COMMISSION OF THE EUROPEAN COMMUNITIES

SEC (94) 1305 final
Brussels, 25 May 1994

COMMISSION RECOMMENDATION
of 25 May 1994
concerning the taxation of small and medium-sized enterprises

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EXPLANATORY MEMORANDUM

The importance of SMEs in creating jobs and stimulating growth has been emphasized on several occasions in declarations and resolutions by the European Council, the Council and Parliament. The European Council in Edinburgh on 11 and 12 December 1992 made a special call for measures to promote private investment, especially investment by SMEs.

The Commission White Paper on growth, competitiveness and employment stressed the responsibility of governments and the Community in creating an environment which is as conducive as possible to the competitiveness of enterprises, and in particular SMEs, given that their dynamism, productivity, flexibility and innovation are vital to the European economy.

The need to create a more favourable environment for enterprises is central to the strategic programme for the internal market[1] drawn up by the Commission. Support for the development of SMEs is essential if the internal market is to be fully effective. And improving the tax environment for SMEs is a key aspect of the initiatives proposed for that purpose.

The Commission has looked into the tax treatment of such enterprises, in line with the thinking put forward in the White Paper, with a view to making it easier for SMEs to meet the new requirements of competitiveness.

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1 COM(93) 632 final of 22 December 1993 - Communication from the Commission to the Council: "Making the most of the internal market": Strategic programme.

A detailed examination of how enterprises are taxed reveals a disparity in tax treatment depending on the legal form under which they operate (see findings in Annex). Because of their legal form, sole proprietorships and partnerships very often have to pay income tax on the whole of their income. The progressiveness of the tax scale means that the marginal rates of tax, while sometimes lower, are generally higher than the rates of corporation tax. This tends to create distortions of competition between enterprises on the basis of their legal form, particularly since the self-financing capacity of sole proprietorships and partnerships is likely to be squeezed compared with that of incorporated enterprises of the same size or even larger, owing to their heavier tax burden. In certain cases this may affect the very development of the enterprise. Given the high proportion of sole proprietorships and partnerships in the European Union (it is often estimated that one out of two firms is not an incorporated enterprise), this tax feature has a quite significant impact.

Some Member States have themselves introduced tax arrangements based on the concept of tax neutrality between incorporated and unincorporated enterprises. While tax neutrality is never complete, better equivalence is achieved and there is minimal interference between these arrangements and the general tax system. This special machinery is designed to ensure more equal tax treatment of firms' reinvested profits, irrespective of their legal form (Denmark and Greece), or place a ceiling on the progressive tax on trading income (Germany).

However, in most Member States, the solution most frequently advocated in such circumstances (even if its implications are complex and affect various fields outside that of taxation, especially the social field) is to turn the sole proprietorship or the partnership into an incorporated enterprise. Tax-relief measures are often available in order to facilitate such operations.

The Commission wishes to promote such arrangements throughout the Union by inviting the Member States which do not yet have provisions of this kind to adopt them or to take measures with equivalent effect.

The ideas outlined in this paper are based on the available data and the answers supplied by Member States to a questionnaire on how enterprises are taxed and what tax provisions are applied when a sole proprietorship or partnership converts into an incorporated company.

Conclusions

Given that the vast majority of small and medium-sized enterprises are unincorporated and considering their prime role in keeping economic activity dynamic in the Community and in creating jobs, the Commission is encouraging the Member States to adopt any measures designed to correct the deterrent effects of current taxation structures on the self-financing of sole proprietorships and partnerships. Greater fairness in the tax treatment of the profits retained or reinvested by those enterprises should, by giving them a chance to improve their self-financing capacity and strengthen their cash position, enable them to deal better with the difficulties typically encountered by SMEs, particularly at the bottom of the economic cycle, and to make the best possible use, thanks to increased capacity for investment, of the opportunities available when the economy recovers. These initiatives would also have the advantage of giving entrepreneurs genuine freedom of choice between the various legal forms under which to carry on their activity by reducing the significance of the taxation factor in their choice.

The special systems operated in Denmark and Greece, and the German mechanism, provide an interesting illustration of the possible options. Other measures having equivalent effect are also conceivable (e.g. a special investment reserve). It is for the Member States to choose those procedures which best suit their domestic taxation systems.

Even if, because of the impact in fields unrelated to taxation, the conversion of sole proprietorships or partnerships into incorporated companies does not necessarily constitute the ideal response to the situation described, it is still a response, and it is desirable for an entrepreneur to be able to choose, throughout the life of his business, the legal form which is best suited to its evolution. Moreover, this is the preferred approach in a number of Member States. For, while the majority of them consider that, legally speaking, these operations entail the cessation of a business activity, the repercussions which this normally has in tax terms are often attenuated.

An examination of the situation in the Community thus reveals that the tax provisions applied when sole proprietorships and partnerships are incorporated make it possible overall to guarantee a minimum level of tax neutrality when the legal status is changed. Isolated changes in tax legislation are nevertheless desirable, particularly in order to generalize the options for imputation of business losses to the owner or partner, when they cannot be carried over because of the change in legal status. And there is a need for a reduction in transfer taxes levied on contributions of assets which might be modelled on the deferment of taxation of capital gains often granted for the same assets. The Commission invites the Member States to improve the existing mechanisms or to introduce such mechanisms in order to ensure that, from the taxation point of view, the incorporation of sole proprietorships and partnerships can be undertaken as flexibly as possible.

These two approaches should not be regarded as mutually exclusive and the Member States are, in particular, invited to draw on the original ideas developed in certain Community countries, with a view to devising, in partnership with the interested parties, those solutions which are best suited to dealing with the problem of self-financing by small and medium-sized enterprises.

COMMISSION RECOMMENDATION

of 25 May 1994

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the second indent of Article 155 thereof,

Whereas on 28 July 1989 the Council adopted Decision 89/490/EEC on the improvement of the business environment and the promotion of the development of enterprises, and in particular small and medium-sized enterprises, in the Community[1], as revised by Council Decision 91/319/EEC[2];

Whereas in its resolution of 17 June 1992 on Community action to support enterprises, in particular small and medium-sized enterprises, including craft-industry enterprises[3], the Council confirmed its undertaking to support the consolidation of the action taken to help enterprises;

Whereas by its Decision 93/379/EEC[4], the Council adopted, from 1 July 1993, a programme to intensify the priority measures and to ensure the continuity of an enterprise policy; whereas the programme gives priority to improving the legal, fiscal and administrative environment of enterprises;

Whereas sole proprietorships and partnerships make up a large proportion of small and medium-sized enterprises, whose role in the creation of jobs has been emphasized on a number of occasions in different Commission communications, and, more particularly, in the White Paper on growth, competitiveness and employment; whereas it is necessary to promote the investment capacity of these enterprises;

Whereas the method of taxing sole proprietorships and partnerships, which are generally subject to personal income tax, a tax which is progressive in nature in particular by comparison with corporation tax, hampers the development of the self-financing capacity of such enterprises and, in an economic environment where access to external financing is becoming more difficult, consequently restricts their investment capacity;

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(1) OJ No L 239, 16.8.1989, p. 33.
(2) OJ No L 175, 4.7.1991, p. 32.
(3) OJ No C 178, 15.7.1992, p. 8.
(4) OJ No L 161, 2.7.1993, p. 68.

