Influence of Tax Regimes for Agricultural Businesses
On Production Structures:
A Comparative Analysis of Five European Countries:
Germany, Belgium, Denmark, France and Netherlands.

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Influence of tax regimes for agricultural businesses on production structures: a comparative analysis of five European countries: Germany, Belgium, Denmark, France and the Netherlands

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INTRODUCTION

The Common Agricultural Policy (CAP) has been governing the legislative and economic environment of European farmers for over 40 years, thereby adding an important supranational dimension to the agricultural sector.

However, taxation is a tool of sovereign power par excellence that remains at the disposal of each state, capable of modifying the business environment and competitive conditions of companies.

Thus, in a communication dated 23rd May 2001 entitled "Taxation Policy in the European Union - Priorities for the years ahead", the Commission reaffirmed the belief that a complete harmonization of the direct taxation systems of the Member States is not necessary. According to the Commission, as long as they respect the EU legislation, member states are free to choose the tax system that best corresponds to their needs.

As an integral part of agricultural policies, tax regulations can impact the organizational choices of farmers, the profitability of their production structures and the dynamics of their evolution. Given the high level of economic similarities with France on a wide range of production systems, as well as in the diversity of their tax approaches, this study aims to make an inventory of direct taxation of agricultural enterprises that are subject to the effective tax regimes in France, Belgium, the Netherlands, Germany and Denmark.

In these five countries, accounting organizations specialized in agriculture are members of the EFAC (European Federation of Agricultural Consultancy). The long experience of exchanges between experts ensures a mutual understanding of the tax regulations and the economic approaches of the farm businesses. The following work has benefited from this long experience in its analysis of actual and comparable situations assessed both in terms of application of tax regulations and as well as study of individual career and optimization.

The choice of these countries is justified by their specific tax policies:
- The Netherlands, characterized by an efficient agricultural system, focus their agricultural fiscal policy on supporting investment and transfer of property.
- Germany and France are characterised by an original approach that treats agricultural businesses as a separate category for taxation.
- Denmark, on the other hand, has no specific tax regime for agriculture: it is this criterion that determined the choice of Denmark in this comparative study. Indeed, this country is characterized by an absence of specialized tax rules and its open-ended approach to taxation and therefore to the company.

Belgium has no specific category of real income for agriculture but has however implemented agricultural flat-rate tax regimes both in matter of income tax and VAT. In addition, the country is characterized by an agricultural tax policy favourable to ownership.

A comparison between the countries can highlight the effects of tax regulations, in particular with regard to settlement, transfer, investment, diversification, choice of the legal form of businesses and mainly, the evolution of production structures.

Indeed, these phases in the life of the farm businesses constitute economic issues, the tax consequences of which can guide the financial, fiscal and patrimonial-related strategies to be implemented.
The study is divided into three parts:
- General principles of national fiscal systems (I)
- Taxation of farming activities: how each country deals with the various problems related to agriculture (II)
- Case studies: examples with figures (III)
PART I

GENERAL PRINCIPLES

OF NATIONAL FISCAL SYSTEMS
This part deals with key elements that will help to understand how each country (Germany, Belgium, Denmark, France and the Netherlands) deals with taxation. This systemic view of approaches to taxation clearly sets down what governs the different tax regimes. Indeed, the taxation policies of the different states primarily reflect their economic and agricultural culture.

The study will focus on:
- Taxable subject (A)
- Taxable income (B)
- Individual income tax (C)
- Corporate income tax (D)

A. Taxable subject:

1) The tax payer: from the individual to the family

Germany, Belgium, Denmark and the Netherlands impose taxes on the income of individuals. This means that each member of a family will be subject to income tax on his personal income. The presence of dependent children with no income has no influence on the amount of tax payable. However, in Belgium, a family with dependent children can benefit from a fixed deduction on the taxable income (1,400 € for one child and 3,720 € for two).

France, meanwhile, is an exception as it applies the family quotient system for all household income tax. This single fact allows France to limit the effects of tax progressivity. There are indeed therefore, differences between the different countries studied: from two tax brackets in Denmark with a maximum of 56%, to four or five brackets in other countries with a maxima of 41% to 52%.

¹EFAC - Taxation of agriculture in Europe a guide to agriculture income tax – Editions Kluwer
2) Income tax progressivity

Figure 1

Tax burden is not measured only in terms of tax brackets and tax rates; another factor that needs to be considered includes the elements determining taxable income. Social contributions paid to specific organisations are deducted from the taxable income calculate in Germany, France, Belgium and the Netherlands. In Denmark, however, social security is financed by taxes, and so it is not deducted social welfare contributions from income.

In the above graph, you can view the progressivity of income tax for a single unmarried taxpayer who does not benefit from any reductions or tax shelter. It appears that taxation is most progressive in France.

B. The Economic and the Scheduled tax approaches to income

Another notable feature lies in the fact that France and Germany distinguish between separate tax categories (schedules) for each type of activity, particularly agriculture, whereas Denmark, Belgium and the Netherlands consider agriculture as any other sector of economic activity (economic approach).
## Influence of tax regimes for agricultural businesses on production structures: a comparative analysis of five European countries: Germany, Belgium, Denmark, France and the Netherlands

**Figure 2**

<table>
<thead>
<tr>
<th>Type of income</th>
<th>Denmark</th>
<th>Netherlands</th>
<th>Belgium</th>
<th>Germany</th>
<th>France</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Income generated by activity of taxpayer:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salary</td>
<td>Income from labour (wages, pensions, agricultural profits, industrial and commercial profits, income from professional activity and professional capital gains)</td>
<td>Income from business and professional activity (agriculture, industry, handicrafts and independent professional)</td>
<td>Income from business and professional activity (agriculture, industry, handicrafts and independent professional)</td>
<td>Profits from agriculture and forestry</td>
<td>Profits from agriculture and forestry</td>
</tr>
<tr>
<td>Pension</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Profits</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Income generated by remuneration linked to possession of financial assets or real-estate:</strong></td>
<td>Capital income (income from financial investments (excluding shares), property and property rights.)</td>
<td>Annual income from movable and immovable property</td>
<td>Property income (rents and cadastral income)</td>
<td>Income from property and certain property rights</td>
<td>Income from property</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Financial profits (dividends and capital gains) derived from a substantial participation (&gt; 5%) in the capital of a company</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Income from shares</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Legend:</strong></td>
<td>in green, taxation categories of agricultural income</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
C. Corporate income tax: overview of rules within the countries

3) Corporate tax: definition, rates and issues

Corporate income tax (CIT) does not seem to be an issue of national tax policy for different countries and is applied similarly by distinguishing between the taxation of distributed and non-distributed incomes at similar rates.

