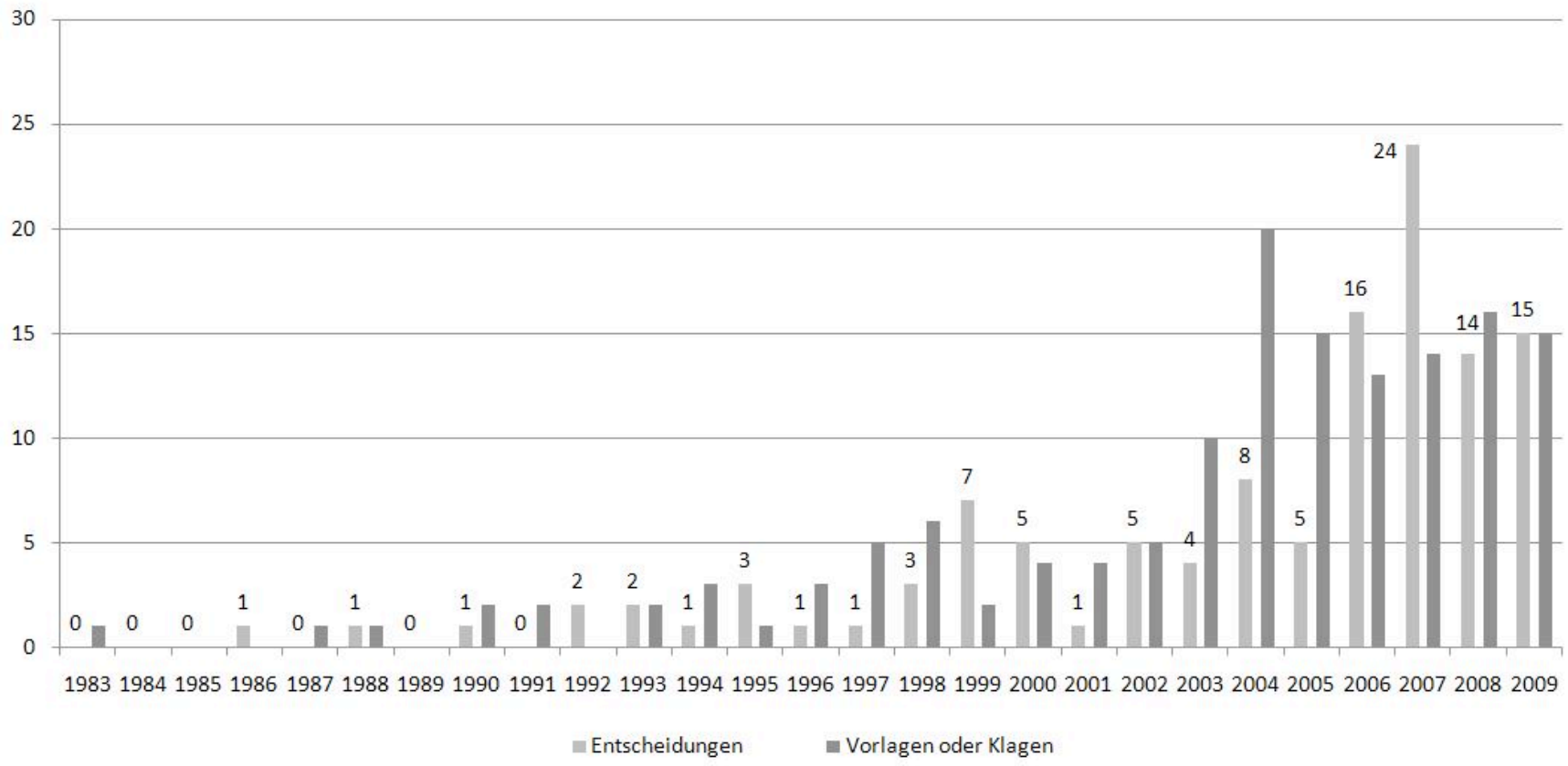
EU Tax: Additional information and statistics

