Many countries permit a group of related companies to be treated as a single taxpayer, or have a special regime for group members which achieves a similar result in practice.

Group taxation is designed to reduce the effect that the separate existence of related companies has on the aggregate tax liability of the group. This can be attractive to taxpayers because it gives them flexibility to organize their business activities and engage in internal restructurings and asset transfers without having to worry about triggering a net tax. Generally, the rules (i) eliminate income and loss recognition on intragroup transactions by providing for deferral until after the group is terminated or the group member involved or underlying asset leaves the group and (ii) permit the offset of losses of one group member.
against the profits of a related group member. Some countries also permit group relief for other indirect taxes such as VAT, stamp duties and capital taxes. Other forms of de facto consolidation can also be achieved, such as the use of partnerships, but this is not discussed in detail below.

The specific rules differ from country to country as to the eligibility and stock ownership requirements of forming a tax group. Often the rules are further complicated by the fact that members of a group are treated as a single entity for many purposes, but as separate entities for other purposes, and by numerous anti-avoidance rules that are in place to prevent inconsistent combinations that the government believes to be inappropriate.

This publication has been prepared to provide a high-level comparison of the group taxation regimes in the US and in European countries in which Jones Day has a tax expertise — Belgium, France, Germany, Italy, Spain and the UK. Exhibit 1 summarizes the key features of the listed regimes.

BELGIUM

Group taxation is presently not permitted in Belgium, and nothing has been foreseen in the most recent Belgian tax reform proposals to introduce such a concept. It is therefore not possible for a Belgian parent to consolidate its profits and losses with those of its subsidiaries or to eliminate the tax consequences arising from intragroup transactions, nor to form a fiscal unity for VAT or other indirect tax purposes.

It may be possible, however, for a group to accomplish indirectly, or de facto, a form of tax consolidation, by using Belgian contractual partnerships such as the “Associations en Participation/Verenigingen voor Deelneming or Sociétés Momentanées/Tijdelijke Verenigingen”. Under Belgian law, the tax attributes arising from such contractual partnerships are allocated amongst their respective partners, and are then reported by the latter on their separate returns. Similar to the treatment of subsidiaries in consolidated groups, partnership taxation allows the income and losses of lower-tier entities to pass through to the owner and offset the owner’s income and losses. The other method for approximating consolidation is to engage in legitimate and defensible transfer pricing so as to properly shift income or deductions between entities. This is particularly interesting because, in practice, the Belgian tax authorities are not as aggressive in challenging purely domestic transactions as opposed to trans-border ones.

FRANCE

Group taxation is permitted in France for income taxation, but not for VAT or any other purposes.

1. Requirements

- **Eligible parent company.**
  
  The parent must be (i) a French legal entity subject to corporation tax either by law (société anonyme / SA; société par actions simplifiée / SAS; société à responsabilité limitée / SARL; or société en commandite par actions / SCA) or upon election with respect to otherwise pass-through entities (société en nom collectif / SNC; société en commandite simple / SCS; or société civile / SC), or (ii) the French permanent establishment of a foreign corporation that is subject to French corporation tax on the income attributable to it.

  The parent of a group must be the ultimate eligible parent company in the chain of companies in the group. This means that the parent’s share capital may not be 95%-owned directly by another company that would be an eligible parent.

  Until recently, it was not possible for a tax group to be formed if eligible subsidiaries were owned by a French parent company subject to corporation tax if the parent were 95%-owned by a French pass-through entity or by a foreign corporation, and the pass-through entity or foreign corporation were 95%-owned by a French company subject to corporation tax. This restriction is no longer applicable.

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1 The information in this publication is not meant to be comprehensive and no specific action should be taken without reference to the laws, regulations and tax treaties of the country, and consultation by a tax expert.
Eligible subsidiaries. Eligible subsidiaries include only French entities subject to corporation tax, either by law or upon election, that are 95%-owned by the French eligible parent either directly or indirectly through one or more 95%-owned subsidiaries, provided that the interposed company is also consolidated. They do not include the French permanent establishment of a foreign corporation. Moreover, pass-through entities cut off consolidation, so that French subsidiaries whose share capital is more than 5%-owned by pass-through entities cannot be included in the tax group.

Not all eligible subsidiaries need to be included in the consolidated tax group.

Requisite stock ownership. The consolidated tax group may include any and all eligible subsidiaries whose share capital is 95%-owned by the parent directly or indirectly through another group member. Shares of subsidiaries that are owned through nongroup members do not count towards the 95% threshold.

Tax year. All group members must have a uniform 12-month fiscal year.

2. Consequences

Elimination of intragroup transactions. Most intragroup transactions are eliminated at the group level.

Dividends. France has an imputation system that is designed to ameliorate the double taxation of dividends. Generally, when a French corporation distributes a dividend to a shareholder outside its tax group, the dividend constitutes taxable income to the recipient and carries a tax credit (avoir fiscal) for French taxes paid by the distributing corporation, which the shareholder may use to offset its tax or obtain a refund. The rate of avoir fiscal is 50% of the dividend for individual shareholders and corporate shareholders benefiting from the parent-subsidiary regime and 15% for other corporate shareholders. The distributing company may have to pay an equalization tax (précompte) on the distribution if the company’s earnings were not subject to corporation tax at the standard rate during the preceding five years.

