used? 5.3. Please provide a quantification of the outcome of the Court decision (e.g. penalties) when available.</p>	<p>5.1. 5.2. 5.3.</p>
<p>6. Other points that you would consider relevant to mention regarding this measure?</p>	<p>6.</p>

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