Relevance of EU tax law

Measured by reference to number of cases

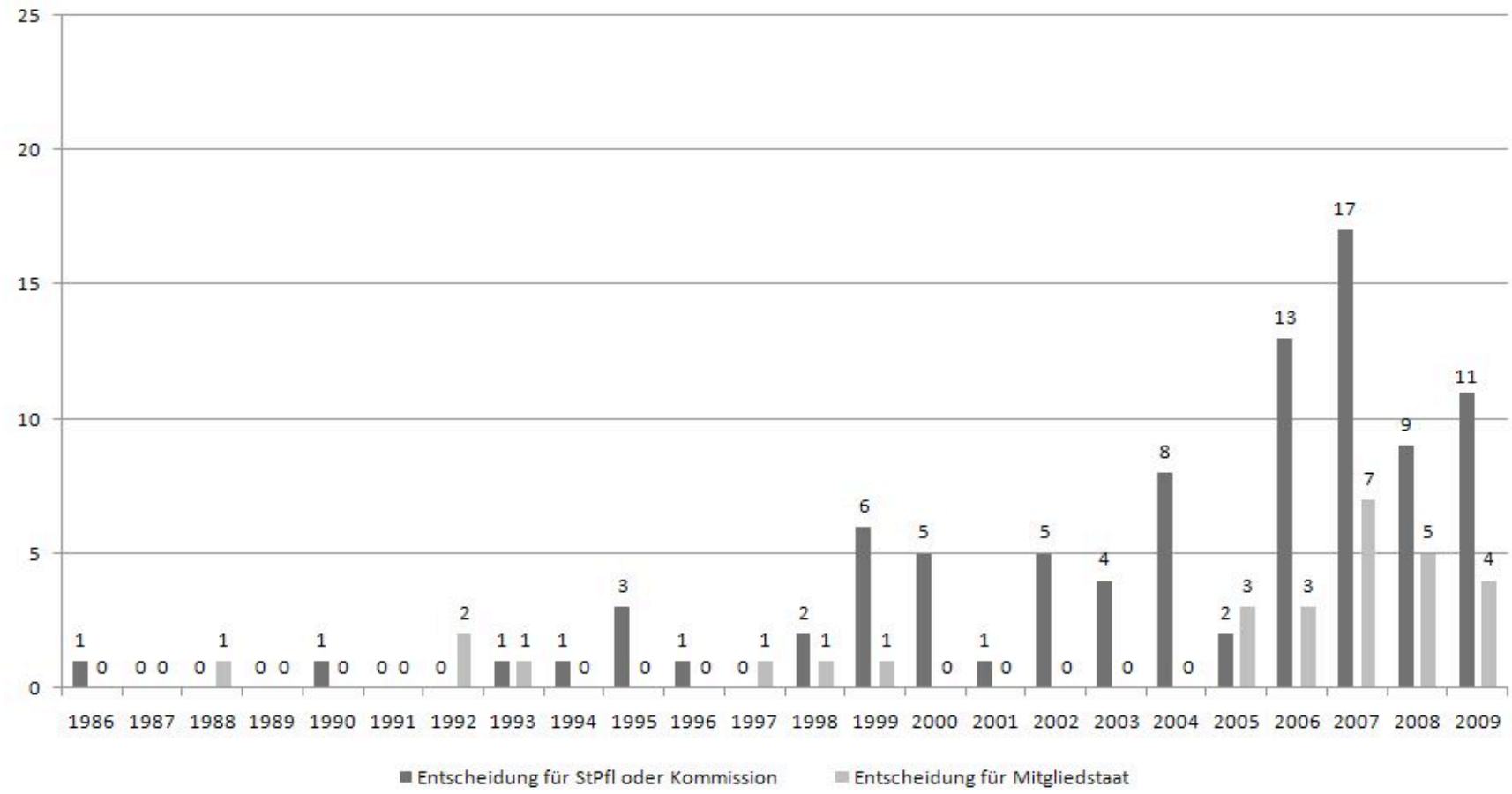
Relevance

Graph 1: Number of (pending) direct tax cases before the ECJ as of 1 January 2010