In a nongroup setting, if a French corporation distributes a dividend to a French company holding at least 5% of the issued capital of the distributing company for at least two years, the dividend carries avoir fiscal and the recipient is exempt from tax on the distribution except for a taxable service charge equaling 5% of the aggregate amount of the dividend and any tax credits (such as the avoir fiscal). If the recipient company subsequently distributes the dividend proceeds to its shareholders, a précompte will be due on the 95% portion of its earnings that was tax-free, but the précompte may be offset by the avoir fiscal accompanying the dividend distribution of the French subsidiary received in the last five years.

In a group setting, however, intercompany dividends that are paid out of taxable profits realized during the existence of the group are entirely exempt from tax, do not carry avoir fiscal and are not subject to précompte. And, if a recipient group subsidiary subsequently distributes the dividend proceeds to its nongroup shareholders, such distribution will carry an avoir fiscal and be subject to précompte, unless it can be allocated for tax purposes to profits earned by the subsidiary before it joined the tax group, provided that such profits were subject to corporation tax at the standard rate in the preceding five years. If the parent company distributes a dividend to its shareholders, such dividend will carry an avoir fiscal. The distribution will be exempt from précompte if it can be allocated for tax purposes to profits earned by the group members (or the parent company before the formation of the tax group) that have been subject to corporation tax at the standard rate during the preceding five years.

Net operating loss allowances. NOLs of a group member incurred during the consolidation return period are taken into account in determining group taxable income, but NOLs of a group member from a pre-consolidation return period are not. Any such deficit may be deducted only from the company’s own taxable income.

Restricted deductibility of interest expense upon acquisition of shares of a company to be included in the tax group from a related party (Amendement Charasse). The acquisition of shares of a company to be included in the tax group from a related party may be subject to the Amendement Charasse limitation. It provides that, when shares of a target company that becomes a member of the group
are purchased from shareholders who directly or indirectly control the group (nongroup parents), or from nongroup companies that are controlled by nongroup parents (nongroup sister companies), a portion of the interest expenses incurred by the tax group will be rendered nondeductible from the group profits during a 15-year period. This is an *in terrorem* rule that applies to a stock acquisition whether or not the acquisition was financed by a loan. The nondeductible amount is calculated by applying the following formula:

\[
\frac{\text{Annual interest expenses}}{\text{Purchase price of the target shares}} \times \frac{\text{X}}{\text{Average amount of the group's debt during the tax year}}
\]

The adverse effects of the *Amendement Charasse* rule may be minimized or eliminated by the making of concurrent cash contributions to the acquiring company (*i.e.*, the numerator of the fraction is reduced by the amount of any cash contribution made to the acquiring company within the three months preceding or following the acquisition).

The *Amendement Charasse* limitation does not apply: (i) if the shares of the target company are acquired in exchange for newly issued shares, (ii) if the shares of the target are acquired from members of the tax group, (iii) if the shares of the target are acquired by related companies from unrelated companies with the view to transferring the target company shares shortly afterwards to a member of the French tax group or (iv) to tax years during which the target company is not a member of the tax group, even if it has been acquired from related companies.

3. Implementation

- **Minimum term.** The election must be made for a minimum of five years, and is automatically renewed for a five-year period.

4. Term

- **Mandatory termination of the group.** A group will generally be terminated if (i) all of the subsidiaries leave the group, (ii) 95% or more of the share capital of the parent is acquired by a company subject to French corporation tax, (iii) the parent is merged into another company or (iv) the parent company changes the duration of its fiscal year. In these circumstances, the loss carryforwards of the terminated tax group may be used to offset the future profits of the parent of the terminated group.

If the parent of the terminated tax group is acquired by a company subject to corporation tax and becomes a member of the tax group of the acquiring company, or forms a new tax group with the acquiring company, the loss carryforwards of the terminated tax group may not be transferred to the new parent and used by the new group. However, the loss carryforwards may be used to offset the future profits of the parent of the terminated tax group and those of its subsidiaries that were members of its tax group. Similar rules are provided if the parent of a tax group is merged into a French company subject to corporation tax and the subsidiaries of the absorbed parent become members of the tax group of the absorbing company or form a new tax group with the absorbing company. In this case, the transfer of the loss carryforwards of the absorbed parent to the absorbing company is subject to the prior authorization of the Ministry of Finance.

- **Leaving the group.** A group member (other than the parent) may exit the tax group at any time without terminating the group. A company automatically exits the tax group if the company is no longer an eligible subsidiary meeting the ownership requirements, or if the company is merged into another company.

Exiting the group triggers the taxation of deferred gains and subsidies that were previously eliminated. An exiting group member’s NOL carryforwards realized during the consolidation return period remain with the group, and the company may not use the carryforwards to offset its separate taxable income. The company is also unable to carry back post-consolidation losses against profits realized during the consolidation return period.

- **No prohibition on reconsolidation.** A group member that leaves the group may rejoin the group in a subsequent year.
5. **Filing of return and payment of tax**
   - **Separate tax returns.** Each group company must file tax returns on a separate basis but is not required to pay the tax shown on the return. The parent is required to file a special tax return that aggregates all profits and losses of the group members and eliminates the intragroup transactions, and the parent pays the tax shown on the return.
   - **Joint and several tax liability.** The group parent is legally obligated to pay the tax owed by the group, and each group member generally pays to the parent an amount equal to the corporation tax it would have paid to the tax authorities had it not been a member of the tax group. If a subsidiary pays less than such amount, the shortfall is treated as a subsidy from the parent to the subsidiary. In the event the parent defaults on its tax obligation, the tax authorities may enforce an action against each group member for up to the amount of corporation tax and penalties for which the member would be liable had the company not been a member of the tax group.