Whereas the current structure of rates of personal income tax and rates of corporation tax distorts competition between enterprises, depending on their legal form, to the detriment of sole proprietorships and partnerships; whereas it is desirable to work for greater tax neutrality, at least as regards the implications which systems of taxation have for profits reinvested by enterprises and, hence for their self-financing capacity;

Whereas several Member States have already taken measures to limit the existing distortion between taxation systems, according to whether an enterprise's profits are charged to personal income tax or corporation tax, either by granting sole proprietorships and partnerships the right to opt for payment of corporation tax on reinvested profits, or by limiting the progressiveness of personal income tax by comparison with the rates of corporation tax applied to incorporated companies;

Whereas the incorporation of sole proprietorships or partnerships is likely to resolve, despite its impact on areas unrelated to taxation which affect the entrepreneur and the enterprise, the problem of the level of taxation of the non-distributed profits of these enterprises; whereas such an operation must be carried out without giving rise to a significant revenue cost,

HEREBY RECOMMENDS:

Article 1

Member States are invited to adopt those tax measures necessary to correct the deterrent effects of the progressive income tax payable by sole proprietorships and partnerships in respect of reinvested profits. In particular, they should consider the possibility of:

(a) giving these enterprises and partnerships in this respect the right to opt to pay corporation tax and/or

(b) restrict the tax charge on reinvested profits to a rate comparable to that of corporation tax.

Article 2

Member States are invited to adopt or extend those measures necessary to eliminate the tax obstacle to changes in the legal form of enterprises, in particular the incorporation of sole proprietorships or partnerships.

Article 3

Member States are invited to communicate, by 31 July 1995, the texts of the main laws, regulations and administrative provisions which they adopt in response to this Recommendation and inform the Commission of all subsequent changes made in this field.

Article 4

This Recommendation is addressed to the Member States.

Done at Brussels, 25 May 1994

For the Commission

Ch. SCRIVENER
Member of the Commission

(2)

ANNEX

I. Current situation as regards the taxation of SMEs' profits

In view of the importance of SMEs for the European economy and their special nature as an economic and social organization, their current tax treatment in the Community should be examined to see how their profits are taxed and in particular whether or not there are derogation measures in this field under ordinary law that are designed specifically for SMEs.

1.1. Taxation of enterprises

How an enterprise is taxed generally depends on its legal form rather than on its size.

In the case of sole proprietorships, the enterprise's and the proprietor's income are taxed together, being charged to personal income tax.

Partnerships are usually taxed applying the principle of tax transparency: the profits are taxable in the hands of the partners in proportion to their rights, even if they did not actually draw on those profits. The conditions governing the taxation of partnerships are in effect very similar to those applying to sole proprietorships. However, in some Member States these firms are either subject de facto to corporation tax if they are engaged in industrial or commercial activities (Belgium, Spain), or they may opt (France) for the tax regime applicable to incorporated enterprises.

In the case of incorporated enterprises, corporation tax is charged on the profits earned by the enterprise itself. In principle, the shareholders and members of those enterprises are themselves taxable only in respect of the profits distributed to them.

1.2. Establishing the tax base

The industrial or commercial profits of sole proprietorships or partnerships subject to income tax are, in principle, determined in the same way as the profits of incorporated enterprises liable for corporation tax.

The rules governing exceptions under ordinary law essentially consist in flat-rate calculation of the taxable amount or simplification of the taxation procedures.

In practice, these arrangements generally concern only sole proprietorships in the craft sector or of very small size, given the thresholds for such measures (in France, for example, the flat-rate arrangements are available only to enterprises with a turnover of less than FF 500 000, or FF 150 000 in the case of service enterprises) and the fact that they are rarely adjusted. While they offer the heads of small enterprises the advantage of a genuine simplification of their taxation and accounting obligations, these arrangements have the drawback of not encouraging them to introduce the management tools they might need in order to expand their business. In practice, the enterprises covered are often those operating at a local level.

Enterprises subject to corporation tax are always excluded from the flat-rate arrangements. However, in a number of Member States such companies may, in particular under the fourth accounting Directive, benefit from simplified accounting procedures if they rank as small enterprises. They may for example submit an abridged version of their balance-sheet and profit-and-loss account and supply tax information in a more condensed form, thus reducing the number of forms to be completed at the end of the financial year. However, they still have to comply with the usual accounting principles and valuation methods of the tax regime for industrial and commercial profits.

In practice, in the majority of cases, with the exception of the tax treatment applied to proprietors' remuneration in accordance with the transparency or otherwise of the legal form chosen for the enterprise, there are no fundamental differences in the procedures for determining the basis of assessment for enterprises, large or small, incorporated or unincorporated. There are, however, major differences in the rates applied: the progressive scale of personal income tax, the standard rate of corporation tax, reduced rates, etc.

1.3. Tax rates

A look at the tax rates (see Note 1, page 23) shows that, in most Member States, the marginal rates of personal income tax are higher than the standard rate of corporation tax, despite the general trend towards reducing rates for both enterprises and natural persons. Because of their legal form and the absence of any distinction between distributed and reinvested income, sole proprietorships and partnerships are de facto taxed on the whole of their income at marginal income-tax rates which may be higher than the corporation-tax rates.

This results in a distortion of competition between enterprises on account of their legal form, to the detriment of sole proprietorships and partnerships. That distortion is all the greater the wider the difference between the rates of income tax and corporation tax.

The system of taxation applying to sole proprietorships and partnerships acts as a brake on their investment–based development. Their self–financing capacity is reduced owing to the higher rates of tax applied to the top slices of income, which are those which provide the greatest scope for saving and investing.

Yet increasing the self–financing capacity of SMEs is the most viable alternative to their recourse to external sources of finance, access to which can be particularly difficult in the present economic situation, since financial intermediaries sometimes tend – following the euphoria of the 1980s – to be excessively cautious and reluctant to grant additional funding. It is therefore important that enterprises should be able to generate sufficient own funds in order to weather any transitory difficulties resulting from external conjonctural or internal factors. When an enterprise is in a phase of major expansion, the shift in balance which may occur in such circumstances makes it more vulnerable, particularly financially.

