
Table of Contents

List of Abbreviations.....	XV
List of Figures	XIX
List of Tables.....	XXI
1 Introduction	1
1.1 Motivation of the thesis	1
1.2 Aim of the thesis and object of examination.....	6
1.3 Organization of the thesis.....	7
2 Relevance of the European Company in practice	9
2.1 Basic features of the European Company	9
2.2 Examination of statistical data regarding the use of the European Company	10
2.3 Interim conclusions	15
3 Taxation of European Companies during the time of restructuring in an ideal environment.....	16
3.1 Guiding tax principles	16
3.1.1 Neutrality and efficiency	16
3.1.2 Equity and fairness	17
3.2 Issues at reorganizations.....	20
3.2.1 General features of reorganizations.....	20
3.2.2 Treatment of hidden reserves	21
3.2.3 Retention of unused losses	24
3.2.4 Treatment of tax incentives	25
3.2.5 Additional transaction taxes	25
3.2.6 Scope of rules	26
3.3 Application to purely national contexts.....	26
3.4 Application to the ideal internal market	27
3.5 Interim conclusions	29

4	Taxation of European Companies during the time of restructuring in the current environment	30
4.1	Guiding tax principles	30
4.1.1	Neutrality and equity in an international context	30
4.1.1.1	International neutrality and efficiency.....	31
4.1.1.2	International equity and fairness	32
4.1.1.3	Taxing right and time of taxation at international restructurings	35
4.1.1.4	Valuation at international restructurings	39
4.1.1.5	Interim conclusions	40
4.1.2	EU law	41
4.1.2.1	Primary EU law	42
4.1.2.1.1	Decisive fundamental freedoms	42
4.1.2.1.2	Discriminations and restrictions of the fundamental freedoms.....	44
4.1.2.1.3	Justifications of discriminations and/or restrictions.....	46
4.1.2.2	Secondary EU law	49
4.1.2.3	Decisive judgments of the European Court of Justice in the context of reorganizations.....	49
4.1.2.4	Interim conclusions	52
4.1.3	Side condition: Feasibility.....	52
4.1.4	Interim conclusions	53
4.2	Comparative analysis of the treatment in the EU member states.....	55
4.2.1	Approach for the comparative analysis	55
4.2.2	Merger Directive	56
4.2.3	Entry	58
4.2.3.1	Merger	58
4.2.3.1.1	Basics with regard to company law.....	58
4.2.3.1.2	Tax consequences.....	59
4.2.3.1.2.1	Entity level.....	61
4.2.3.1.2.1.1	Transferring company/companies.....	61
4.2.3.1.2.1.1.1	Assets and liabilities in country of transferring company ...	61
4.2.3.1.2.1.1.2	Permanent establishments in country other than that of transferring company	72
4.2.3.1.2.1.2	Receiving company (SE)	77
4.2.3.1.2.1.2.1	Tax-exempt provisions and reserves	77

4.2.3.1.2.1.2.2	Losses	79
4.2.3.1.2.1.2.3	Prior holdings	82
4.2.3.1.2.1.2.4	Additional transaction taxes	84
4.2.3.1.2.2	Shareholder level	86
4.2.3.1.3	Interim conclusions	93
4.2.3.2	Holding SE	94
4.2.3.2.1	Basics with regard to company law	94
4.2.3.2.2	Tax consequences	95
4.2.3.3	Subsidiary SE	109
4.2.3.3.1	Basics with regard to company law	109
4.2.3.3.2	Tax consequences	109
4.2.3.3.2.1	Contributions of cash or shares	110
4.2.3.3.2.2	Contributions of branches of activity or single assets	111
4.2.3.4	Conversion	128
4.2.4	Transfer	130
4.2.4.1	Basics with regard to company law	130
4.2.4.2	Tax consequences	131
4.2.5	Exit	144
4.2.6	Interim conclusions	145
4.3	Issues and options for reform	147
4.3.1	Company law	147
4.3.2	Tax law	150
4.3.2.1	Missing or incorrect transformation of Merger Directive	150
4.3.2.2	Treatment of accrued hidden reserves	152
4.3.2.2.1	Transfer of assets and companies from one member state to another	153
4.3.2.2.1.1	Issues	153
4.3.2.2.1.1.1	Taxing right and time of taxation	153
4.3.2.2.1.1.1.1	Assessment against the background of international neutrality and equity	154
4.3.2.2.1.1.1.2	Assessment against the background of primary and secondary EU law	156
4.3.2.2.1.1.2	Valuation	162
4.3.2.2.1.1.3	Interim conclusions	164

4.3.2.2.1.2	Options for reform	164
4.3.2.2.1.2.1	Assets remaining in the former jurisdiction to tax	164
4.3.2.2.1.2.2	Assets leaving the former jurisdiction to tax	165
4.3.2.2.1.2.2.1	Requirements with regard to the tax base, the tax rate and the taxable event	165
4.3.2.2.1.2.2.2	Personal, objective and territorial scope	168
4.3.2.2.1.2.2.3	Required coordination between countries involved	168
4.3.2.2.1.2.2.4	Uncoordinated approaches	172
4.3.2.2.1.2.2.5	Other options: taxation of unrealized gains or abolishment of taxing rights upon exit	175
4.3.2.2.1.2.3	Interim conclusions	177
4.3.2.2.2	Transfers of foreign permanent establishments	177
4.3.2.2.3	Transfer of shares from one member state to another	178
4.3.2.2.4	Doubling of hidden reserves	179
4.3.2.3	Retention of unused losses	182
4.3.2.4	Filing obligations and avoidance of abuse	185
4.3.2.5	Additional transaction taxes	187
4.3.3	Interim conclusions	188
5	Taxation of European Companies during the time of restructuring in the proposed environment	191
5.1	Guiding tax principles	191
5.2	Common Corporate Tax Base	192
5.3	Common Consolidated Corporate Tax Base	195
5.3.1	Proposed rules	195
5.3.1.1	Ongoing system	195
5.3.1.2	Transitional aspects	200
5.3.2	Issues and options for reform	203
5.3.2.1	Transactions taking place within a consolidated CCCTB group	203
5.3.2.2	Transactions not taking place within a consolidated CCCTB group ..	208
5.4	Interim conclusions	214
6	Conclusions	216
	Appendix	223
	List of References	229