6. **No VAT consolidation**

7. **Worldwide Tax Consolidation (Bénéficie consolidé)**
   - With the prior authorization of the Ministry of Finance, a company that is subject to French corporation tax may combine the reporting of income and losses of all of its direct and indirect 50%-owned domestic and foreign subsidiaries, branches, partnerships and joint ventures, and be taxed only on the resulting consolidated net taxable income. All foreign corporation taxes are creditable towards the French corporation tax payable on the consolidated net taxable income. This regime applies only to a small number of French companies, including for example Totalfina-Elf, Aventis and Lafarge. Worldwide tax consolidation reporting may be combined with the domestic tax consolidation regime.

**GERMANY**

Group taxation is permitted in Germany for federal income taxation, “trade” (local/regional income) taxation and VAT reporting. It is implemented contractually by having eligible companies form an organschaft.

1. **Requirements**
   - **Eligible parent company.** The parent must be a (i) German corporation such as a public limited liability company (Aktiengesellschaft / AG), private limited liability company (Gesellschaft mit beschränkter Haftung / GmbH) or limited partnership on shares (Kommanditgesellschaft auf Aktien / KGaA), (ii) German partnership such as limited partnership (Kommanditgesellschaft / KG), general partnership (offene Handelsgesellschaft / OHG or Gesellschaft bürgerlichen rechts / GbR), (iii) German trade or business of a foreign corporation or partnership that is subject to German tax on income or (iv) German trade or business of an individual.

   The parent of a group need not be the ultimate eligible parent company in the chain of companies in the group. It is even possible for a subsidiary to be the group “parent” of an organschaft.
   - **Eligible subsidiaries.** Eligible subsidiaries include only German corporations (such as an AG, GmbH or KGaA). Partnerships and foreign corporations having a German trade or business are not eligible subsidiaries.

   Not all eligible subsidiaries need to be included in the consolidated tax group.
   - **Requisite stock ownership.** The consolidated tax group may include any and all eligible subsidiaries where at least 50% of the voting power is owned directly or indirectly by the group parent. Shares of subsidiaries that are owned through nongroup members count towards the 50% threshold, provided the intermediary companies hold more than 50% of the voting rights in its subsidiary. The required ownership has to be held for the entire tax year of the subsidiary.
• **Tax year.** Group members may have different fiscal years.
• **Group members may not be in bankruptcy.** To be an eligible parent or eligible subsidiary, a company must not be in bankruptcy.

2. **Consequences**

• **No elimination of intragroup transactions.** Intragroup transactions are generally not eliminated at the group level. However, in the case of intragroup debt, there is a limited exception that applies to interest expense on long-term debt that, though ordinarily is only 50% deductible for trade tax purposes, is eliminated for trade tax purposes.

• **Loss carryforwards.** For purposes of determining corporation income tax, losses of a group member incurred during the organschaft period are taken into account in determining group taxable income, but loss carryforwards of a group subsidiary’s pre-organschaft period are not. They are “frozen” and cannot be deducted even against the member’s own taxable income until after the member leaves the group. On the other hand, for purposes of determining trade tax, a group member’s pre-organschaft period loss carryforwards may be deducted from the group member’s own taxable income but not from the income of any other group member.

• **Dual consolidated loss rule.** Germany recently enacted a new provision providing that, effective as of January 1, 2001, a German tax loss of a company that is a parent of an organschaft will not be deductible for tax purposes if the company is a “dual resident company” (i.e., resident in both Germany and another country) to the extent the company is able to deduct the loss in the other country.

3. **Implementation**

• Group taxation is implemented contractually by having each group member sign a separate profit and loss transfer agreement (organschaft) with its group parent pursuant to which the parent is deemed to earn all of the income earned by the other group members for German tax purposes, and the subsidiaries are required to periodically pay their net earnings to the parent. The profit and loss transfer agreement must be filed and entered into the commercial register of the subsidiary and must be approved at a shareholders’ meeting of both the parent and the subsidiary. It may be effective retroactively to the beginning of the fiscal year as long as it is signed prior to the end of the fiscal year (however, the agreement need not be entered into the commercial register at that time; it is sufficient that the agreement be entered into the register prior to the end of the following fiscal year).

Pursuant to the agreement, the group members must annually transfer their profits to the group parent or the group parent must reimburse the losses of its subsidiaries, and the transfer has to be the last book entry with which the parent or subsidiary realizes income in the year. No cash payment is required, and only book entries on intercompany accounts are customarily made.

4. **Term**

• **Minimum term.** For corporation and trade tax purposes, the term of an organschaft must be for a minimum of five calendar years.

• **Voluntary termination.** Each group member enters into an organschaft with the parent. An organschaft may be terminated voluntarily by the parent and group member at any time, but, if terminated during the first five-year term, the tax authorities will deny the organschaft for the entire term of the agreement, except under limited circumstances. One such circumstance is the sale of a group member to a non-group member, which is permissible at any time without causing a termination of the organschaft ab initio.

An organschaft may not be terminated until the end of the subsidiary’s tax year. It is therefore recommended that, in the case of a sale of a group member, the group member’s business year be changed so that it ends before the transfer date.

5. **Filing of returns and payment of tax**

• **Separate tax returns.** Each group company is required to file corporation and trade tax returns on a separate basis but is not required to pay the tax. The parent’s tax return aggregates all profits and losses of the group members, and the parent pays the tax. The parent’s return includes filings with respect to each group member.
• **Tax liability.** The parent is legally obligated to pay the tax owed by the group. Each group member is jointly and severally liable for taxes of the group.

