

# **Cross-Border Mergers within the EU**

## **Proposals to Remove the Remaining Tax Obstacles**

*Harm van den Broek*



**Wolters Kluwer**  
Law & Business

EUCOTAX Series on European Taxation

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## **Cross-Border Mergers within the EU**

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*The titles in this series are listed at the back of this volume.*

*To my dear brother Joost, his wife Kim and my little niece*

## List of Abbreviations

AEIEC	Act on Employee Involvement within the European Company
AERSE	Act on the Enforcement of the Regulation on the European Company
AFMEC	Act on the Fiscal Measures concerning the Introduction of the European Company and on the Amendment of other Fiscal Arrangements
AG	Aktiengesellschaft
AImplSE	Act on the Implementation of the SE
AISE	Act on the Introduction of the SE
APECM	Act on the Participation of Employees in the case of a Cross-border Merger
AWR	Algemene Wet inzake Rijksbelastingen
BFH	Bundesfinanzhof
BV	Besloten vennootschap
CFC	Controlled Foreign Corporation
CITA	Corporate Income Tax Act
CLC	Civil Law Code
DWT	Dividend Withholding Tax
EC	European Commission
ECJ	European Court of Justice
ECOFIN	Economic and Financial Council
ECOSOC	Economic and Social Council
ECR	European Court reports
EEC	European Economic Community
EEA	European Economic Area
EFTA	European Free Trade Agreement
EStG	Einkommensteuergesetz

## *List of Abbreviations*

EU	European Union
EUR	Euro
FBI	Fiscale Beleggingsinstelling
GmbH	Gesellschaft mit beschränkter Haftung
ITA	Income Tax Act
KStG	Körperschaftsteuergesetz
NLG	Netherlands Guilder
NV	Naamloze vennootschap
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal of the European Union
PVBA/	Personenvennootschap met beperkte aansprakelijkheid/Société de
SPRL	personnes à responsabilité limitée
RA	Reorganization Act
RT	Act on the Regulation of Taxes
RTA	Reorganization Tax Act
SAS	Société par actions simplifiée
SCE	Societas Cooperativa Europaea (or European Cooperative Society)
SE	Societas Europaea (or European Company)
SEEG	Gesetz zur Einführung der Europäischen Gesellschaft
SEIA	SE Employee Involvement Act
SEStEG	Gesetz über steuerliche Begleitmaßnahmen zur Einführung der Europäischen Gesellschaft und zur Änderung weiterer steuerrechtlicher Vorschriften
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UmwG	Umwandlungsgesetz
UmwStG	Umwandlungssteuergesetz
WOR	Wet op de Ondernemingsraden
WT	Wage Tax



## Preface

I wrote this book as a PhD thesis at the Radboud University Nijmegen (the Netherlands). After I started writing in 2005, European company law on cross-border mergers developed rapidly. The European Court of Justice ruled in the important cases *SEVIC* and *Cartesio*, and in 2007 the Tenth Council Directive entered into force, enabling limited liability companies in the European Union to participate in cross-border mergers. As a consequence, various Member States such as Germany and the United Kingdom could no longer postpone the implementation of the tax merger arrangements of the 1990 Merger Directive. Also from a tax point of view, the past years were years of change.

In my research I have tried to shed light on the scope and interpretation of the tax merger arrangements of the Merger Directive, and the tax merger arrangements in the Netherlands and Germany. Although these arrangements were set up on valid principles, many tax obstacles which hamper economically useful cross-border mergers continue to exist. My topical challenge to come up with proposals and recommendations on the removal of these obstacles was fascinating.

I am grateful to the Council of the European Union for granting me access to their Archives with the unpublished legal history of the Merger Directive. I would like to thank Professor Wolfgang Schön for granting me the possibility to stay at the Max-Planck-Institut für Steuerrecht und Öffentliche Finanzen in Munich. Special thanks go to my supervisor, Professor Gerard Meussen, for commenting my draft texts and ideas thoroughly, swiftly and patiently. The author would like to thank Margaret Nettinga for reviewing the text.

Any comments or questions on the contents of this book are most welcome at [h.vandenbroek@jur.ru.nl](mailto:h.vandenbroek@jur.ru.nl)

Harm van den Broek  
September 2011

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