Given that sole proprietorships represent, on average, almost half of all the enterprises operating in the Member States of the Community, and that they employ 10–20% of the labour force, the potential impact of this special tax feature is quite appreciable.

Since the various legal forms are unevenly represented in the Community, this tax aspect may influence the optimum level of investment within the single market.

The distribution pattern of incorporated enterprises, partnerships and sole proprietorships varies considerably between the Member States. The number of incorporated enterprises is very low in such countries as Germany and Italy, and particularly high in France, Belgium and the United Kingdom (see table in Note 3, page 36, on the size of the enterprise sector in the Member States). It is usually small enterprises which adopt unincorporated legal forms, although the situation varies according to the Member State. In Germany, for example, some large enterprises are run in the form of partnerships; in Belgium, small enterprises do not hesitate to incorporate, while only a limited number of large enterprises use incorporation in Germany.

II. Ad hoc solutions in some of the Member States

In Denmark, the sole proprietor may, each year, elect to be taxed at the rate of corporation tax on income retained within the firm. Under this special scheme, which has been in force since 1987 (special business arrangement or "business rules"), a distinction is made, with regard to the nature of the income withdrawn by the entrepreneur, between income from capital and personal income. Income from capital, which is determined by applying the average rate of return on bonds for the year to the enterprise's net assets, qualifies for the preferential tax treatment of dividends (traditionally applied to income from shares). Personal income, i.e. the income withdrawn by the entrepreneur in addition to the return on capital, is taxed applying the sliding scale of income tax. This method, which is used by about 130 000 firms, makes it possible to achieve equality of tax treatment between sole proprietorships, partnerships and incorporated enterprises as regards income retained within the enterprise, since the latter is taxed at 34% – the same rate as corporation tax. The scheme is described in more detail in Note 4, page 37.

Norway and Sweden, too, have schemes which are relatively similar in conception to the Danish one. The downside of this tax arrangement is that it imposes more administrative constraints (principally of an accounting nature) on those enterprises which opt for it.

In Greece, the tax reform of June 1992 introduced a related mechanism for enterprises formed as partnerships, limited partnerships or private limited companies; previously, these had been subject to the progressive scale of income tax, ranging from 5% to 40%. Following the reform, their profits will be taxed at the single rate of 35% (as in the case of public limited companies) less the remuneration of partners or managers (natural persons holding at least one third of the partnership's/company's shares). Such remuneration, whether in effect withdrawn or not, is estimated at a flat rate of 50% of the partnership's/company's net income, with the partner or manager liable for personal income tax on it. The advantage of the reform is that it provides for neutral treatment of the profits ploughed back by enterprises in the above categories.

In Germany, a provision has been introduced with effect from 1 January 1994 whereby progressivencesof income tax on the profits of sole proprietorships and partnerships is limited, the maximum at marginal rate of tax for this type of income being capped at 47%. By contrast, the highest rate (53%) will continue to apply, where appropriate, to all the other taxable income of taxpayers. The difference between the rate of corporation tax (45% on undistributed profits[2]) and that of the tax on the income of non-incorporated enterprises (47%) will henceforth be only two percentage points; it would have been more than four times greater had it not been capped. While the measure is of a different order to those introduced by Greece and Denmark, in that it covers all the income, whether distributed or undistributed, of the enterprises concerned, it still shows a similar willingness to limit the differences of tax treatment between the ploughed-back profits of incorporated enterprises and those of sole partnerships and partnerships.

2 The rate is 30% for distributed profits.

Diese Beispiele illustrieren, welche Lösungen möglich sind, ohne mit dem allgemeinen Steuersystem in Konflikt zu geraten (Dänemark, Griechenland) oder das traditionell für Einzelunternehmen und Personengesellschaften geltende Durchgriffsprinzip aufzugeben (Deutschland).

Welche Lehren kann die Gemeinschaft aus diesen Maßnahmen ziehen?

Hier geht es nicht darum, eine einzige dieser Lösungen als Modell für die Gemeinschaft zu wählen - sie alle haben ihre Vor- und Nachteile.

So steht der Differenziertheit und Angemessenheit des dänischen Systems mit dem angestrebten Ziel steuerlicher Neutralität die komplexe Verwaltung dieses Systems gegenüber. Das dänische Steuergesetz räumt dem Unternehmer (Einzelunternehmen und Personengesellschaften) die Möglichkeit ein, jedes Jahr zwischen der Sonderregelung und der normalen Einkommensteuerregelung zu wählen, so daß er den Umfang der Selbstfinanzierung des Unternehmens durch die Wahl der je nach Unternehmensergebnis steuerlich günstigsten Regelung optimieren kann. Die Sonderregelung setzt jedoch voraus, daß sich der Unternehmer zu einer detaillierten Buchführung zwingt. Zwang ist hier jedoch ein relativer Begriff, da die buchhalterischen Anforderungen positive pädagogische Auswirkungen haben können, indem sie den Unternehmer dazu veranlassen, sich die für eine gute Leitung seines Unternehmens erforderlichen Informationshilfsmittel zu verschaffen. Außerdem sind mit dieser maximalen steuerlichen Flexibilität weitere negative Konsequenzen in Form erheblicher Belastungen für den staatlichen Haushalt verbunden. Diese Belastungen ließen sich mit Regelungen, durch die die einmal getroffene Wahl für einen Mindestzeitraum (von fünf Jahren oder mehr) oder unwiderruflich festgeschrieben wäre, zweifellos begrenzen. Doch wären derartige Regelungen mit höheren Verwaltungskosten für die Steuerbehörden verbunden, da sie strenge Kontrollen durchführen müßten, um eine mißbräuchliche Inanspruchnahme derartiger Sonderregelungen zu verhindern.

(3)

Der Vorteil des griechischen Systems besteht darin, daß einbehaltene Gewinne von Personengesellschaften (Einzelunternehmen sind von dieser Regelung ausgeschlossen) und Kapitalgesellschaften steuerlich gleich behandelt werden - in beiden Fällen wird ein Körperschaftsteuersatz von 35 % erhoben. Diese generell angewandte Regelung weist jedoch den Nachteil auf, daß den Unternehmen keine Wahlfreiheit bleibt: Die neue Steuerregelung kann negative Konsequenzen für diejenigen kleineren Unternehmen haben, die bisher mit einem niedrigeren Grenzsteuersatz der Einkommensteuer unterlagen.