6. **VAT consolidation**

• In order to achieve VAT consolidation, there must be “economic integration” and “organizational integration” in addition to the above described requisite stock ownership. Economic integration requires that the group members support and maintain the parent’s business. Organizational integration requires that the group members be managed by the group parent. These arrangements may be achieved by (i) setting forth written protocols for meetings between management of the group members and the parent, (ii) having the same individuals act as management of the parent and the other group members and (iii) having the group members enter into a “domination agreement” with the group parent, which must be filed and entered into the commercial register.

• No VAT is imposed on sales or other services between group members. The group parent files a single return for the tax group and may offset the group members’ VAT credits against their respective VAT obligations.

• The group parent is legally obligated to pay the net tax owed by the tax group. Each group member is jointly and severally liable to pay its share of the tax should the parent default.

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**ITALY**

Group taxation is permitted in Italy for VAT, but not for income taxation reporting. However, the Government has expressed an intention to introduce group income taxation legislation in the very near future. In addition, Italian tax law permits indirect, or de facto, tax consolidation under certain circumstances, such as by means of assigning corporate income tax credits among Italian companies within the same controlled group. The assignment process is as follows.

1. **Requirements**

• **Eligible parent.** The parent must be an Italian corporation, partnership or other Italian entity carrying out commercial activities in Italy. It may not be a foreign company.

• **Eligible subsidiaries.** Eligible subsidiaries include only Italian resident corporations (i.e., joint-stock companies, limited liability companies and partnerships limited by shares but not pure partnerships). A foreign company can be part of the chain if, for instance, it is controlled by an Italian resident company and controls (i.e., owns at least 50% of the registered capital of) another Italian company. However, foreign companies cannot be the assignor or assignee of intragroup tax credits.

• **Requisite stock ownership.** The controlled group may include companies in which the parent owns directly at least 50% of the registered capital, as well as companies the capital of which is 50% or more owned by a 50% or greater subsidiary of the ultimate parent company. The 50% threshold must be satisfied in the tax year prior to the one in which the tax credit is assigned.

   Moreover, even if the 50% stock ownership threshold is not met, the group may include the following companies: (a) those in which the parent has directly and indirectly the majority of the voting rights that can be exercised at the ordinary shareholders’ meeting, (b) those in which the parent has directly and indirectly voting power sufficient to exercise a dominant influence at the ordinary shareholders’ meeting, (c) those that are under the direct or indirect dominant influence of the parent by virtue of contractual arrangements or by virtue of special provisions of the bylaws (where the applicable law governing those companies allows such provisions) and (d) those in which the parent or another group member has the majority of voting rights pursuant to a shareholders’ agreement.

• **Tax year.** It is not necessary for all group members to have a uniform fiscal year.

2. **Consequences**

• **No elimination of intragroup transactions.** Intragroup transactions are not eliminated at the group level.

• **No net operating loss allowances.** NOLs are not taken into account in determining group taxable income.
• **Taxes that may be offset.** The assignee may use the assigned credits to offset its own corporate income tax ("IRPEG") and any other tax levied in lieu of IRPEG, as well as other Italian taxes such as the local tax on productive activities ("IRAP"), VAT and social security contributions. For purposes of IRPEG and any tax levied in lieu of IRPEG, the offset is unlimited, whereas for other Italian taxes, the offsetting is limited to ITL 1 billion per year. No offset against VAT due and resulting from the VAT consolidation under the VAT consolidation regime (described below) is permitted.

The assignee may not reassign credits received from a group member.

• **Assignment may be complete or partial.** Any member of a controlled group may assign all or part of its corporate income tax credits to any other group member.

3. **Implementation**

• Whether a tax credit exists, and is assignable, is established on an accrual basis. The credit may then be assigned to offset taxes on a cash basis. As payment of taxes generally takes place in the year following the one relating to the taxes, a credit can therefore be used to offset taxes relating to the same year as the credit. For example, a tax credit of company A arising in year 2000 may be offset against company B’s taxes for the same year (but not for 1999, *i.e.*, taxes payable in 2000).

4. **Term**

• **No minimum period of affiliation.** There is no requirement that the assignor and assignee be affiliated for a minimum period of time before or after the tax credits are assigned. However, as indicated above, the affiliation requirement must be met in the tax year prior to the one in which the tax credit is assigned.

5. **Filing of return and payment of tax**

• **Separate income tax returns.** The assignor and assignee file their tax returns on a separate basis and pay the taxes shown on their respective returns.

• **Joint and several liability.** The assignee is jointly and severally liable with the assignor for the tax resulting from a disallowance of claimed tax credits.

6. **VAT consolidation**

• Upon the making of a proper election, an Italian company and its 50%-owned subsidiaries (following the same eligibility requirements as for an assignment of income tax credits) may elect to combine their reporting in a single tax return for VAT purposes. The group parent files a single return for the consolidated tax group and may offset the group member’s VAT credits against its respective VAT obligations (including VAT carryforwards).

• The group parent is legally obligated to pay the net tax owed by the consolidated tax group. Each group member is jointly and severally liable to pay its share of the tax should the parent default and is obligated to reimburse the parent for its share of the consolidated tax liability.

• The parent and subsidiaries must provide security for the VAT taxes offset upon consolidation. Should they fail to do so, they must pay the amount of the offset VAT. The security can be a guarantee of another solvent company, a guarantee of a bank or insurance company, or the pledging of shares or debentures. Specific rules are provided for groups of companies that have aggregate assets lower than EUR 258,228,449. In such a case, the parent can be the guarantor for all members of the group.

7. **Other taxes**

• Intragroup transfers are exempt from any transfer tax (fissato bollato) on the disposal of shares, participation and quotas.