<table>
<thead>
<tr>
<th>Figure 3</th>
<th>Corporate Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Corporate Tax</strong></td>
<td><strong>A overview of rates in the countries</strong></td>
</tr>
<tr>
<td><strong>Corporate tax</strong></td>
<td><strong>Fixed-rate tax payment at source for dividends</strong></td>
</tr>
<tr>
<td><strong>France (2011)</strong></td>
<td>33% (exception of 15% for SMEs)</td>
</tr>
<tr>
<td><strong>Germany (2011)</strong></td>
<td>25%</td>
</tr>
<tr>
<td><strong>Denmark (2011)</strong></td>
<td>25%</td>
</tr>
<tr>
<td><strong>Netherlands (2011)</strong></td>
<td>20% up to €200,000</td>
</tr>
<tr>
<td></td>
<td>25% beyond that amount</td>
</tr>
<tr>
<td><strong>Belgium (2012)</strong></td>
<td>33.99%</td>
</tr>
<tr>
<td></td>
<td>From 0 to €25,000: 24.98%</td>
</tr>
<tr>
<td></td>
<td>From 25 to €90,000: 31.93%</td>
</tr>
<tr>
<td></td>
<td>From 90 to €322,500: 35.54%</td>
</tr>
</tbody>
</table>

An analysis of the table above shows us a number of findings:
- The rate of corporate tax varies from 25% to 33.99%.
- The fixed-rate deduction at source varies from 19% to 42%.

However, the income generated by companies subject to corporate tax in all the countries in this study is subject to an accumulation of corporate tax and a fixed-rate payment at source for dividends.

In Belgium, the corporate tax rate is 33% to which must be added a "crisis contribution" equal to 3 "additional cents" which brings the effective rate to 33.99%. There is a scale of lower rates for profits below €322,500. But because of the many conditions required for access to this regime, only some SMEs can benefit from it. If the company has profits of more than €322,500, the rate of 33.99% is still applicable.
Besides, the following histogram helps to visualize the impact of this corporate tax accumulation and the fixed-rate deduction at source:

**Figure 4**

![Histogram of tax regimes](image)

An analysis of this graph shows:
- Uniform rate of taxation of dividends in all the countries (25%), except in France (19%).
  The taxation of dividends is an element of arbitrage in the choice of distribution or not of dividends.
- Application of reduced rates for small businesses and SMEs in the Netherlands, Belgium and France: 15% up to €38,120 income in France; a reduction of corporate tax of up to €322,500 income in Belgium and 20% to €200,000 in the Netherlands; The addition of taxation (corporate tax and dividends) gives a relatively similar rate across countries: the rate revolving around 50%.

**4) Corporate tax interest rates**

While corporate tax is compulsory for some types of companies, it is possible for other types of companies, including even individual farmers, to opt for the companies scheme. So, it is necessary to compare the impact of corporate tax combined to fixed-rate payment on dividends with that of personal income tax.

The following table allows us to compare maximum rates of taxation by type of income taxation:
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The comparison of the corporate tax rates with the income tax table allows us to draw some conclusions:

- The total tax burden is relatively the same whether the company’s income is subject to corporate tax or income tax. But this observation is applicable only if the incomes subject to income tax place the taxpayer in the top bracket.
- Another general principle is that the total profits earned by the company are subject to corporate tax. It enjoys reduced taxation (as compared to income tax charges), as long as they are not distributed, which is not possible in case of an individual income tax regime.
- It is more interesting to opt for corporate tax in the Netherlands. Indeed, the addition of the corporate tax rates (corporate tax and levy on dividends) is lesser than the maximum bracket of income tax: 50% for corporate tax against 52% for income tax. This addition gives the opposite result in other countries.
- Distributed profits are not considered as capital income but as labour income in the case of individuals in Denmark and in the case of transparent partnerships in the Netherlands.
- Belgium does not want to lower corporate tax rates as this will lead to competition with income tax.

The corporate tax option may be motivated by several considerations. In Denmark, the advantage of allowing self-employed workers to choose the corporate tax plan allows them to benefit from the same tax benefits as those enjoyed by companies. One of the most important benefits of the application of the corporate tax system is a full deduction of interest on loans arising from labour income. Another advantage is that, in Denmark, the corporate tax is also widely used for income smoothing. Indeed, the profits left at the disposal of the company will be taxed only at the fixed rate of corporate tax.

In addition, through this system, it is also possible to defer a portion of the final payable tax: the profits of the company are taxed at a fixed rate of 28% and when the profits are levied, they are taxed as personal income. The tax paid as corporate tax is deducted (tax credit) from the taxes of the year in which the profit is levied.

In Denmark, the corporate tax regime is very interesting for several reasons:
- Full deduction of interest on company loans;
- Income left at the disposal of the company is taxed at a rate of 25%;
- Possibility of the carry-back mechanism in case of deficit and thus benefit from a tax credit;
- Possibility to smoothen the income tax of the company.

<table>
<thead>
<tr>
<th></th>
<th>Income tax</th>
<th>Corporate tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating income (top bracket)</td>
<td>41 % to 56%</td>
<td>25 % to 33.9%</td>
</tr>
<tr>
<td>Levy (on distributed profits)</td>
<td>0%</td>
<td>15 % to 25%</td>
</tr>
<tr>
<td>Total tax burden</td>
<td>41% to 56%</td>
<td>44% to 58.9%</td>
</tr>
</tbody>
</table>

Figure 5
Variation in the rates of corporate tax and income tax
There are some other specific rules in the countries studied:

**Denmark:** There is an interesting feature in agricultural cooperatives, supply and marketing cooperatives (dairies, slaughterhouses, etc.) in Denmark. The income of these cooperatives is determined at a flat-rate of 4% of the assets and is taxed at 14.3% which is the cooperatives corporate tax. This tax is between 0.572% and 0.858% of the value of the asset, while it is to be noted that the base rate is 25%. The distributed profits of these cooperatives are included in the current income of farmers. In comparison, in France, these cooperatives are exempt from corporate tax provided that transactions with non-members do not exceed 20% of their business. In addition, transactions with non-members are subject to corporate tax. It appears that in France, taxation that applies to cooperatives is more favourable despite the constraints imposed on them.