Der besondere Vorteil des deutschen Mechanismus der Begrenzung der Progression der Einkommensteuer auf gewerbliche Einkünfte besteht in seiner einfachen Umsetzung. Doch hat er den Nachteil, das Steuersystem zu verzerren, indem er den selbständigen Unternehmer, dessen Steuersatz 47 % nicht überschreiten kann, vorteilhafter behandelt als den abhängig Beschäftigten, dessen Steuerlast 53 % betragen kann, selbst wenn letzterer - beispielsweise als Geschäftsführer - eine ebenso große Verantwortung trägt.

Diese Unterschiede resultieren in erster Linie aus sowohl steuertechnisch als auch politisch bedingten Entscheidungen, die spezifischen nationalen Gegebenheiten Rechnung tragen.

Dennoch haben alle diese Lösungen - so unterschiedlich sie auch sein mögen -die positive Wirkung, dazu beizutragen, den für die Besteuerung einbehaltener Gewinne von Einzelgesellschaften und Personengesellschaften geltenden Satz dem Körperschaftsteuerregelsatz für die Besteuerung einbehaltener Gewinne von Kapitalgesellschaften anzugleichen.

Es sind weitere Varianten mit ähnlicher Wirkung denkbar. So könnte beispielsweise eine steuerlich günstigere Behandlung der Investitionstätigkeit des Einzelunternehmens oder der Personengesellschaft darin bestehen, zwischen einbehaltenen und vom Unternehmer oder den Anteilseignern entnommenen Gewinnen zu unterscheiden. Die einbehaltenen Gewinne würden - sofern der Unternehmer (oder die Anteilseigner einstimmig) widerruflich oder unwiderruflich für diese Regelung optiert - mit dem Körperschaftsteuersatz belegt und nur die entnommenen Gewinne als gewerbliche Einkünfte mit der Einkommensteuer des Unternehmers (oder der Anteilseigner).

Zwar machen die skandinavischen Maßnahmen und insbesondere das dänische Beispiel deutlich, daß derartige Regelungen durchführbar sind, doch sei auch darauf hingewiesen, daß in einigen Mitgliedstaaten diesbezüglich eine gewisse Skepsis herrscht. So wird in Deutschland aufgrund der einschlägigen Erfahrungen zu Beginn der 50er Jahre und im Vereinigten Königreich aufgrund von Untersuchungen der Steuerverwaltung daran gezweifelt, daß ein System, bei dem die einbehaltenen Gewinne von Einzelunternehmen und Personengesellschaften wahlweise der Körperschaftsteuer unterworfen werden, angesichts vor allem der Schwierigkeit, die Einkommensströme zwischen Unternehmer und Unternehmen zu kontrollieren, und der Gefahr einer mißbräuchlichen Anwendung der Regelung überhaupt praktikabel wäre.

In diesem Zusammenhang wurde als Alternative vorgeschlagen, den Unternehmen die Bildung spezifischer Investitionsrücklagen zu gestatten, durch die die Selbstfinanzierungsmöglichkeiten der Unternehmen erweitert und gleichzeitig sichergestellt würde, daß die Mittel für Investitionen (materieller oder immaterieller Art) verwendet werden. Auch hier wäre es den Mitgliedstaaten überlassen, wieviel Freiheit sie den Unternehmen bei der Verwendung und Zweckbestimmung ihrer Selbstfinanzierung lassen (beispielsweise Verbesserung der Liquidität oder Ausrüstungsinvestitionen).

Im Mittelpunkt der bisher dargelegten Lösungen steht das Bestreben, die Gewinnthesaurierung von Unternehmen aller Rechtsformen steuerlich neutral zu gestalten. Der Vorteil dieser Mechanismen besteht darin, über die Besteuerung das Entwicklungspotential der Unternehmen zu fördern, ohne die bestehende Rechtsform in Frage zu stellen, für die sich der Unternehmer ursprünglich aufgrund von steuerlichen[3] oder anderen Kriterien entschieden hat. Zur Zeit verfügt nur eine Minderheit der Mitgliedstaaten über derartige Vorschriften.

Die meisten Mitgliedstaaten geben einem anderen Konzept den Vorzug, das darin besteht, die Änderung der Rechtsform eines bestehenden Unternehmens steuerlich zu erleichtern.

III. STEUERVERGÜNSTIGUNG BEI DER ÄNDERUNG DER RECHTSFORM DER KMU

Zwischen diesem und dem vorstehend erwähnten Konzept bestehen erhebliche Unterschiede. Im übrigen handelt es sich bei beiden weder um exklusive noch um miteinander unvereinbare Konzepte: Dänemark, Deutschland und Griechenland, die die bereits vorgestellten Ad-hoc-Steuervorschriften zugunsten von Unternehmen, die nicht in Form der Kapitalgesellschaft geführt werden, eingeführt haben, sehen in ihren Rechtsvorschriften auch verschiedene Regelungen vor, um die steuerlichen Nachteile bei der Umwandlung eines Einzelunternehmens oder einer Personengesellschaft in eine Kapitalgesellschaft zu begrenzen.

Die beiden Konzepte stellen jedoch auch keine gleichwertigen Alternativen dar, da sie mit unterschiedlichen Auswirkungen auf die Rechte und Pflichten der Unternehmer verbunden sind. In die Entscheidung des Unternehmers, für die Ausübung seiner Berufstätigkeit eine Kapitalgesellschaft zu gründen oder nicht, spielen zahlreiche steuerfremde Faktoren hinein. Der Umfang der persönlichen Haftung des Unternehmers wird oftmals ein wichtiges Entscheidungskriterium sein. Als weiteres wichtiges Entscheidungselement sei der Umfang des sozialen Schutzes (und seine Kosten) genannt, der dem Unternehmer je nach gewählter Rechtsform zusteht. Wenn andere Personen an dem Vorhaben beteiligt sind, werden auch personale Aspekte in die Entscheidung einbezogen werden.

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3 In diesem Zusammenhang wird der Unternehmer seine allgemeine steuerliche Situation bewerten; in seine Entscheidung für oder gegen die Gründung einer Kapitalgesellschaft werden sein derzeitiges oder erwartetes Gesamteinkommen hineinspielen. In allen Fällen wird der Unternehmer seine Entscheidung in Abhängigkeit seiner persönlichen Parameter treffen, ohne sich notwendigerweise darüber im klaren zu sein, wie sich seine Entscheidung auf die Kosten späterer Investitionen und das Wachstumspotential des Unternehmens auswirkt.

It should also be stressed that incorporation has a disadvantage for small enterprises in that it imposes on the head of the enterprise a more burdensome administrative structure than necessary – particularly if the only purpose of incorporation is to improve the firm's tax position – weakening the direct link which exists between entrepreneur and enterprise.