**Spain**

Group taxation (called “Régimen de Consolidación Fiscal”) is permitted in Spain for income taxation, but not for VAT reporting.

1. **Requirements**

• **Eligible parent company.**

The parent may be a (i) Spanish corporation such as a limited company (sociedades anónima / SA), or limited liability company (sociedades de responsabilidad limitada / SA), or (ii) a foreign corporation that is to be treated as a Spanish entity for tax purposes, or (iii) a foreign corporation that has a permanent establishment in Spain. The parent must be established and carrying on business in Spain and be a taxable person in Spain.

The parent must be a taxable person in Spain. The parent may have a permanent establishment in Spain and be a taxable person in Spain. The parent may have a permanent establishment in Spain and be a taxable person in Spain.
that is resident in Spain for Spanish income tax purposes, (ii) Spanish partnership by shares (comanditarias por acciones / CA), (iii) foreign company that is resident in Spain for Spanish income tax purposes or (iv) permanent establishment of a nonresident entity holding shares in Spanish companies.

The parent of the group must be the ultimate eligible parent company in the chain of corporations in the group. This means the parent’s share capital may not be 75%-owned directly or indirectly by another company that would be an eligible parent. To be an eligible parent, a company must be subject to, and not exempt from, corporation tax (Impuesto sobre Sociedades), and may not be in bankruptcy or in a position of suspension of payments, or have a capital inadequacy whereby its net worth is less than half of its stated share capital.

- **Eligible subsidiaries.** Eligible subsidiaries include only SAs, SRLs or CAs that are resident in Spain. They do not include a permanent establishment of a nonresident entity.

  All eligible subsidiaries meeting the stock ownership requirements must be included in the consolidated tax group. The inclusion of new companies in the consolidated regime is mandatory from the year following that in which the company becomes owned 75% or more by the group parent.

- **Requisite stock ownership.** The consolidated tax group must include all eligible subsidiaries whose share capital is 75%-owned by the parent directly or indirectly through another group member. Shares of subsidiaries that are owned through nongroup members do not count towards the 75% threshold. The requisite ownership must exist on the first day of the fiscal year in which the consolidated regime is to be applied and continue throughout the year.

- **Tax year.** All group members must have a uniform fiscal year.

- **Group members may not be tax exempt or in bankruptcy.** To be an eligible parent or eligible subsidiary, a company must be subject to, and not exempt from, Spanish corporate tax (Impuesto sobre Sociedades) and may not be in bankruptcy or in a position of suspension of payments, or have a capital inadequacy.

### 2. Consequences

- **Elimination of intragroup transactions.** Most intragroup transactions are eliminated at the group level. For example, payments of interest and of dividends from one group member to another will not be subject to withholding tax.

- **Net operating loss allowances.** NOLs of a group member incurred during the consolidation return year are taken into account in determining group taxable income, but NOLs of a group member from a pre-consolidated return period are not. An NOL from a pre-consolidation return period may be deducted only from the company’s own taxable income.

### 3. Implementation

- The election for tax consolidation is optional. Group taxation is opted for by having all companies of the group adopt corresponding resolutions at a general shareholders’ meeting (or alternative competent body). The resolutions must be adopted during the fiscal year prior to that in which the consolidation regime is to be applied. The parent company must file the resolutions with the tax authorities before the commencement of the tax year in which the regime is going to be applied (i.e., during the same fiscal years in which the resolutions have been adopted).

### 4. Term

- **No minimum term.** There is no requirement to opt for group taxation for a minimum term. The tax consolidation regime applies for an indefinite period of time until terminated.

- **Voluntary termination of the group.** A group may be terminated voluntarily by the parent at any time.

- **Mandatory termination of the group.** A group will be terminated when the parent (i) ceases to own the requisite stock interest in all the subsidiaries or (ii) becomes owned 75% or more by a Spanish resident company or a Spanish permanent establishment of a foreign company eligible to be a parent of a consolidated tax group.

- **Leaving the group.** A subsidiary may exit the tax group at any time without terminating the group, but a group member may not voluntarily leave the group if it remains
an eligible subsidiary. When a subsidiary ceases to fulfill the consolidation stock ownership or other requirement, it will be excluded from the tax group for the fiscal year in which it ceases to qualify.

Exiting the group triggers the taxation of deferred gains that were previously eliminated. An exiting group member’s NOL carryforwards realized during the consolidation return period remain, in principle, with the group, but with the following restrictions: The company may use the carryforwards to offset its separate taxable income in the same proportion as the NOLs were initially incurred. The company is also unable to carry back post-consolidation losses against profits realized during the consolidation return period.

5. Filing of return and payment of tax

• Separate tax returns. Each group company, including the parent company, must file tax returns on a separate basis but is not required to pay the tax shown on the return. The parent’s tax consolidation return aggregates all profits and losses of the group members and eliminates intragroup transactions, and the parent pays the tax shown on the return.

• Joint and several tax liability. All companies in the group are jointly and severally liable for the payment of all taxes of the consolidated group under the consolidated regime. However, this joint and several obligation does not apply to penalties.

6. No VAT consolidation

UNITED KINGDOM

There is no general consolidation principle in UK taxation. However, there are various specific provisions relating to groups that recognize the economic unity of interest between group companies by allowing for (i) the elimination of gain and loss recognition on intragroup transactions involving capital assets (tax neutral transfers of capital assets), (ii) the surrender of non-capital losses of one group member to a related group member (group relief surrender of losses), (iii) stamp duty relief for intragroup transfers and (iv) VAT consolidation.

