

Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (codified version)

CHAPTER IV

SPECIAL CASE OF TRANSPARENT ENTITIES

Article 11

1 Where a Member State considers a non-resident transferring or acquired company to be fiscally transparent on the basis of that Member State's assessment of the legal characteristics of that company arising from the law under which it is constituted, it shall have the right not to apply the provisions of this Directive when taxing a direct or indirect shareholder of that company in respect of the income, profits or capital gains of that company.

2 A Member State exercising the right referred to in paragraph 1 shall give relief for the tax which, but for the provisions of this Directive, would have been charged on the fiscally transparent company on its income, profits or capital gains, in the same way and in the same amount as that Member State would have done if that tax had actually been charged and paid.

3 Where a Member State considers a non-resident receiving or acquiring company to be fiscally transparent on the basis of that Member State's assessment of the legal characteristics of that company arising from the law under which it is constituted, it shall have the right not to apply Article 8(1), (2) and (3).

4 Where a Member State considers a non-resident receiving company to be fiscally transparent on the basis of that Member State's assessment of the legal characteristics of that company arising from the law under which it is constituted, that Member State may apply to any direct or indirect shareholders the same treatment for tax purposes as it would if the receiving company were resident in that Member State.