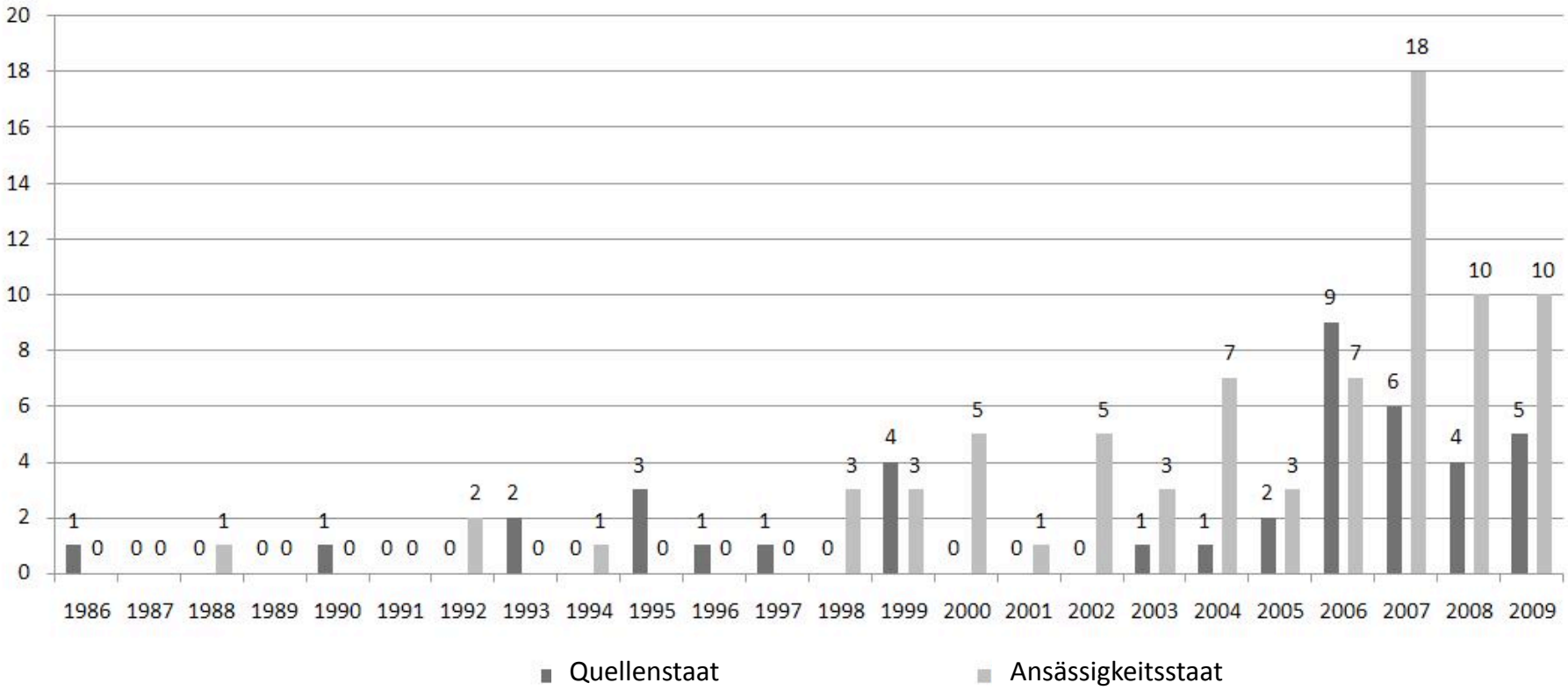
Relevance

Graph 2: Success rate – Taxpayers 76%, Member States 24%



Relevance

Graph 3: Source and Residence State Discrimination

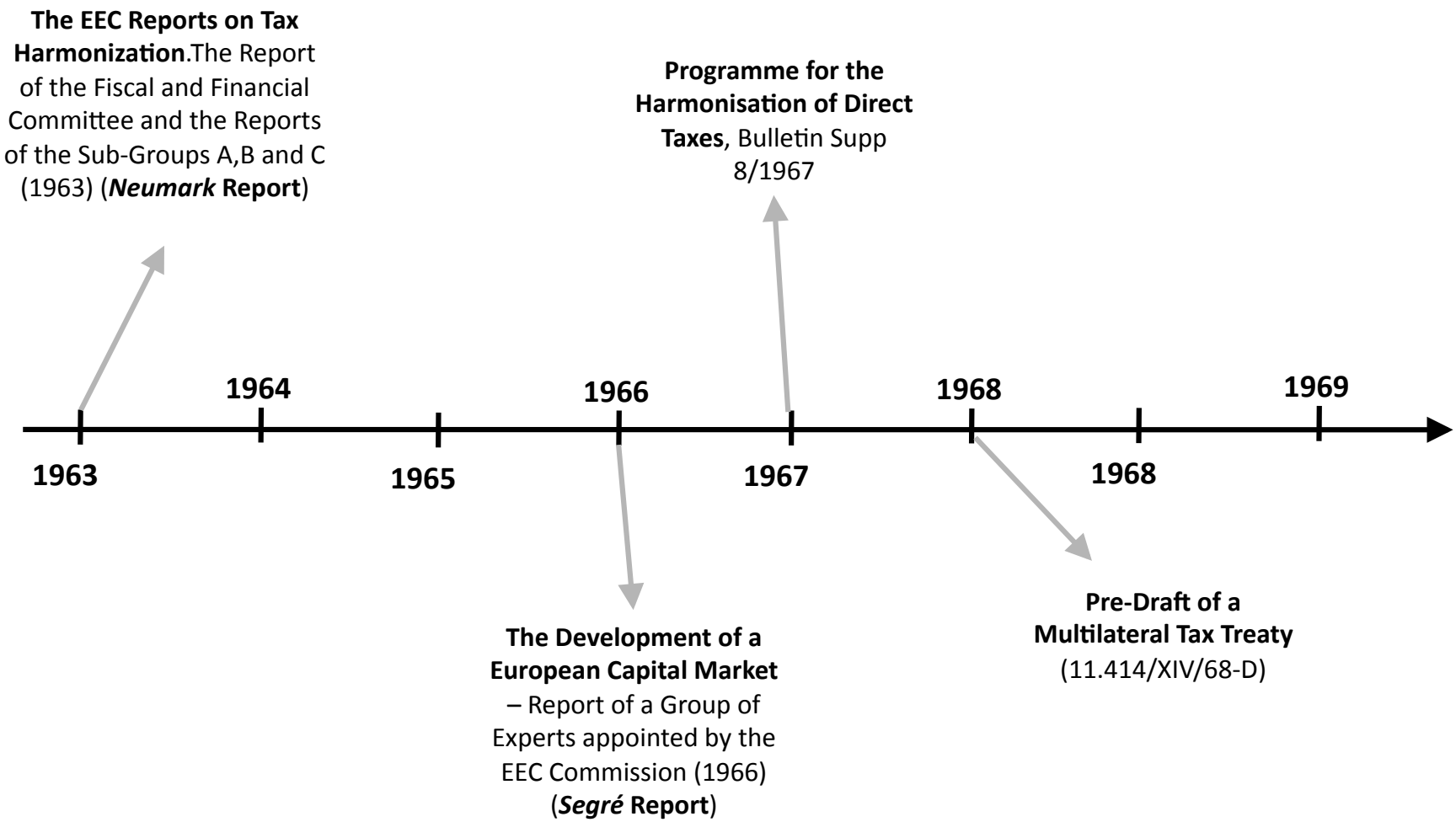


Relevance: Summary

- **High relevance**