1. Requirements

• Eligible parent company. The parent can in general terms be any corporation, whether UK resident or not. For VAT purposes, an individual may be the “parent” of a group (but not a member of it).

• Eligible subsidiaries. Although any corporation may be a member of a group for many UK tax purposes, with the exception of stamp duty relief, only members within the UK tax net (i.e., those resident in the UK or with a branch or agency trading in the UK or, for VAT purposes, a UK fixed establishment) may actually benefit from group reliefs.

• Requisite stock ownership or other requirements. The stock ownership and other requirements differ for the specific provisions.

To qualify for tax neutral transfers of capital assets, the group parent must own in each subsidiary, directly or indirectly through another group member, more than 50% of the subsidiary’s profits and assets available to equity holders on a liquidation, and each subsidiary must be part of a chain of 75% subsidiaries (by reference to holdings of ordinary share capital).

Group relief surrenders of losses can be made between two companies if a common parent holds, directly or indirectly, at least 75% of both companies’ ordinary share capital and 75% of both companies’ profits and assets available for distribution to equity holders in liquidation, or if one of the companies holds such interests in the other. Further, absent the requisite stock ownership by a single group parent, group relief loss surrender is also possible between a consortium company and its group and the companies that are consortium members (and also any other company in a member’s group). A “consortium” exists where between two and 20 companies each hold more than 5% interests, and together hold at least a 75% interest, in the consortium company.

To qualify for stamp duty relief, the transferor and transferee must either be linked by a common ultimate parent owning directly or indirectly at least 75% of the ordinary share capital and profits and assets available
for distribution to equity holders on a liquidation of each member company, or one of the companies must hold such an interest in the other.

Elective VAT grouping is permitted between companies under common control, defined broadly.

- **Tax year.** There is no requirement for group members to adopt the same tax year. However, corresponding accounting periods may simplify group relief affairs.
- **Companies in distress/insolvency.** The appointment of an administrator or receiver does not generally break group relationships, but the appointment of a liquidator will have that effect, with the exception of the relief for capital asset transfers.

2. Consequences

- **Group relief surrender of losses.** Group relief surrenders of certain losses are permitted between group members, but only on a current-period-to-current-period basis.
- **Dual consolidated loss rule.** There is a rule in the UK similar to the US dual consolidated loss rule, which may disallow group relief for losses of UK and non-UK branches if those losses are also allowed for tax purposes by a foreign country.
- **Tax neutral transfers of capital assets.** Intragroup transfers of capital assets are deemed to be at “no gain no loss” (NGNL) values. A transfer may only be NGNL if the asset transferred remains subject to UK tax (*i.e.*, if the transferee is a UK resident company or the UK branch of a non-UK resident company). Capital losses cannot be surrendered between group members, so in practice assets are often transferred by group companies at NGNL to a fellow group member with capital losses prior to sale of that asset outside that group. Following a recent reform, such a pre-sale transfer may now be deemed to have occurred by means of an election. If a company leaves a group within six years of receiving an asset in a NGNL transfer, a gain may be triggered on the original NGNL transfer.
- **Stamp duty relief.** Intragroup transfers are exempted from stamp duty. The relief may be unavailable, however, where there are (among other things) arrangements for the transferee company to leave the group.
- **VAT grouping.** Supplies between member companies are disregarded for VAT purposes. A single member is appointed representative member. It takes administrative responsibility for the group’s VAT affairs and is deemed to make all supplies made by group members outside the group.

3. Implementation

- **Group relief.** Group relief is obtained by surrender by the loss-making company and claim by the profit-making company. The claim is made in the profit-making company’s tax return, and the surrendering company must notify its consent to the authorities in writing. Payments made for surrenders are not taxable, up to the amount surrendered.
- **Tax neutral transfer of capital assets.** NGNL for asset transfers is automatic and compulsory for qualifying transfers within the eligible group (although treatment can differ on group reorganizations).
- **Stamp duty relief.** An application must be filed to claim stamp duty intragroup relief. It is nondiscretionary where the relevant conditions are met.
- **VAT grouping.** VAT groups are created and amended by written notification to Customs & Excise. Customs may refuse registration in tax avoidance circumstances.

4. Term

- **No minimum term.** There is no minimum term for any form of grouping. However, the existence of arrangements to sell a group member may prevent eligibility for group relief, and in the case of group relief surrender of losses and stamp duty relief, this may be the case even if no legally binding agreement has been signed. Further, it is notable that there may be a degrouping charge on a company leaving a group if it has received NGNL asset transfers from fellow group members within the previous six years. If the group held the NGNL asset at a gain at the time of the NGNL transfer, the uncrystallized gain is treated as having crystallized in the exiting company. However, recently implemented reforms permit an election to deem the gain to have arisen within the vending group.
- **Voluntary termination of the group.** A VAT group may in general terms be terminated voluntarily. For other UK tax purposes, groups will exist where the conditions are met and survive until those conditions are breached.
**Mandatory termination of the group.** In VAT avoidance circumstances, a VAT group may be terminated mandatorily, or an application to join a group refused, by Customs & Excise if it appears necessary to protect VAT revenue.

**Leaving the group.** A company automatically ceases to be eligible for group reliefs where it no longer meets the relevant ownership requirements.

Exiting the group may trigger the taxation of deferred capital gains that were previously eliminated (see above). An exiting group member’s NOL carryforwards remain with the company.

**No prohibition on re-grouping.** There is no prohibition on re-grouping after a company ceases to be a member of a group.