Nevertheless, a solution to the problem of the unequal tax treatment of the profits of enterprises which are not incorporated and the profits of those which are might be to encourage the former to incorporate. While this might seem radical and possibly disproportionate, it would achieve the objective of improving the competitiveness of the enterprises concerned. If a change in legal form is facilitated or even encouraged so that a corporate form more adapted in tax terms to the enterprise's development is used, the tax constraints which may be encountered by an enterprise operated as a sole proprietorship or a partnership as a result of the entrepreneur's initial choice may then fall away.

For this reason, it is important that the tax system should generally offer sufficient flexibility as regards the choice of legal form in which the entrepreneur intends to carry on his trade. While the entrepreneur chooses whether or not to go for incorporation when he starts up his business, a few years later he may want to review his original choice as his business grows.

But it is also true that the tax disadvantage from which the sole proprietorship or the partnership may suffer, as it grows, vis-à-vis an incorporated enterprise materializes when the level of profits generated by the enterprise place it towards the upper end of the scale of personal income tax. Such a situation occurs more often at the end of a strong period of growth than when the enterprise is first set up, the early years of activity being characterized generally by a low, or even negative, rate of return.

While the need for the enterprise to be able to adapt its legal form to the requirements of competitive markets, and the benefits of the transformation, are clear, it is important to ensure that such a change does not entail tax costs which could discourage an enterprise from making it.

In the majority of Member States, however, a change of legal form generally means the cessation of the business, with the tax consequences which that entails, and setting up a new legal person. Immediate taxation of the profits of the financial year, of hidden capital gains and provisions initially set aside free of tax, loss of the opportunity to carry over losses from previous financial years and liability for capital duty are the tax burdens which any enterprise taking this road will normally have to face.

It is not often that an enterprise is allowed to continue, since legal formalism usually prevails over the enterprise's economic situation; most Member States, however, make a distinction according to the type of legal transformation concerned and its precise technicalities. Depending on whether the change is from sole proprietorship to incorporated enterprise, from partnership to incorporated enterprise, or from one form of incorporated enterprise to another, the continuity of the enterprise is accepted by certain Member States. Tax reliefs are also granted if certain conditions associated with the legal transformation are met.

In the case of the incorporation of sole proprietorships, the notion that the business should automatically be wound up - which is what most Member States would argue - may be favourably modified depending on the circumstances: thus, in Belgium, "continuity" of the enterprise is accepted for tax purposes if this is what the entrepreneur wants.

Taking the transformation of a partnership into an incorporated enterprise, some Member States (Italy, Portugal) accept continuity, but most consider that this involves cessation of the enterprise and creation of a new legal person.

However, whatever their attitude in terms of legal formalism (the enterprise may continue or should be wound up), most of the Member States have introduced provisions which make it possible to attenuate the tax consequences of transformation. These measures, the details of which are given in Note 2, page 32, Member State by Member State, basically concern the opportunity to defer taxation of the hidden capital gains recorded at the time of transformation and to carry over the provisions relating to the activity without changing their purpose. Certain relaxations of registration duty are also provided for.

It is also interesting to note that the possibility which has been created in France for partnerships to opt (irrevocably) for corporation tax has virtually the same tax effects as transformation into an incorporated enterprise. While the relief procedures are the same, there is the additional advantage that hidden capital gains and profits on which tax has been deferred are not taxed, since no change is made to the accounts and it is still possible to tax capital gains at a later stage.

Possible lessons from these measures for the Community

Legal formalism continues to be the dominant factor in the Member States' assessment of whether an enterprise should continue in business when it wishes to change its form of organization; however, the tax effects of formalism, which in virtually all cases leads to the winding–up of the enterprise and the creation of a new entity, are attenuated by practical measures designed to reduce or defer a number of taxes.

Virtually all of the Member States thus have provisions which allow the taxation of capital gains to be deferred until they are realized (usually on condition that the entrepreneur undertakes to hold on to the securities received in exchange for the capital contributed to the new entity and that the assets transferred continue to be carried at their accounting value in the new entity's books) or allow the entrepreneur to choose between immediate taxation (which enables the new firm to calculate the depreciation of the transferred assets applying the value at which they were contributed and not the value at which they were carried in the books of the original enterprise) and deferred taxation. Only one country (Portugal) does not permit such choice when sole proprietorships are incorporated.

Similarly, all of the Member States except Portugal allow provisions to be maintained if their object remains unchanged. Virtually all of them also maintain the enterprise's normal deadlines for payments.

By contrast, legal formalism and its reflection in taxation do not allow losses to be carried over following a change in an enterprise's legal form. Some countries (Germany, France, Luxembourg, United Kingdom) have indicated, however, that, in such cases, losses incurred by a sole proprietorship or partnership can be imputed to the entrepreneur or the partners.

As regards capital duties, some Member States still apply relatively high rates to real property contributed to companies (Belgium, Greece, Spain, France, Italy). However, some of these countries have introduced provisions to reduce this tax charge (Belgium, France, Spain) as long as securities are issued in return for the contributions made. General introduction of such mechanisms in the Union would appear desirable.

ANHANG 1

Gegenüberstellung der Körperschaftsteuer- und Einkommensteuersätze - Auswirkung auf die Unternehmensbesteuerung

Bei einer Gegenüberstellung der Körperschaftsteuer- und Einkommensteuersätze in der Gemeinschaft ergeben sich je nach Mitgliedstaat drei Situationen (siehe Tabelle); dies wird in den nachstehenden Schaubildern veranschaulicht.

In der ersten Ländergruppe liegt der Körperschaftsteuersatz nicht nur unter dem marginalen Einkommensteuerspitzensatz, sondern auch unter dem niedrigsten Einkommensteuersatz. Bei der zweiten Gruppe liegt der Körperschaftsteuersatz zwischen den positiven Eckwerten der Einkommensteuer. In der letzten Gruppe finden sich die Länder, in denen der Körperschaftsteuersatz gleich dem marginalen Einkommensteuerspitzensatz ist oder über diesem liegt.

- Dänemark und Irland - Irland wegen des ermäßigten Körperschaftsteuersatzes für das verarbeitende Gewerbe - gehören zur ersten Gruppe. Schon der Vergleich der Struktur der Steuersätze zeigt eindeutig die Begünstigung der körperschaftsteuerpflichtigen Unternehmen gegenüber den Einzelunternehmen und einkommensteuerpflichtigen Personengesellschaften hinsichtlich der steuerlichen Veranlagung ihrer Gewinne. Bei sonst gleichbleibenden Voraussetzungen ist eine derartige fiskalische Behandlung ein nicht zu leugnender Anreiz für die Gründung eines Unternehmens mit eigener Rechtspersönlichkeit (sofern die administrativen Kosten nicht prohibitiv sind).