  - **Declining?**
- **Increasing success of Member States**
  - **Reasons?**
- **Increasing number of cases regarding the residence state**
  - **Explanation?**

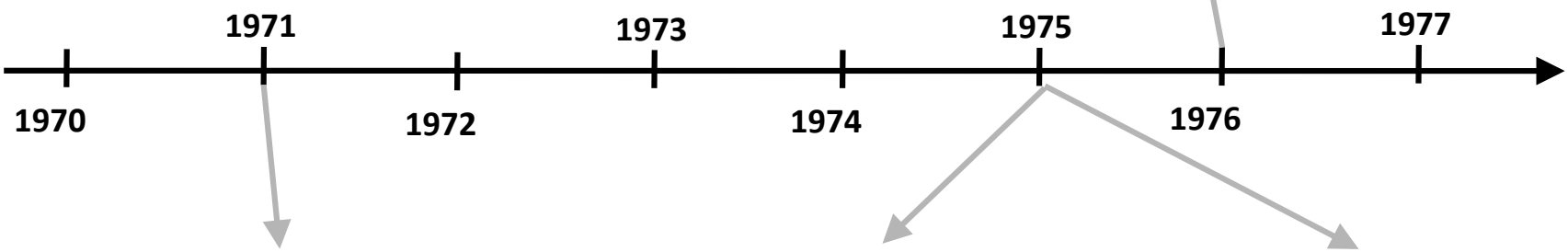
History of EU Tax Law:
Milestones in European Tax Policy