5. **Filing of return and payment of tax**

**Separate tax returns.** With the exception of VAT, each group company must file tax returns on a separate basis, and is obligated to pay the taxes shown on its tax return. The Inland Revenue may agree with a group required to make corporation tax installment payments to accept payments of tax from a single group company, but this is uncommon. The Inland Revenue allows over-payments of tax by one group company to be taken into account when determining the interest and penalties on another group company’s underpayment of tax.

For VAT group purposes, VAT returns are filed by the representative member, which also accounts for any tax due or claims tax repayable. Transfers between group members of VAT collected or recovered by the group generally have no tax effect.

**Joint and several and secondary liabilities.** The rules differ for the specific provisions.

Each member of a VAT group is jointly and severally liable for the VAT obligations of the group for the period through which it is a member.

Apart from VAT, group members are not jointly and severally liable for aggregate group liabilities and are generally liable only for their own tax affairs. However, certain limited secondary liabilities may arise in the group context. In certain circumstances, unpaid corporation tax can be collected from a person that has had control of the company in default, or has been itself controlled by such a person. A further specific provision may also give rise to secondary liabilities for a company that has been a member of the same group as a company that defaults on tax arising on the disposal of a capital asset.

**UNITED STATES**

Group taxation is permitted in the US for federal income tax purposes.

1. **Requirements**

**Eligible parent company.** The parent must generally be a domestic corporation. It may not be a domestic or foreign partnership, foreign corporation other than Mexican and Canadian corporations in limited circumstances, tax-exempt corporation, life insurance company except in limited circumstances, possessions corporation, domestic flow-through corporation such as a REIT or RIC, or export corporation such as a DISC or FISC.

The parent of a group must be the ultimate eligible parent company in the chain of companies in the group. This means that the parent’s share capital may not be 80%-owned directly by another company that would be an eligible parent.

**Eligible subsidiaries.** Eligible subsidiaries are subject to the same restrictions as the eligible parent company. A partnership will break consolidation for those of its eligible subsidiaries wishing to join the group. A domestic limited liability company that has elected to be treated as a branch of its shareholder is disregarded, however, and will not break consolidation for those of its eligible subsidiaries wishing to join the group.

All eligible subsidiaries meeting the stock ownership requirements must be included in the tax group. The inclusion of new companies in the tax group is mandatory from the time the stock ownership requirements are satisfied.

**Requisite stock ownership.** The consolidated tax group must include all eligible subsidiaries whose stock is 80%-owned by vote and value by the parent directly or indirectly through another group member. Shares of subsidiaries that are owned through nongroup members do not count towards the 80% threshold.
Stock for this purpose does not include “plain vanilla preferred stock,” which is stock that (i) is non-voting, (ii) has limited and preferred dividend rights, (iii) has redemption or liquidation rights not exceeding the issue price plus a reasonable redemption or liquidation premium and (iv) is nonconvertible. Certain options are treated as exercised and treated as outstanding stock for this purpose.

- **Tax year.** All group members must have a uniform fiscal year.

2. **Consequences**
   - **Elimination of intragroup transactions.** Most intragroup transactions are eliminated at the group level and deferred until realized outside the group. For example, the gain realized on the transfer of a nondepreciable asset by one group member to another group member is excluded from the income of the transferring member until the asset is transferred outside the group or the transferor or transferee member leaves the group.
   - **Investment adjustments.** Generally, if a group member earns profits, there is a commensurate upward adjustment in the outside basis of the company and of each group member having a direct or indirect interest in the company. If a group member suffers a loss or distributes a dividend to another group member, there is a downward adjustment in the outside basis of the company and of each group member having a direct or indirect interest in the company. If the outside basis in a group member is reduced below zero, the negative outside basis is recorded as an excess loss account but no gain is recognized until, for example, the member leaves the group.
   - **Net operating loss allowances.** NOLs of a group member incurred during the consolidation return period are taken into account in determining group taxable income, but NOLs of a group member from a pre-consolidation return period are not. An NOL from a pre-consolidation return period may be deducted only from the company’s own taxable income.
   - **Loss disallowance rule.** Losses on the sale of a member’s stock outside the group are generally disallowed except to the extent of economic losses.

- **Dual consolidated loss disallowance.** An NOL of a group member may not be used to offset income of other group members if (i) the loss corporation is a US resident company that is also subject to tax as a resident of a foreign country or is subject to tax by the foreign country without regard to whether its income is from sources in the foreign country and (ii) the NOL is taken into account for foreign tax purposes.

- **State tax treatment.** The laws differ from state to state. Filing on a consolidated or combined basis may be required or elected in certain states, while impermissible in others (including California, Connecticut, Delaware, Idaho, Illinois, Louisiana, Maryland, Minnesota, New Hampshire, North Carolina, Ohio, Pennsylvania, Tennessee, Texas and Wisconsin).

3. **Implementation**
   - **Election mechanics.** The election opting for group taxation must be made by the due date of the group parent’s tax return for the fiscal year in which the consolidation regime is to be adopted. The due date for a corporation’s tax return is generally nine months after the end of the corporation’s fiscal year. For the first consolidated return year of a tax group, all group members must file a consent to the consolidated return regulations by attaching a form to the group’s consolidated return.

4. **Term**
   - **No minimum term.** There is no requirement to opt for group taxation for a minimum term.
   - **Voluntary termination of the group.** Tax groups must generally continue to file consolidated returns for subsequent years until permission is granted by the IRS to discontinue filing consolidated returns or until the tax group terminates mandatorily.
   - **Mandatory termination of the group.** A tax group generally terminates if the group parent ceases to be the common parent of the group, or if at the beginning of the tax year the group parent does not own at least one subsidiary that was a group member at the end of the prior tax year.