**Germany:** There was a system of corporate tax with a different rate to incentivise distribution of profits: 45% if the profits are not distributed and 30% on distributed profits. Dividends were subject to a fixed-rate levied at source tax of 17.5%. Since 1st January 2001, corporate tax rate is 25% regardless of the income distribution and only half of the dividends are included in the taxable income of the shareholder.

Four reasons are responsible for this shift:
- The desire to treat corporations and partnerships equally.
- Compliance under the EU legislation regarding subsidiaries. The previous system was applicable only to companies domiciled in Germany. Under the old system, companies with subsidiaries abroad were not subject to tax in Germany. This is no longer the case since the new legislation.
- The desire to simplify the system.
- Increase the tax revenue of the country.

**Netherlands:** Most companies are transparent (the partners are therefore subject to income tax). It is possible, however, to opt for corporate tax. It should be noted that, as in France, tax credit no longer exists in the Netherlands.

**France:** Transparent companies and individual entrepreneurs may opt for corporate tax. More specifically, the tax credit mechanism - which consists of assigning a tax credit to the recipient of the dividend, the company paying the dividend having already paid tax on the profit - has been removed. The tax credit was put in place to mitigate the effects of double taxation on corporate profits and dividends distributed. From 1st January 2005, taxation of dividends has been completely changed and the withholding tax deleted.

**Belgium:** Belgium does not want to pit income tax in competition with corporate tax. It provides for corporate tax reductions for incomes below €322,500. In addition, it is not possible for individual entrepreneurs to opt for the corporate tax regime.

The Court of Justice of the European Union (CJEU) (judgment of 15th September 2011) confirmed the incompatibility (under Articles 49 TFEU and 63 TFEU) of the old system of tax credits and with holding under the principles of freedom of establishment and free movement of capital. This was on the occasion of a preliminary ruling by the Council of State presented in the context of a case filed against the Minister for the Budget, Public Accounts and the Civil Services by the company Accor SA regarding the application by the latter for the return of withholding tax paid for the years 1999 to 2001.

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1 Withholding tax is the deduction at source by the creditor of a person who is debtor for another.
The study of the general principles of national tax systems (Part I) is the benchmark for this analysis. It is necessary to study this analysis from a strictly agricultural point of view in order to expose the tax rules used in the five countries for the strategic phases of businesses (Part II).

Different countries have either chosen or not to implement a fiscal policy specifically dedicated to agriculture. Thus among the five countries in this study, only Germany and France have developed a specific tax regime for agricultural profits. In contrast, the Netherlands, Belgium and Denmark do not have a tax dedicated to agriculture.

The Netherlands take into account the specificities of different sectors through specific deductions on taxable income.

Denmark meanwhile maintains a general approach to its economy by treating the agricultural sector in the same way as other industries.
PARTIE II

AGRICULTURAL TAXATION: HOW EACH COUNTRY APPROACHES THE DIFFERENT ISSUES RELATED TO AGRICULTURE
Many provisions are available to address different issues related to agriculture: accounting principles and problems encountered are the same in different countries. However, the tax treatment of key elements that constitute income generates differences in the tax base.

We analyze in this section:
- An individual practice of agricultural business (A)
- Taxation of fixed assets: an unavoidable issue of business (B)
- Depreciation: from the unit to the pool (C)
- Intangible Fixed Assets (D)
- Establishing the business: the challenges of financing (E)
- Transfer of the business operations: the question of capital gains (F)
- Modernization: reserve for investment (G)
- Economic variability: how to regulate increasing or decreasing revenues (I)
- Diversification: absence of any tax issue (J)

A. An individual practice of agricultural business

It is remarkable that in all countries, individual farm business are the most common feature with 98% in Denmark, 93% in the Netherlands and Germany, 84% in Belgium and 73% in France. Corporate forms specifically dedicated to agriculture are found in France and this explains the higher proportion of farm businesses in the form of companies (27% in France against 2% for Denmark, 7% for Germany and the Netherlands and 16% in Belgium).

Figure 6

Farm businesses in the different countries:

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Individual business</th>
<th>companies and partnerships</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2007</td>
<td>2007</td>
<td>2007</td>
</tr>
<tr>
<td>Denmark</td>
<td>44 620</td>
<td>43 670 (98%)</td>
<td>950 (2%)</td>
</tr>
<tr>
<td>Germany</td>
<td>370 480</td>
<td>346 330 (93%)</td>
<td>24 150 (7%)</td>
</tr>
<tr>
<td>(including former GDR from 1991)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>527 350</td>
<td>383 980 (73%)</td>
<td>143 370 (27%)</td>
</tr>
<tr>
<td>Netherlands</td>
<td>76 740</td>
<td>71 400 (93%)</td>
<td>5 340 (7%)</td>
</tr>
<tr>
<td>Belgium</td>
<td>42 800</td>
<td>36 000 (84 %)</td>
<td>6 800 (16 %)</td>
</tr>
</tbody>
</table>

The proportion of agricultural companies is higher especially in France (including particularly the EARL GAEC).

In Belgium, as in France, there is a type of company dedicated to agriculture (landbouwvennootschap). These are widely found in the land cultivation and dairy farming sectors.

In France, the use of the corporate form has three main objectives:

Transmission of assets, taxation (rules for calculating turnover in transparent companies to limit the impact of taxation on capital gains) and the inclusion of family labour (work of spouse and children).

3 Eurostat – Enquête structures 2007
In The Netherlands, corporate tax is frequently levied on Limited Liability Companies as soon as profits exceed € 125 000, in order to limit taxation. The majority of companies in the Netherlands are constituted among spouses.

In all the countries studied, farm businesses are mostly transparent partnerships where each partner declares his or her share in the profits of the company as income tax. It must be noted that the vast majority of these partnerships are family businesses.

B. Taxation of fixed assets: an unavoidable issue of business

The term real estate includes both land and buildings.

**Land:**

If, from the business point of view, real estates -especially land-are an important element, they are treated as neutral from the fiscal point of view (in the sense that investment in land does not generate depreciation).