Milestones – 1963 to 1969



Milestones – 1970 to 1977

Proposal for a Council Directive on the Elimination of Double Taxation in Connection with the Adjustment of Transfers of Profits between Associated Enterprises (Arbitration Procedure), COM(76)611 final. — Withdrawn by [1997] OJ C 2, p. 6.



Körperschaftsteuer und Einkommensteuer in den Europäischen Gemeinschaften (1971) (***van den Tempel*** **Report**)

Communication from the Commission **Action Programme for Taxation**, COM(75)391 final

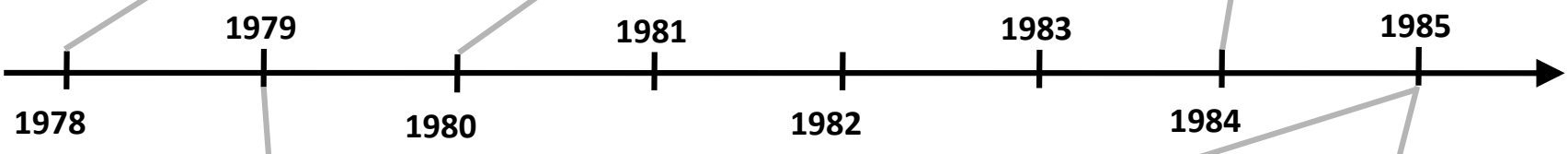
Proposal for a Council Directive concerning the harmonization of systems of company taxation and of withholding taxes on dividends, COM(75)392 final. — Withdrawn by SEC(90)601 final.

Milestones – 1978 to 1985

Proposal for a Council Directive on the application to collective investment institutions of the Council Directive concerning the harmonization of systems of company taxation and of withholding taxes on dividends, COM(1978)340 final. — Withdrawn on 8 April 1993, [1993] OJ C 228, p. 13.

Report on the **Scope for Convergence of Tax Systems**, COM(80)139 final, Bulletin Supp 1/80

Communication from the Commission on **Community Action to Combat International Tax Evasion and Avoidance**, COM(84)603 final



Proposal for a Council Directive concerning the harmonization of income taxation provisions with respect to freedom of movement for workers within the Community, COM(1979)737 final. — Withdrawn on 9 September 1992.

Proposal for a Directive of the Council on the harmonization of the laws of the Member States relating to tax arrangements for the carry-over of losses of undertakings, COM(1984)404 final, amended through COM(85)319 final. — Withdrawn on 21 November 1996, [1997] OJ C 2, p. 6.

Communication from the Commission on **Fiscal Measures Aimed at Encouraging Cooperation Between Undertakings of Different Member States**, COM(85)360 final

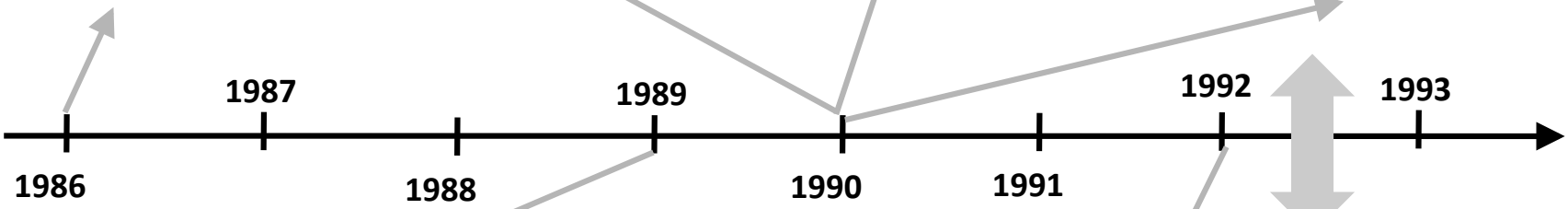
Milestones – 1986 to 1993

Council Resolution of 3 November 1986 concerning the **action programme for small and medium sized enterprises** (SMEs), [1986] OJ C 287, p. 1.