Diese Anreizwirkung ist bei der zweiten Ländergruppe dagegen schwächer; zu dieser Gruppe gehören die meisten Mitgliedstaaten (Belgien, Spanien, Frankreich, Griechenland, Irland (außer verarbeitendes Gewerbe), Luxemburg, Niederlande, Vereinigtes Königreich). Die Rechtsform der Einzelfirma ist von Vorteil, solange der steuerpflichtige Gewinn relativ niedrig liegt (ohne etwaige Einkommen aus anderen Quellen); je höher er jedoch ausfällt, desto stärker benachteiligt der Schwellen- und Schereneffekt - weil die Einkommensteuer, anders als die Körperschaftsteuer, progressiv ist - Einzelunternehmen gegenüber beispielsweise Kapitalgesellschaften. Dies gilt auch für die einkommensteuerpflichtigen Personengesellschaften.

Allerdings ist festzustellen, daß zu dieser zweiten Gruppe drei Mitgliedstaaten gehören (Belgien, Luxemburg und Vereinigtes Königreich), die einen progressiven Körperschaftsteuertarif anwenden.

(a) Außer in Belgien, das praktisch die Voraussetzungen definiert und diese Vorteile den KMU vorbehält, sind die ermäßigten Steuersätze Teil der normalen Struktur der Körperschaftsteuersätze und gelten eher für die niedrigen Gewinne der großen oder kleinen Gesellschaften als für die kleinen Gesellschaften im eigentlichen Sinne, selbst wenn diese letzten Endes statistisch am meisten betroffen sind. Durch diese Maßnahmen kann jedenfalls der Steuerdruck auf die kleinen Gesellschaften abgeschwächt und ihnen ihr Start somit erleichtert werden.

(b) Die Körperschaftsteuerprogression läßt sich in diesen drei Sonderfällen natürlich mit dem progressiven Tarif der Einkommensteuer vergleichen, der Einzelunternehmer in allen Mitgliedstaaten unterliegen. Zwar entsprechen die ermäßigten Körperschaftsteuersätze in Belgien und im Vereinigten Königreich mehr oder weniger den Steuersätzen der niedrigsten Klassen (28 %/26,75 % bzw. 25 %/25 %), doch ist die Progression der entsprechenden Einkommensgruppen vollkommen anders geartet. In den drei genannten Mitgliedstaaten ist die niedrige Körperschaftsteuerklasse mit ermäßigtem Satz höher oder gleich der zum marginalen Spitzensatz besteuerten höchsten Einkommensteuerklasse. Praktisch bleibt die Besteuerung der kleinen Handelsgesellschaften vorteilhafter als die der Einzelfirmen.

(c) Zu dieser zweiten Gruppe gehören auch die Niederlande, die einen degressiven Körperschaftsteuertarif anwenden, und zwar mit einem Satz in Höhe von 40 % auf die ersten 100.000 HFL Gewinn und einem Satz in Höhe von 35 % für darüber hinausgehende Gewinne. Diese Sätze sind dem marginalen Einkommensteuerspitzensatz (60 %) für Einkommen über 85.530 HFL vergleichbar. Damit soll ein zu großer Unterschied zwischen dem Steuersystem für Kapitalgesellschaften und dem für andere Unternehmensformen vermieden werden.[4]

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4 Im Vereinigten Königreich wurde kürzlich ein weiterer ermäßigter Satz in Höhe von 20 % in den Einkommensteuertarif eingeführt; er gilt nur für eine sehr niedrige Einkommensgruppe (die ersten 2.000 UKL, das sind rund 1.500 ECU).

Zu der dritten Ländergruppe schließlich gehören Italien und Portugal; hier sind die Abstände zwischen den effektiven Körperschaft- und Einkommensteuersätzen (oberste Klasse) so gering, daß sich ab einer bestimmten Gewinnhöhe eine gewisse Steuerneutralität zwischen den Rechtsformen einstellt. Deutschland hat kürzlich sein Steuersystem in diesem Sinne geändert, um die ungeschriebene Regel des Quasiparallelismus seiner marginalen Körperschaftsteuer- und Einkommensteuerspitzensätze einzuhalten. Seit dem 1. Januar 1994 gilt ein von 36 auf 30 % gesenkter Körperschaftsteuersatz für ausgeschüttete Gewinne und ein von 50 auf 45 % gesenkter Steuersatz für einbehaltene Gewinne, so daß die Differenz zwischen letzterem Satz und dem marginalen Spitzensatz (53 %) der Einkommensteuer von bisher 3 Punkte auf 8 Punkte gestiegen wäre, wenn nicht beschlossen worden wäre, den Einkommensteuersatz für Einkünfte aus Gewerbebetrieb auf 47 % zu begrenzen, um eine gewisse Gleichmäßigkeit in der steuerlichen Belastung der körperschaftsteuerpflichtigen und der einkommensteuerpflichtigen Unternehmen zu erhalten.

Comparative table of rates of corporation tax and personal income tax: all levels of government(*) (1994)

Country	Rate of personal income tax		Différential(**) pers.inc. tax/corp. tax	Rate of corporation tax
	Bottom rate	Top rate		
GERMANY	19	53 (47)(***)	-2	30/45 (1)
BELGIUM	26.75 [25]	59 [55]	-20	39% Reduced rates for SMEs(2): 28% on profits between BFR 0 and 1 million, 36% between 1 and 3.6 million, 41% between 3.6 and 13 million
DENMARK	38 (+5 points social security contribution) (8)	58(+5%)	-24	34
SPAIN	20	56	-21	35
FRANCE	5	56.8	-23.47	33.33
GREECE	5	40	-5	35 (3)
IRELAND	27	48	-9	40% Reduced rate: 10% for manufacturing companies in certain areas (Shannon, IFSC)
ITALY	10	51	+1.2	52.2 [36] (4)
LUXEMBOURG	10 (+2.5% contribution to Employment Fund)	50 (+2.5%)	-9.17	43.33 [33] (5) Reduced rates: 20% (profits under LFR O.4); progressive rates from 20 to 30% (LFR 0.4 to 0.6 million); 30% (LFR 0.6 to 1 million); 30-33% (LFR 1 to 1.312 million); 33% (over LFR 1.312 million)
NETHERLANDS	13 (6)	60	-25	35% (but 40% for the first HFL 100 000 in profits)
PORTUGAL	15	40	-0.4	39.6 [36]
UNITED KINGDOM	25 (7)	40	-7	33% Reduced rate: 25% on profits below UKL 300 000

(*) Rates shown in square brackets are rates of tax charged by central government. Effective rates include local taxation applied in certain Member States.