Indeed, land is not depreciated in any country. In Denmark and Belgium, they are still considered a professional asset and are generally recorded in the balance sheet of the business when they are owner-operated, unlike in France where they can optionally be retained as private assets.

Thus, in France, the general rule is the recording of land in the balance sheet. It is possible however to exercise the option of non-registration. Where lands are recorded in the balance sheet, all related costs (mortgage interest, property taxes and acquisition costs) are deductible from the income. The capital gain on sale is considered as professional. When they are not registered, no cost is deductible except about 20% of the land tax and capital gains are taxed under the regime of capital gains of private persons. In light of these rules, in practice, recording is generally made under the category of business assets.

The Netherlands: land is recorded in the balance sheet. The capital gain on the land is taxed only if the gain is due to speculation (buying at a normal market price in the prospect of a quick resale at a high price due to change of purpose – for agricultural purposes / construction purposes). Given the deductions and the non-taxation of capital gains not related to speculation, this represents a lost profit to the state.

Only the Netherlands and Belgium (beyond 8 years of holdings) exempt capital gains on farmland. The other three countries impose tax on this item. The intensity of agricultural production can be measured by the value of production per hectare. Measured in U.S. dollars, the intensity of agricultural production in the Netherlands is the highest in Europe and one of the highest in the world (after Japan). With 1.6% of the usable agricultural area of Europe, the Netherlands contributes to 8% of the EU's agricultural production.

For the reasons mentioned above and because of the size of the country with respect to the density of population, land pressure as well as cost of land is very high in the Netherlands. It should be noted that in the Netherlands, the prices of land transactions are not subject to controls.

This has resulted in a particularly intensive rate of production per hectare.

This country is not only an exporter of food products, but also of farmers looking for relatively cheap land and spaces larger than those available in their country, in Europe and the world. There also remains the fact that this exemption does not seem to have any real impact on land values.
**Buildings and residences:**
Depending on the type of production, business operations use more or less specialized buildings. The tax treatment of farm buildings is based on the same principles in all countries.

However, the farmer’s residence is subject to different rules, depending on the country. The farmer’s residence is often a part of the farm or is built near farm buildings. It is often included in the transactions of transfer of ownership.

**Germany:** The farmer’s residence was necessarily recorded in the balance sheet until 31.12.1998 and since then, only the listed houses (with historical heritage value) can, optionally, be included. This requirement resulted in the deduction of charges related to essentially private fixed holdings from the farm income. The removal of this requirement was enacted primarily by a concern for equity between taxpayers and especially for employees.

**Denmark:** The scheme applied to the farmer’s residence is the same for all taxpayers, namely: a flat-rate deduction of financial expenses and maintenance costs of 1% (limited to € 400) from the land value, evaluated annually by the tax authorities (market value). In counterpart, the taxable income is increased by the estimated value of the rental, i.e. 2% on the same basis. Gains on sale of a principal residence are exempted. Upon the sale of the farm, a total capital gain is calculated and the part of capital gains on the house is exempted - if the house is 20% of the value of the farm, 20% of capital gains is not taxed.

**France:** The balance sheet entry of the residence is an option that is rarely exercised since, for this, it must be an integral part of the farm land and not have the character of the owner’s house, i.e. with the size and construction features of a private property. In fact, the majority of houses do not form part of the farm land. In case of registration, depreciation rules are the same as for the buildings. These rules are as follows: for buildings for residential use, the rate of depreciation most commonly accepted in practice range from 1% to 2.5% per year, or a period of 40 to 100 years. Other expenses relating thereto are deducted from the income but a sum corresponding to the actual rental value⁴ is added to the income.

**Netherlands:** As in France, entering the house in the balance sheet is a matter of choice. Registration allows amortizing, deducting costs but capital gains or losses are included in income. For a description of depreciation rules, see section below (section 5).

**Belgium:** you can choose whether to list the house in the balance sheet. Consequences for taxation are the same as in the Netherlands. In addition, in Belgium one must take into account the fact that people who live in the house are also taxed for living free of cost in the company’s house. Also for the deduction of insurance a negative correction must be made for the basic calculation of the deduction.

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⁴ The actual rental value corresponds to the rent that a tenant will be asked to pay for using the house.
C. Depreciation: from the unit to the pool

Machinery and facilities are considered as depreciable assets in all countries. This means that their acquisition will result in an increase in the value of the balance sheet and the annual depreciation expense statement will reduce taxable income.

The amortization period corresponds to the economic life of an investment. By economic life, it is meant the period of expected use on the farm in relation to physical or technical wear and tear (obsolescence) or legal expiration.

France, Germany, the Netherlands and Belgium practice depreciation in a classical manner, item by item. Denmark stands out particularly in its depreciation method with the pool system. This original system is applied to all equipment, grouped in a pool, a depreciation rate ranging from 0% to 25%. This system neutralizes the effect of capital gains in case of renewal of equipment. Another highlight in the depreciation method, the Netherlands calculates the depreciation value based on the difference between the purchase price and the resale value of the equipment. Depreciation methods by country are as follows:

- **Buildings**: They are amortized on a linear basis in all countries except Denmark, where it is possible to increase depreciation by 3%. In Belgium, it is always possible to choose the reduced balance depreciation (for the whole category and not for a single investment).

- **Equipment and tractors**: These are depreciated according to a linear method in all countries except in Denmark where the pool is amortized on a declining balance rate which is decided annually by the farmer. In the Netherlands, the base rate for depreciation is the purchase price of the equipment minus the residual value determined by the administration. In Belgium, reduced balance depreciation is accepted.

Rates and depreciation periods applied in different countries are described in the table below:

<table>
<thead>
<tr>
<th></th>
<th>Denmark</th>
<th>France</th>
<th>Germany</th>
<th>Netherlands</th>
<th>Belgium</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Buildings</strong></td>
<td>25 years</td>
<td>20 years</td>
<td>33,33 years</td>
<td>25 years</td>
<td>20 – 33.33 years</td>
</tr>
<tr>
<td></td>
<td>From 0% to 4% (+3 % option)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Tractor</strong></td>
<td>5 years</td>
<td>8 years</td>
<td>6 years -25% (rest value)</td>
<td>5 – 10 years</td>
<td></td>
</tr>
<tr>
<td></td>
<td>From 0 to 25%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Agricultural material</strong></td>
<td>10 years</td>
<td>10 years</td>
<td>7 years -10% (rest value)</td>
<td>5 – 10 years</td>
<td></td>
</tr>
</tbody>
</table>

Comparative Example of item by item depreciation and pool depreciation:

Data:
The situation is as follows: The net book value of the pool at the beginning of the financial year was 1,000 K €. New material A was acquired for 200 K €. In the same time, old material B, initially acquired for 300 K € and held for more than five years, was resold for € 50 K.