- **Merger Directive**, [1990] OJ L 225, p. 1.
- **Parent-Subsidiary-Directive**, [1990] OJ L 225, p. 6, with correction in [1990] OJ L 266, p. 20.
- **Arbitration Convention**, [1990] OJ L 225, p. 10.

Guidelines on Company Taxation, SEC(90)601 final

Proposal for a Council directive concerning **arrangements for the taking into account by enterprises of the losses of their permanent establishments and subsidiaries situated in other Member States**, COM(90)595 final. — Withdrawn on 11 December 2001, [2004] OJ C 5, p. 20.



1992: Principle of Subsidiarity — Treaty of Maastricht

Communication from the Commission on **Tax Measures to be Adopted by the Community in Connection with the Liberalization of Capital Movement**s, COM(89)60 final

- Report of the Committee of Independent Experts on Company Taxation (1992) (***Ruding* Report**)
- Commission Communication subsequent to the **conclusions of the Ruding Committee indicating guidelines on company taxation linked to the further development of the internal market**, SEC(92)1118 final

Milestones – 1994 to 2001

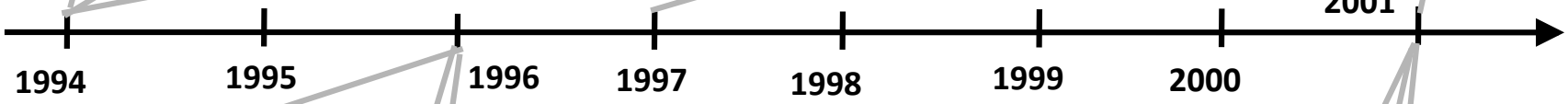
Communication from the Commission on **The Improvement of the Fiscal Environmnent of Small and Medium Sized Enterprises**, COM(94)206 final

Commission **Recommendation 94/390/EC of 25 May 1994 concerning the taxation of small and medium-sized enterprises**

Commission **Recommendation 94/79/EC of 21 December 1993 on the taxation of certain items of income received by non-residents in a Member State other than that in which they are resident**, [1994] OJ L 39, p. 22.

Communication from the Commission **Towards tax co-ordination in the European Union – A package to tackle harmful tax competition**, COM(97)495 final and COM(1997)564 final, and Conclusions of the ECOFIN Council Meeting on 1 December 1997 on taxation policy ("**Code of Conduct**") and ***Primarolo* Report**, 4901/99

Commission Staff Working Paper – **Company Taxation in the Internal Market**, SEC(2001)1681 final



Economic and Social Committee – Opinion on **Direct and Indirect Taxation**, [1996] OJ C 82, p. 49

Taxation in the European Union – Discussion paper for the Informal Meeting of ECOFIN Ministers, SEC(96)487 final

Taxation in the European Union: Report on the Development of Tax Systems, COM(96)546 final

Communication from the Commission **Towards an Internal Market without tax obstacles – A strategy for providing companies with a consolidated corporate tax base for their EU-wide activities**, COM(2001)582, and European Parliament resolution, [2003] OJ C 47 E, p. 591

Communication from the Commission **The elimination of tax obstacles to the cross-border provision of occupational pensions**, COM(2001)214 final, and European Parliament resolution, [2002] OJ C 177 E, p. 302.