(**) The differential between the standard rate of corporation tax applied to undistributed profits and the top marginal rate of personal income tax.

(***) Germany: from 1 January 1994, the rate of personal income tax on commercial or industrial income is limited to 47%; for other types of income, the top marginal rate of 53% continues to apply.

(1) Germany: the rate of tax on distributed profits is 36%, that on undistributed profits 50%.

(2) Belgium: this reduced rate of taxation applies to incorporated SMEs that fulfil all the following conditions:

(a) taxable income below BFR 13 million,

(b) no more than half their shares held by one or more other incorporated enterprises,

(c) investment value of shares held no more than 50% of paid–up capital,

(d) distributed profits not exceeding 13% of paid–up capital.

(3) Greece: for private limited companies, the 35% rate applies to the net residual profits after deduction of the remuneration of the three main shareholders taking part in the management of the company.

(4) Italy: enterprises with no more than three salaried employees in which the owner and members of the owner's family work are not liable to pay the local tax on profits (ILOR).

(5) Luxembourg: companies pay an additional contribution of 1% to the Employment Fund and a local profits tax at an average rate of 10%.

(6) Netherlands: a social security contribution of 25.55% is added to the bottom rate of income tax, making the effective rate 38.55%.

(7) United Kingdom: a reduced rate of 20% was recently introduced into the scale of personal income tax, but only on a very narrow band (the first UKL 2 000, about ECU 1 500).

NOTE 2

Measures to alleviate the tax consequences of the conversion of sole proprietorships or partnerships into incorporated enterprises

Whatever the attitudes adopted by Member States on a formal legal level (continuation or cessation of the business in question), most have introduced arrangements for alleviating the tax consequences of such conversion operations.

With regard to the immediate taxation of profits, the great majority of Member States do not require early declaration of profits for the conversion of a sole proprietorship into a company but apply the normal deadline for the declaration of income (France is an exception in that it requires a return to be submitted within 60 days of conversion; Greece also requires almost immediate payment).

Similarly, the great majority of Member States authorize carry-over of provisions where the purpose of such provisions remains unchanged. This kind of arrangement helps to ensure some degree of tax neutrality in the case of changes of legal structure.

By contrast, the benefit of a possible carry-over of losses is frequently lost on a change of legal structure because the activity is deemed to cease. This applies particularly to conversion into a company; however, there are arrangements in some Member States (e.g. Germany, France, Ireland, Luxembourg and the United Kingdom) for setting such losses against the personal income of the owner (or of the partners in the case of a partnership).

With regard to the taxation of latent capital gains on the conversion of a sole proprietorship into a company, the great majority of Member States permit the business either to defer taxation or to be taxed at a preferential rate; others permit enterprises to choose between immediate and deferred taxation (in France latent capital gains on depreciable assets are automatically taxed on conversion to a company, although the owner may choose between immediate and deferred taxation of latent capital gains on intangible assets). In most Member States, these favourable arrangements are subject, in the case of a conversion operation carried out in the form of transfers of assets, to the transfers being remunerated mainly through shares which the transferor undertakes to retain for a minimum number of years and to the assets being included in the new entity's accounts at their book value.

It should be pointed out with regard to capital duties that the amount of duty payable on the conversion of an enterprise is far from negligible. Transfer duties are frequently levied on transfers of buildings, property rights and goodwill for consideration. The rates of these duties can be very high, particularly in the case of transfers for consideration (this is the case, for example, where the company takes on the liabilities of the transferor; under such circumstances, the transfer operation is normally treated as a sale). Directive 69/335/EEC of 17 July 1969 (OJ No L 249 of 3 October 1969, p. 25) does permit Member States to levy transfer duties on transfers of immovable assets to incorporated enterprises at a rate in excess of the maximum harmonized capital-duty rate of 1% applicable to other types of transfers.

However, a number of Member States (e.g. Belgium, France and Spain) have adopted the principle which is most frequently applied to the taxation of capital gains in connection with a conversion operation: taxation of such gains may be suspended if the transferor is remunerated in the form of shares; similarly, transfer duties may be reduced substantially (application of a flat-rate amount or reduced rate) if, for example, the transfers are remunerated by securities which the transferor undertakes to retain for a minimum period.

Tax treatment applied in the Member States when sole proprietorships or partnerships are converted into incorporated enterprises

	Capital duties	Capital gains	Immediate taxation of profits	Carry-over of losses	Carry-over of provisions (*)
Belgium	0,5% (1) (transfer of assets to an incorporated enterprise in exchange for shares)	16,5% for tangible assets 33% for intangible assets (but temporary exemption if the business has not specifically waived application of the "continuation" arrangements)	no	no	yes
Denmark	1% rate	taxation suspended in the case of payment in the form of securities (equal to at least 75% of transferred assets) and subject to the transferor retaining the securities	no	no	yes

(1) Temporary exemption from capital duty in the case of transferts to companies established in an employment area, to headquarters of multinational companies establisehd in Belgium, to companies undergoing conversion, to innovative companies and to companies located in a development area.

(*) This involves the possibility of carrying over provisions whose purpose remains unchanged.

	Capital duties	Capital gains	Immediate taxation of profits	Carry-over of losses	Carry-over of provisions (*)
Germany	2% (Grunderwerbsteuer) on transfers of land or buildings to a company	suspension of taxation possible (if historic values are entered in the accounts of the recipient company and if securities are retained by the transferor)	no	no (but can be set against the income of the owner or partners)	yes
Greece	normal rate of 1% but rate varies between 3% and 11% for the transfer of a building for consideration (frequent occurence in the case of sole proprietorships)	no taxation of unrealized capital gains (except for capital gains on property)	yes	yes (?)	yes (except for certain types of provision: e.g. provisions for doubtful claims)
Spain	normal rate of 1% (corporate transactions) but 6% for the transfer of a building for consideration	taxation suspended (in the case of transfers of assets, etc.)	no	no	yes
France	fixed duty of FF 500 where the transferor retains for five years the securities received in return for the transfer (failing that, a special duty of 8.6% for transfers of property and goodwill)	possible deferral of taxation (capital gains on non-depreciable assets) if securities received in payment for the transfer are retained. In the case of capital gains on depreciable assets (tatxation effected in the hands of the recipient company), payment of tax is spread over five years	yes (but the transferor is not taxed on profits relating to stocks if included at their book value in the assets of the recipient company)	no (but for sole proprietors and partners the trading deficit of the business transferred is included in the total deficit that can be carried over for five years for income-tax purposes)	yes