Calculation:
In the pool system in Denmark, the final value of the pool will be € 1,150 K (1000 + 200-50). Depreciation will be calculated on the basis of 1 150 K €. This means an increase of the depreciation base by 150 K €. Income for the year will be reduced by the amortization of the additional € 150 K (20% i.e. 30 K €).

In the item by item system, the purchase value is 200 K € amortized over 5 years. Additional annual charge will be 40 K €. The gain on the material B that is fully depreciated will be € 50k fully taxable on the income statement. Income for the year is increased by 10 K €.

Conclusion:
In the pool system the taxable income is not increased by a capital gain.

The two systems described (item by item and pool) generate different impacts on the sale of tangible assets:
- In the system where there are assets, the gains recognized are the difference between the sale price of the asset and its net book value.
- In the system of "pool", the selling price of the good diminishes the total value of the pool and therefore decreases the depreciation base.

In terms of investment, the consequences are as follows:
- Under the "pool" system, the concept of capital gains is absent because they are not computed. There is therefore no specific taxation; there is a change in the value of the pool and so in the depreciation that takes into account the purchase and resale of equipment. This mechanism appears to provide incentive to regular renewal of investments.
- As part of the system where there are assets, the rules for the taxation of capital gains have a direct impact on investment behaviour: renewal is faster in case of exemption from capital gains.

In view of these consequences, it appears that the "pool" depreciation system seems to encourage more investments for modernization than investments related to economic circumstances (tax optimization).

D. Intangible fixed assets

The intangible asset is a non-monetary asset without physical substance with a durable utility for business activity (P.C.G. article 211-1, 3).

In general, in all countries, the following are considered as intangible assets: the "sugar" quota, dairy quotas, planting rights, improvements in funds (leasehold) etc.
They are accounted in the balance sheet only if a price was paid to acquire them. Whether they are recorded or not on the balance sheet, their sale will generate a capital gain that is taxable or not, depending on the country.

A recurring topic of discussion in France with respect to their very existence, not only in the tax administration but also in the agricultural profession, they are not treated the same way in all countries. Our study here will concern the quotas and rights to single payment.

It is specified that marketability of the intangible assets is unrelated to the possibility of depreciation.

1) Quotas: a variable approach

**Denmark:**

Quotas for potatoes, sugar beet and hunting rights are not treated as capital but as current assets. They can be rented or sold (except hunting rights). For milk quotas, in particular, Denmark recognizes a market value for the milk quota but it is not depreciable. According to its date of acquisition, for free or for consideration, resale may or may not be taxed.

**Germany:**

Milk quota is considered an intangible asset. It is transferable but cannot be rented. In principle, most intangible assets (beets, potatoes quota, distillation, etc.) are not depreciable. However, since a court decision (29 April 2009), milk quota is now depreciable. This decision being retroactive, milk quotas acquired for consideration before 2009 are also depreciable.

Ever since the April 29th, 2009 ruling, there are two types of quotas: the quota A and quota B.

The A quota: with no value, was granted during the introduction of the European system of milk quotas. This quota was freely granted on 1st April 1994. Because of lack of value, this quota cannot be depreciated. It is deemed to be a part of the land value, assuming that there can be no dairy production without land. The B quota: quota rights purchased for consideration after 1st April 1994. This quota is depreciable upon acquisition.

**France:**

When they are granted for free, registration of intangible assets in the balance sheet is not required (all the more as the sale of milk quota is not allowed unless it is purchased by the agricultural administration). Fiscally, these intangible rights are never depreciable and whether they are included in the balance sheet or not, their sale may generate taxable capital gains in accordance with the tax status of the farmer.

**Netherlands:**

When they are acquired for consideration, quotas are recorded on the balance sheet. Most intangible assets are amortized in accordance with plans approved by the tax authorities: milk quotas in 8 years, beet quotas in 5 years. Rights to spread manure were redeemable until 1st January 2000; it was removed in order to limit the concentration of these rights and the creation of pig factories. A recent reform introduced the right to raise pigs to cover environmental risks. Negotiations are underway with the tax administration which should lead to the same treatment as for other quotas.

**Belgium:**

All quotas are considered intangible assets, which are amortized over a period of at least 5 years.
2) Single Payment Rights: (SIPES)

On 26th June 2003, the European Ministers of Agriculture signed a new agreement on the reform of the Common Agricultural Policy.

The major point of the reform is the introduction of a new single payment system (income support) for the delinking of aid received and production. The main objective of this assistance is to ensure a more stable income for the farmer. Thus, farmers are free to decide their production, taking into account market demand.

In France, Germany and Denmark, the Single Payment Rights is considered an intangible asset. In the Netherlands, there is a divergence of point of view: the tax administration considers it as a financial asset with no impact on the income statement except at the time of sale, the tax experts consider it as a future claim whose changes in value are reflected in the income statement.

The inscription on the balance sheet and the tax treatment of the Single Payment Rights varies with the type of acquisition:
- Free of cost:
  They do not appear on the balance sheet in Germany and the Netherlands.
  In Denmark, they are entered in the balance sheet as a record (value 0) and in France they are recorded at € 1 per Single Payment Rights.
- For consideration:
  Single Payment Rights are accounted for in France, Germany and Denmark, where they are considered an intangible asset.
  In the Netherlands, the issue is not resolved. Each year, the tax administration determines the balance sheet value of the Single Payment Rights acquired for a price (the value may be different from the market price).
  In any country, it is not permitted to amortize the Single Payment Rights irrespective of its origin (initial allocation or purchase).

E. Starting the business: challenge of financing

Tax Assistance for start up is more or less incentivized depending on the countries (the Netherlands and France). The German case is quite unique in the sense that the proposed measures are of very limited nature, given the very high cost of business installations which involve a significant financial burden and therefore low taxable income.