Communication from the Commission on **Tax policy in the European Union – Priorities for the years ahead**, COM(2001)260 final

Milestones – 2002 to 2005

Opinion of the Economic and Social Committee on **Fiscal competition and its impact on company competitiveness**, ECO/067

Communication from the Commission on **Dividend taxation of individuals in the Internal Market**, COM(2003)810 final

Opinion of the European Economic and Social Committee on **Taxation in the European Union: common principles, convergence of tax laws and the possibility of qualified majority voting**, [2004] OJ C 32, p. 118

Communication from the Commission on the work of the EU Joint Transfer Pricing Forum in the field of business taxation from October 2002 to December 2003 and on a **proposal for a Code of Conduct for the effective implementation of the Arbitration Convention** (90/436/EEC of 23 July 1990), COM(2004)297 final. — Accepted by the Council in late-2004 (IP/04/1447)

Communication from the Commission **The Contribution of Taxation and Customs Policies to the Lisbon Strategy**, COM(2005)532 final

2002 **2003** **2004** **2005**

- **Savings Directive**, [2003] OJ L 157, p. 38
- **Interest-Royalty-Directive**, [2003] OJ L 157, p. 49

Communication from the Commission **An Internal Market without company tax obstacles: achievements, ongoing initiatives and remaining challenges**, COM(2003)726 final

Communication from the Commission on the work of the EU Joint Transfer Pricing Forum on transfer pricing documentation for associated enterprises in the EU and **Proposal for a Code of Conduct on transfer pricing documentation for associated enterprises in the EU**, COM(2005)543 final.—Accepted by the Council in June 2006, [2006] OJ C 176, p. 1

Communication from the Commission **Tackling the corporation tax obstacles of small and medium-sized enterprises in the Internal Market – outline of a possible Home State Taxation pilot scheme**, COM(2005)702 final, and Annex SEC(2005)1785

Milestones – 2006 to 2009

Report from the Commission **Implementing the Community Lisbon Programme: Progress to date and next steps towards a Common Consolidated Corporate Tax Base (CCCTB)**, COM(2006)157 final

Communication from the Commission concerning **the need to develop a co-ordinated strategy to improve the fight against fiscal fraud**, COM(2006)254 final

- Communication from the Commission **Co-ordinating Member States' direct tax systems in the Internal Market**, COM(2006)823 final
- Communication from the Commission **Tax Treatment of Losses in Cross-Border Situations**, COM(2006)824 final, and Appendix SEC(2006)1690
- Communication from the Commission **Exit taxation and the need for co-ordination of Member States' tax policies**, COM(2006)825 final

Proposal for a CCCTB?

2007

2006

2008/09/10

Communication from the Commission **Towards a more effective use of tax incentives in favour of R&D**, COM(2006)728 final.

- Communication from the Commission on the work of the EU Joint Transfer Pricing Forum in the field of **dispute avoidance and resolution procedures and on Guidelines for Advance Pricing Agreements** within the EU, COM(2007)71 final.
- Communication from the Commission on the **application of anti-abuse measures in the area of direct taxation – within the EU and in relation to third countries**, KOM(2007)785 final

Development of Secondary EC Tax Law

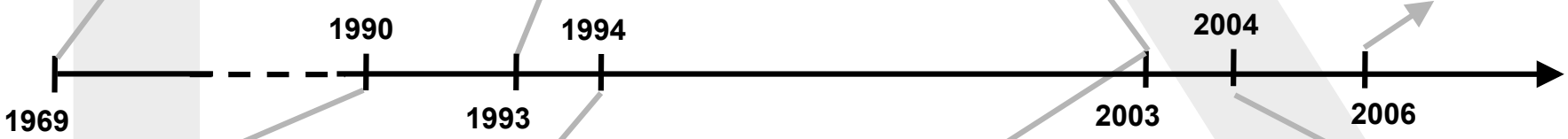
Timeline: Parent-Subsidiary-Directive

Proposal for a Council Directive on the common system of taxation applicable to parent companies and their subsidiaries of different Member States, COM(1969)6 final.

Proposal for a Council Directive amending Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, COM(1993)293 final. — Withdrawn in COM(2004)542 final.

Proposal for a Council Directive amending Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, COM(2003)462 final.

Council Directive 2006/98/EC of 20 November 2006 adapting certain Directives in the field of taxation, by reason of the accession of Bulgaria and Romania, [2006] OJ L 363, p. 129.



Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, [1990] OJ L 225, p. 6, with correction in [1990] OJ L 266, p. 20. — Based on proposal COM(1969)6 final.

Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded, Annex I, XI.B.I, [1994] OJ C 241, p. 196.

Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded – Appendix II, 9, [2003] OJ L 236, p. 555.

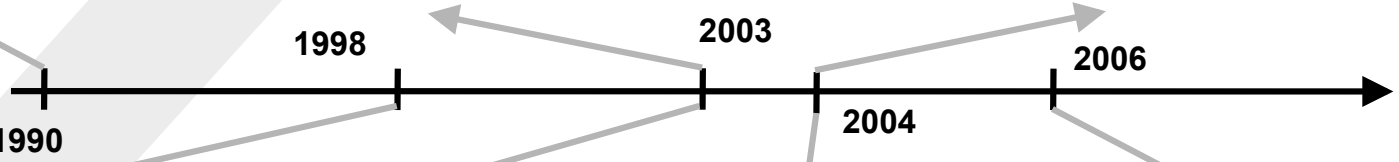
Council Directive 2003/123/EC of 22 December 2003 amending Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, [2004] L 7, p. 41. — Based on proposal COM(2003)462 final.

Timeline: Interest-Royalty-Directive

Proposal for a Council Directive on a common system of taxation applicable to interest and royalty payments made between parent companies and subsidiaries in different Member States, COM(90)571 final. — Replaced by COM(93)196 final, and withdrawn on 9 December 1994.

Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, [2003] OJ L 157, p. 49.—Based on proposal COM(1998)67 final.

Council Directive 2004/66/EC of 26 April 2004 adapting Directives 1999/45/EC, 2002/83/EC, 2003/37/EC and 2003/59/EC of the European Parliament and of the Council and Council Directives 77/388/EEC, 91/414/EEC, 96/26/EC, 2003/48/EC and 2003/49/EC, in the fields of free movement of goods, freedom to provide services, agriculture, transport policy and taxation, by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, [2004] OJ L 168, p. 35. — Based on proposal COM(2004)148 final.



Proposal for a Council Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, COM(1998)67 final.

Proposal for a Council Directive amending Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, COM(2003)841 final.

Council Directive 2004/76/EC of 29.4.2004 amending Directive 2003/49/EC as regards the possibility for certain Member States to apply transitional periods for the application of a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, [2004] OJ L 157, p. 106. — Based on proposal COM(2004)243 final.

Council Directive 2006/98/EC of 20 November 2006 adapting certain Directives in the field of taxation, by reason of the accession of Bulgaria and Romania, [2006] OJ L 363, p. 129.

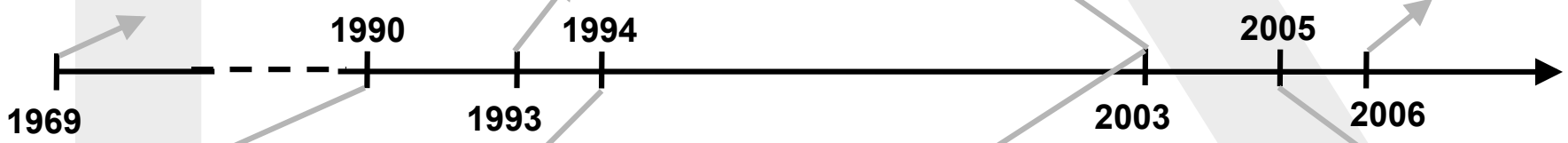
Timeline: Merger Directive

Proposal for a Council Directive on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States, COM(1969)5 final.

Proposal for a Council Directive amending Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States, COM(1993)293 final. — Withdrawn in COM(2004)542 final.

Proposal for a Council Directive amending Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States, COM(2003)613 final.

Council Directive 2006/98/EC of 20 November 2006 adapting certain Directives in the field of taxation, by reason of the accession of Bulgaria and Romania, [2006] OJ L 363, p. 129.



Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States, [1990] OJ L 225, p. 1.

Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded, Annex I, XI.B.I, [1994] OJ C 241, p. 196.

Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded – Appendix II, 9, [2003] OJ L 236, p. 555.

Council Directive 2005/19/EC of 17 February 2005 amending Directive 90/434/EEC 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States, [2005] OK L 58, p. 19.