	Capital duties	Capital gains	Immediate taxation of profits	Carry-over of losses	Carry-over of provisions (*)
Ireland	stamp duty of 1%	taxation of capital gains is suspended if remuneration is in the form of securities provided that the securities are retained by the transferor	no	no (but carry-over possible as part of the overall deficit that can be carried over for income-tax purposes)	yes
Italy	transfers of immovable property to companies (8%)	taxation of capital gains suspended (if assets are carried in the balance sheet at their original value)	not available	not available	not available
Luxembourg	real or personal estate invested: 1% in the case of assets transferred for consideration: from 0.24% to 6% depending on the nature of the assets	no taxation of capital gains if the assets are carried at their book value in the accounts of the recipient company	no	no (but deductibility is permitted in the hands of the person who has incurred the loss, even if he is no longer the owner; the same applies to partners in a partnership)	yes

	Capital duties	Capital gains	Immediate taxation of profits	Carry-over of losses	Carry-over of provisions
Netherlands	not available	not available	not available	not available	n.d.
Portugal	duty ("sisa" municipal tax) on transfers of immovable property: 4% to 10% depending on the nature and use of the property	- taxation of capital gains (stocks and assets) (1) - no taxation (tax neutrality) (2)	no (1) --- (2)	no (1) yes (2)	no (1) yes (2)
United Kingdom	stamp duty of 1% (land, buildings, etc.)	taxation of companies in principle but relief is available (in the case of payment in the form of shares)	no	yes (on future dividends)	yes

(1) tax arrangements applied to the conversion of a sole proprietorship into a company

(2) tax treatment applied to the conversion of a partnership into a company

NOTE 3

Comparative figures on the size of the corporate sector

(The figures in this table are based on 1989 data)	Number of compa-nies	Population ('000s)	Number of companies per 1000 head of population	Total taxes as % of GDP	Corporate income tax as % of GDP
Belgium	225,640	9,938	22.70	44.3	3.10
Denmark	85,917	5,132	16.74	49.9	2.00
Germany	404,195	62,063	6.50	38.1	1.91
Greece	70,824	10,033	7.05	33.2	1.33
Spain	655,491	38,888	16.86	34.4	2.06
France	699,170	56,423	12.39	43.8	2.19
Ireland	110,418	3,515	31.41	37.6	1.50
Italy	300,000	57,540	5.21	37.8	3.40
Luxemburg	11,941	377	31.67	42.4	7.21
Netherlands	257,000	14,846	17.31	46.0	3.68
Portugal	171,919	9,793	17.55	35.1	n.a.
United Kingdom	1,005,300	57,236	17.56	36.5	4.02
Total	3,997,815	325,785			
Average			12.27	39.9	2.95

NOTE 4

Description of the "business rules" - Denmark

1. Natural persons carrying on business independently (as sole proprietors or partners) can opt for the "business rules".

2. The objective of these rules is as follows:

(1) to render the business's interest payments fully tax-deductible (as is the case with its other operational expenditure);

(2) to ensure that that part of the business's profits constituting a return on its equity is taxed in the same way as other capital gains;

(3) to counterbalance cyclical trends;

(4) to offer taxation at 34%, the same rate as corporation tax.

3.1. The rules require independent businessmen to keep their business and personal finances separate for accounting purposes; distinct accounts must be kept for the businesses income and personal finances.

The business income is assessed in accordance with the general rules laid down in the tax legislation.

If, in a particular income year, a business shows a profit, this is divided into an imputed capital gain (i.e. the return on the business's own capital) and the remaining profit. Capital gains are assessed as income from capital, like other return on capital. The remainder of the profit is assessed as personal income on a sliding scale. However, the profit is only liable to tax when it is withdrawn from the business.

Nevertheless, the taxable person may refrain from withdrawing the profit, or a part thereof, and opt to retain it in the business. In that case it attracts advance tax of 34% (i.e. at the same rate as corporation tax). It is only when the taxable person withdraws the accumulated profit in a subsequent year that it is finally taxed as personal income. The advance business tax is set off against the taxable person's and his/her spouse's tax for the year in question and the five succeeding years but cannot be disbursed as a cash payment.

If the business shows a loss in an income year, the loss must first be set off against any accumulated profit. In the absence of any accumulated profit, the loss is deducted from the taxpayer's other income. Any remaining loss may be carried forward for deduction against the business's profits and other income in the succeeding five years.

3.2. As a general rule, there are no restrictions on the nature of businesses which can opt for the business rules. Nevertheless, if the business reflects aspects of a private limited company, the option is not available. Income from such companies is taxed as income from capital. Insolvent businesses are likewise excluded from the business rules.

3.3. If the taxable person operates a number of businesses, they must all be subject to the business rules. Under these rules, all such businesses are treated as one business.

If the taxable person is married and his/her spouse operates his/her own business, the spouse must apply either the business rules or the "capital gains rules" to his/her business.

3.4. The taxable person is free to determine each year whether the business is to come under the business rules.

If the taxable person ceases to apply the business rules without transferring the business, any accumulated profit is taxed as personal income in the income year following the income year in which he last applied the business rules.

If the taxable person ceases trading in respect of one of a number of businesses without transferring the business, any retained profits are taxed proportionately.

A taxable person who has previously applied the business rules in respect of a business and who, within the immediately succeeding five income years, resumes application of the rules must, when calculating the business's capital account, assess real property at the value which was indicated when the rules were last applied.

3.5. If the taxable person transfers the business or ceases trading as an independent business, any accumulated profits are taxed as unearned income in the same income year or, if the distinction between the business accounts and the taxpayer's individual accounts are maintained for the rest of the year, the succeeding income year. If the taxable person acquires another business before the end of the succeeding income year, he may apply the business rules uninterrupted, provided that the distinction between the business accounts and his personal accounts is maintained throughout the entire period.

If the taxable person applies the business rules without interruption, the purchase price received on the transfer of the business is subject to the business rules.

Where one of a number of businesses, a business which has been separated from an existing business, or a notional part of a business is transferred, the purchase price received is subject to the business rules. The taxable person may opt to transfer an amount not exceeding the net cash consideration outside the business rules to his individual finances, provided that a corresponding part of any accumulated profits is withdrawn and taxed as personal income in the same income year.

3.6. If a taxable person ceases to be liable to tax in Denmark or in any other respect acquires a tax domicile abroad, any accumulated profit is taxed as personal income in the income year in which he ceases to be liable to tax or changes his tax domicile.

3.7. Businesses subject to the business rules may be transferred and/or transformed in the same way as other businesses. If the business is transferred and deferred taxation applies, taxation of any accumulated profits may also be deferred.