The European Observatory for SMEs confirms that entrepreneurs consider access to finance as one of the three most important constraints weighing on the development of SMEs and in all sectors.

Many small and medium-sized enterprises encounter difficulties to cover their investments via the usual sources of financing, whether through debt or increase in capital.

Several factors seem to explain this situation: the small sizes of SMEs, their difficulties in providing the required credit guarantees, a lack of transparency vis-à-vis the risks to their business and its management.
**Netherlands:** From the perspective of the meeting the demands of funding, Netherlands has, since 1996, a dual mechanism called "Aunt Agatha" that provides:

- On the one hand, the exemption from income tax from interests received in respect of a loan granted by an individual to a novice entrepreneur during a determined period of time.
- On the other hand, a deduction to the lender for the loss he suffers (maximum € 47,000) when the novice entrepreneur fails in business and is unable to repay the amount borrowed.

This mechanism is not specific to agriculture and in a few years, the "Aunt Agatha" system has become an additional source of funding for many independent business persons.

**Denmark:** Employees or independent workers (from all sectors) who wish to create an enterprise can save a portion of their salary or income activity on specific bank accounts. This facility is offered until the year following their retirement. They can deduct this savings from their income.

The payment of the amounts saved provides a reduction in tax on capital income (about 33% in 2011). If the payment comes from earned income, it provides a reduction of the tax on labour income (about 52%).

A maximum of 60% of the salary can be saved. If the salary is less than 55,928 Euros net, a maximum amount of 33,557 Euros net can be saved without exceeding the real income. The entrepreneur can use his savings as soon as he starts his business. Minimum assets of the company created must be 10,738 Euros and the minimum working time 50 hours per month during the first two years of the establishment.

Savings can be used in two ways:

Either it can be used to finance recovery in which case the value of the assets it finances will be diminished, or it can constitute revenue for the financial year (limited to 50% of current operating costs) and is calculated as taxable income.

The tax rebate before the installation is only deferred taxation to promote entrepreneurship. In Denmark, there also exists a mechanism that is very similar to that of Aunt Agatha (see description below).

**Germany:** There is a system to help business start-ups that applies to all sectors. These are reserves (up to € 306,775) for future investments made during the first 5 years of operations. If the investment project is not realized, the funds are reinstated and taxed at 6% per annum. There is no specific agricultural tax.

**France:** France has tax measures encouraging projects deemed viable for young farmers. The condition for enjoying the benefits of the tax measures in question is to be the beneficiary of grants meant for young farmers. Income of the fiscal year from grants to young farmers (DJA) has a 100% deduction.

The profits during the first 60 months of operations benefit from a 50% reduction. It should be noted that the provision for young farmers (DJA) is part of the second pillar of the CAP. In France, a tax credit system was introduced in 2005 and ended on December 31, 2010. This tax credit benefited farmers who yielded their farm as part of a progressive sales contract to a farmer under the age of 40 years whose business is new or is less than 5 years old.

The tax reduction is equal to 50% of the interest amounts earned annually within the limit of €5,000 for a single person. This measure has not been as successful as expected because the conditions for implementation (notary deed and 50% payment at the time of signing of the deed) were binding and the borrowing rate (TEC 10) was not necessarily more interesting financially than loans.
Belgium: There is a funding comparable to the "Aunt Agatha" system in the Netherlands. In Belgium this system is known as "win-win-lending": private individuals who lend money to a business benefit from an advantageous tax on interests earned. Moreover, these interests received are higher than savings investments but lower than a bank loan rate, which has given rise to its name "win/win loan." As in the Netherlands capital loss if the borrower defaults leads to a tax reduction.
- Private individuals who give a loan to a company are taxed in a manner favourable to the income (interest). Moreover the interest is more beneficial than the interests given by banks for savings accounts.
- The companies themselves receive attractive interest rates (lower than the bank rates) and interest constitutes a cost that is tax deductible.
People who give a loan in this context also have, as in Holland, the right to deduct losses from taxes if the companies cannot repay the loan.

F. Transfer of the farm business: the question of capital gains

The main tax implication for the transferor of a farm is in the recognition of capital gains. Given the large and growing amount of sales, tax rules applying to capital gains are driven generally by the desire not to compromise the transaction by a tax burden that is too high and to allow fluidity in transfers. An overview of the rules is provided below:

France and Belgium distinguish between short-term and long-term capital gains. In France and Belgium, short-term gains are added and therefore taxed along with the current income while long term capital gains are taxed at a fixed rate of 16% (+RDSCSG) in France and 16.5% in Belgium (and subject to social security contributions). In other countries, capital gains are considered as current income. Moreover, in France, taxation of capital gains enjoy full exemption for up to 250K € turnover or partial exemption for up to 350K € turnover, to limit the impact on small farms. There is total exemption irrespective of turnover, except on land, in case of retirement. In Belgium, the payment terms of the sale do not affect the taxation of capital gains. However, capital gains on immovable property are exempted beyond a certain period of holdings of property. For land, the holding period is 8 years and 5 years for buildings.

Netherlands and Germany practice tax deductions related to the amount of capital gains or farm size. In Netherlands and Germany, the collection of all or part of the amount of the sale in the form of annual rent paid by the buyer can help stagger the period of taxation of capital gains. Denmark has no specific rules of tax deduction and the only way to defer taxation of capital gains is a retirement fund (up to € 333,333). This provision exists in Netherlands, but the payment is lower (€ 217,833) unless the transferor is above 60 years of age (€ 435,652). In France, payment possibilities are very low and not comparable at all (maximum € 67,288).

This overview reveals two trends: the first is to implement tax deductions or exemptions with immediate effect (as in Germany, Belgium, Netherlands and France) and the second is to allow spreading of the taxation of capital gains over a period of time thereby limiting tax progressivity (as in Denmark). The Netherlands stand out as it practises both methods by combining exemption and staggering.
**G. Modernization: reserve for investment**

Investment is a very important dimension in agriculture. Indeed, it is made to meet the demands of profitability, expectations in terms of work comfort and lack of manpower. Moreover, the technical developments made reflect this importance. For tax purposes, a number of rules reflect this dimension. The main reasons for these rules are related to the high cost of investment. Some investments are taxed, especially for farmers, in the context of environmental standards without necessarily generating additional profitability.