   Some of the tax consequences associated with the termination of a tax group include: (i) gain or loss on
deferred intercompany transactions are taken into account, (ii) excess loss accounts (negative outside basis) are includible in income, (iii) the requirement of continued filing of consolidated returns ends, (iv) the tax years of the members terminate and (v) the utilization of unused investment tax credits, NOLs, capital loss carryovers and other tax attributes of the members of the terminated tax group become subject to limitations.

The fact that a parent is no longer in existence may not cause the group to be terminated. For example, the group is treated as remaining in existence if there is a mere change in the identity, form or place of organization of the parent. Moreover, the group will not terminate if the other members of the group succeed to and become the owners of substantially all the assets of the former parent (a “downstream transfer”), and there remains a tax group that includes the former members, one of which now meets the eligibility requirements of a parent company. Likewise, the group will not terminate if the parent merges into a second-tier subsidiary where the parent survives the merger and becomes the subsidiary of its former first-tier subsidiary, which becomes the new parent. Furthermore, if the stock or assets of a parent are acquired by a smaller corporation in exchange for the smaller corporation’s stock (a “reverse acquisition”), the parent’s group is treated as remaining in existence. The determination of whether the reverse acquisition rule is triggered is made by comparing the value of the stock held by the shareholders of the acquired and acquiring corporations immediately after the acquisition; if the shareholders of an acquired parent end up owning more than 50% in value of the acquiring corporation’s stock, a reverse acquisition has occurred.

- **Leaving the group.** A group member immediately exits the tax group whenever the requisite stock ownership ceases to exist. A group member may not, however, withdraw prior to that time. A group remains in existence notwithstanding the exit of a group member, unless the exiting member is the group parent.

- **Five-year prohibition on reconsolidation.** If a corporation is included, or required to be included, in a group’s consolidated return and the corporation ceases to be a member of the group, then the corporation and any successor may not be included in any consolidated return filed by the group or by another tax group having the same common parent or successor before the 61st month after the first tax year in which the company ceased to be a member of the group.

5. **Filing of return and payment of tax**
   - **Single tax return.** The group parent files a single tax return for the consolidated tax group.
   - **Joint and several tax liability.** The group parent is legally obligated to pay the tax owed by the consolidated tax group, and each group member is jointly and severally liable for the entire consolidated tax liability.

**FURTHER INFORMATION**

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For additional information on group taxation, readers are urged to consult their regular contacts at Jones Day or the following attorneys concerning their own situations or any specific legal questions they may have. General e-mail messages may be sent to counsel@jonesday.com. We invite you to visit our Web site at www.jonesday.com.

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### EXHIBIT 1 – COMPARISON OF GROUP TAXATION REGIMES

<table>
<thead>
<tr>
<th>REQUIREMENTS</th>
<th>France</th>
<th>Germany</th>
<th>Italy</th>
<th>Spain</th>
<th>UK</th>
<th>US</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Eligible parent company</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Domestic corporation</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>- Domestic flow-through partnership</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>- Domestic branch/domestic PE of a foreign company</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Must be the ultimate eligible parent company in the chain</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Eligible subsidiaries</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Domestic corporation</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>- Domestic partnership</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>- Foreign corporation or partnership with a domestic PE</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Group must include all subsidiaries</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>All group members must have same tax year</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong>Requisite stock ownership</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Required percentage ownership by value</td>
<td>95%</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>Yes</td>
<td>80%</td>
</tr>
<tr>
<td>- Required percentage by share capital</td>
<td>95%</td>
<td>None</td>
<td>50%</td>
<td>75%</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>- Required percentage ownership by vote</td>
<td>95%</td>
<td>None</td>
<td>50%</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Eligible subsidiaries may be owned indirectly through a nongroup member</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Possible, depending on relevant group relief</td>
<td>No</td>
</tr>
<tr>
<td><strong>CONSEQUENCES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Elimination of intragroup transactions</strong></td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>VAT groups only</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>NOLs from a pre-consolidation period of a group member</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- May offset consolidated income of the group</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>- May offset the member’s income as separately calculated</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Dual consolidated loss disallowance</strong></td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>IMPLEMENTATION</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Automatically granted upon filing</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Depends on nature of relief</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>TERM</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minimum term</td>
<td>5 years</td>
<td>5 years</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>The group may be voluntarily terminated</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>VAT only</td>
<td>No</td>
</tr>
<tr>
<td>A member may voluntarily leave the group</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong>FILING OF RETURN AND PAYMENT OF TAX</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Tax Return</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Group members file separate income tax returns</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Generally, separate returns, but representative member files single VAT return</td>
<td>No</td>
</tr>
<tr>
<td>- Parent files single tax return</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Joint and several tax liability</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Group members are jointly liable for entire tax</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>/****/</td>
<td>No, except for VAT groups</td>
<td>Yes</td>
</tr>
<tr>
<td>- Group members are jointly liable for their share of the consolidated tax</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>VAT consolidation</strong></td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

/*/ Partnerships may not be grouped for UK purposes, but they are generally transparent and may be looked through.

/****/ In general, to qualify for group relief for surrender of losses and for stamp duty relief, ownership of at least 75% of the ordinary share capital and profits and assets is required; to qualify for tax neutral transfers of assets, a chain of 75% ownership within the group is required together with over 50% ownership directly or indirectly by the parent; and to qualify for VAT consolidation, the companies need only be commonly controlled and have a fixed place of business in the UK.

/****/ Yes, but not for sanctions.

/*****/ There may be a de-grouping charge on company leaving a group if it has received asset transfers from fellow group members within the previous six years.
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