**In France and the Netherlands,** there are possibilities of accelerated depreciations for environmental investments. This rule allows deducting, over a very short period (12-24 months), the cost of an investment that does not generate profit. Note that, in France, this possibility was eliminated for assets acquired on or after 1st of January 2011 in relation to the end of the compliance with environmental standards. Accelerated depreciation also exists regionally: in the Netherlands (for intangible assets abroad) and in Germany (for investments in the former GDR).

**In Denmark:** equipment and facilities can no longer be depreciated in advance since 1st of January 2000, (up to 15% per year for an investment planned for the next 3 years, for an amount of up to 30% of its acquisition value) except in the case of ships. The aim was to allow a tax savings to the company in order to facilitate its investments.

**In Belgium:** it is possible to carry out a deduction for investment. The planned investment must be clearly identified and the deduction rate varies between 3% and 22% depending on the nature of the investment.

**France:** Founded in 1980, the deduction for investment (DPI) is linked to the amount of income in the financial year in which it is practiced.
Influence of tax regimes for agricultural businesses on production structures: a comparative analysis of five European countries: Germany, Belgium, Denmark, France and the Netherlands

### DPI calculation table

<table>
<thead>
<tr>
<th>Profits</th>
<th>Maximum Deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below 4 000 €</td>
<td>Ceiling=profit</td>
</tr>
<tr>
<td>4 000 € to 9 999 €</td>
<td>4 000 €</td>
</tr>
<tr>
<td>10 000 € to 40 000 €</td>
<td>40% of the profits</td>
</tr>
<tr>
<td>40 000 € to 60 000 €</td>
<td>8 000 € + 20% of the profits</td>
</tr>
<tr>
<td>Above 60 000 €</td>
<td>20 000 €</td>
</tr>
</tbody>
</table>

While the legislator defines rules for the tax treatment of investments, both to encourage and to provide direction, taxpayers strive to derive maximum benefit from the rules laid down. Thus, the French DPI is perhaps used more as a means of lowering the tax and social burden (by lowering taxes and social contributions through the deduction of income, since income is the basis on which tax and social contributions deductions are applicable) than as a means to plan investments. Combined with an exemption of capital gains on the basis of turnover, the DPI provides a strong incentive for overinvestment.

**Example of the use of DPI:**

A farmer (with less than € 250,000 turnover) generates a substantial income and therefore practices maximum DPI (€ 20,000). In the period of 5 years of using the DPI, he invests in new equipment (in order to practice the accelerated depreciation *). In two years the net fiscal value of his material has reduced by almost two thirds, while the market value has not decreased very much. A significant net capital gain has been made at resale, but it is not taxable with respect to turnover. The share of income paid in DPI has completely escaped tax and social security contributions. In addition, our farmer considerably reduces his hardware maintenance costs since he renews it frequently. He also has, but this is an almost secondary fact, modern materials and equipment enabling him to have an improved performance and a more comfortable work experience.

* Accelerated depreciation is defined as the practice of applying a coefficient that increases the depreciation rate (the rate varies according to the depreciation period of the property).

**In Germany coexist simultaneously:**

- A reserve for reinvestment which exempts the profits derived from the sale of an asset when it is reused for investment in 4 years;
- A reserve for replacement to be used the following year in case of damages incurred;
- A reserve for future investment equal to 50% of the acquisition costs.

In all countries, investment allowances that are not used within the time limit are reported as income. It is only in France that their non-use incurs no penalties.

**In the Netherlands,** there is a reserve for future investment equal to 28% of the acquisition costs.

**Conclusion:**

The mechanisms are relatively similar in all countries. The notable difference between France and other countries lies in the fact that deduction in France is not dedicated to a particular investment. In other countries, the mechanisms are actually dedicated towards investment aid and the practice is more controlled.
The investment approach is necessarily more thoughtful. In contrast, in France, there is more flexibility in investment.

**H. Economic variations: regulating increasing or decreasing incomes**

A part from hazardous climatic factors (which are becoming more frequent and more severe), economic risk is becoming more visible and strong. Economic risk affects agriculture with price volatility. Producers are therefore directly suffering from global market fluctuations and Europe no longer provides support systems. Faced with this change, a number of measures have been implemented, focussing on an orientation towards individual or collective protection (crop insurance) and also towards precautionary savings.

While revenue insurance had been studied by the French government in the early 2000s, the state preferred to favour a policy of precautionary savings by farmers implementing Deduction for Hazards (DPA) and by developing it.

1) **Anticipated Risks**

a. **Deduction for Hazards (DPA)**

This French mechanism, founded in 2001, integrates variations in income. It is designed to encourage farmers to build savings mobilized in case of occurrence of an event affecting income. This provision is provided in Article 72 D bis Tax Code. Indeed, the DPA allows the farmer to deduct from his income the amounts that he has to carry over to a paid savings account—within the limit of 23,000 Euros.

The deduction is then reintroduced within a period of ten years in order to mitigate the consequences of:

- Hazardous climatic conditions, natural or and health related, which is uninsured
- An economic risk characterized by a decline in added value, or
- Up to the amount of the deductible, a fire or damage to insured crops;

It can also be used to pay certain insurance premiums. The use of DPA is contingent upon the particular insurance contract for harvest and against fire.

As appealing as it sounds, in reality the DPA takes time to become a habit. There are several reasons for this lack of appeal:

- Too short time for its constitution even if it has changed from 3 to 6 months after closing
- Source of funds necessarily arise from operating revenues levied against cash operations of the business
- Very restrictive use of funds (the calculation of economic loss is difficult).

This specifically French mechanism has been examined in the other countries in this study. A study of the DPA was conducted in Netherlands but it appears that it was quickly abandoned due to a major obstacle caused by the freezing of funds. In this country, savings are directed primarily towards investment.

In Germany, the DPA has been the object of reports and studies that were quickly abandoned for two main reasons. The first concerns the difficulty to define risk as this involves objective criteria, the second concerns the farmers who are the beneficiaries. Indeed, it appeared that this mechanism that
was supposed to protect farmers after a damage would benefit only to those who had significant disposable income allowing them to block their savings without financial embarrassment.

In Denmark and Belgium, there are no possible deductions on income in this context.

b. Undistributed profits

For companies taxed under the income tax regime, when profits are distributed to share holders or withdrawn by the farmer, the profits are then subject to personal income tax as a dividend. Denmark and Germany allow individual farmers in all sectors to benefit from reduced taxation on the share of profits they leave available to their businesses. Netherlands, Belgium and France do not have this mechanism.

The principle of undistributed profits exists in Denmark since 1986. It consists of submitting a tax payment of 25% (income tax rate in Denmark) on the share of profits left at the disposal of the company. The share of profits taken by the operator is subject to personal income tax rates of 0% (due to the carry-back rule) to 56%. This is a commonly used mechanism.

This mechanism helps to strengthen the financial structure of the company, by controlling and planning the income statement.

In Germany, this measure was adopted in 2008. Profits left at the disposal of the company, recorded in a specific balance sheet account are subject to taxation at the rate of 28%. Deductions beyond the sums allocated to this account are then subjected to an additional tax of 25%.

It may be noted that the prevailing tax rates practiced (28% + 25%) are above the highest tax bracket (47%) on the income of individuals. This explains clearly the lack of success of this provision.

In Belgium, companies are taxed at the corporate tax rates through the venture capital deduction system. This deduction is in fact a notional interest that is calculated on the equity of the Company ("venture capital"). If the company keeps the profits within the company and does not distribute them, the risk capital goes up and the deductions for risk capital will be greater.

c. Crop insurance

If crop insurance is not, in itself, a provision in the tax system, the fact remains that it is inseparable from the DPA. Member States may, through political means, compensate and/or direct producers to manage risk through insurance. This is what experts of the Joint Research Centre (CCR) of the EU recommend: "... indeed, apart from hazardous weather conditions (which are becoming more frequent and more severe), economic risks are becoming more significant and stronger."

Income insurance, already in place in some countries (USA, UK), was studied by the French government in the early 2000s, but it was not identified as a generalized system in view of its cost for the state and the reluctance of insurers to cover the risk of revenue loss, regardless of the reason. The state has therefore preferred to favor a policy of precautionary savings by implementing the DPA and by developing it.

Crop insurance is common to all countries. It focuses mostly on protection against hail storms. It sometimes has a high cost for the insured.

In Germany, it is mainly used for vegetable production gardening, orchards and vineyards. Crop insurance is only rarely practiced in Belgium.
d. The capping of income or tax

In agriculture income is subject to variability. Capping devices have also been implemented which aim to limit the fiscal impact of exceptionally high income.

Capping can be done in two ways:

- Capping of income tax related to abnormally high income:

  **Three Year average:** in France and the Netherlands. The three year average consists of calculating the average income for the current year and the previous two years. The result obtained will be subject to income tax of the calendar year. The three year average is an option for a minimum of five years in France and two years in the Netherlands.

  **Quotient:** in France, Germany and The Netherlands. The mechanism of the quotient consists of calculating the difference between the year’s income and the average income of the previous three years. The difference is subject to marginal rate of income tax, thus limiting tax progressivity.

- **Capping of the income of the financial year:**

  **DPI and DPA in France:** DPA, despite the constraints as for the DPI is used to minimize a very large income which will be the result of market euphoria (ex. grain market in the 2007 harvest) so as to guard against future risks.

  One could say that, just like the DPI, it helps in the management of market risks, is oaring markets are considered a risk.

  **Banking in Denmark:** the creation of a savings bank account in Denmark. This savings includes a minimum savings of € 666 and a maximum of 25% of income before financial charges. These savings should be used within 10 years of their constitution. It has no particular destination requirement and will be subject to income tax at 56% at the time of its cashing from the account. This device cannot be used concomitantly with the principle of non-deducted profits (see description above).

  In Belgium there is no system of income capping.

2) **Definite risks: stock depreciation**

Provision for stock depreciation is useful when the risk is real. Provision for stock depreciation is practised for stocks that are present from one year to another. Somehow, it anticipates a loss from an accounting period that is certain to be recorded the following financial year.

It appears that the accounting rules of valuation are the same in all countries. Products in stock are always valued at cost price but if the cost price is higher than market price, it will be limited to the latter.

3) **Subsequent risks: carry-back mechanism**

This mechanism that carries back the deficit is practiced once loss is recognized for accounting purposes. This mechanism is practiced in all countries except Belgium.

In Germany and The Netherlands, the carry back mechanism is applied to all companies irrespective of the tax regime.

In France and Denmark, the carry back of deficits applies only to companies subject to companies tax.

In all countries, it is possible to carry over non deducted losses and tax them under future incomes ("carry forward"). In Belgium, the deferral period is unlimited.
4) Diversification: not a tax issue

One of several developments affecting the farming profession in the world of agriculture is diversification. Diversification consists of addition of agricultural or not activities, and these additions may have tax consequences depending on the country.

A few figures:

Percentage of farms not exclusively used for agricultural purposes: In The Netherlands: around 30%. In Denmark: around 20% in 2007, the figure is expected to rise to 40% in 2015. In Germany: around 35% in the former West Germany and less than 10% in the former East Germany. In some West German states it may rise to 50% as around Lake of Constance, due to rural tourism. In France: Only 23% of farmers are committed towards diversification, as against 48% 20 years ago. (Source: “Diversification and development of agricultural activities through the services involved in rural development.” Mission Report presented by Frédéric Nihous - June 2008).

Three diversification activities have been identified: biogas, public works and direct sales.

**Biogas activities**

At the European level, the directive of the Parliament and of the European Union Council destined to promote renewable energy and signed in 2009, constitutes the main text for the development of renewable energies in the European space. This Directive aims to achieve a 20% share of renewable energies in the total energy consumption by 2020 within the European Union.

The addition of a bio-methanisation plant to a farm business in view of the sale of energy is not the subject of any specific tax plan neither in The Netherlands nor in Belgium, nor in Denmark.

In contrast, in France and Germany, the income derived from the sale of energy will be taxed in a separate tax category from that of agriculture.

**Construction activities: an item of VAT**

Construction activities performed by a farmer in all the countries, are not, legally speaking, qualified as agricultural activities.

For tax purposes, the first implication relates to VAT. In all countries, the rate for non-agricultural activities is the normal rate while the reduced rate is reserved primarily for agricultural activities.

<table>
<thead>
<tr>
<th>Figure 10</th>
<th>VAT rates in five countries</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Normal rate</td>
</tr>
<tr>
<td>Denmark</td>
<td>25</td>
</tr>
<tr>
<td>France</td>
<td>19.6</td>
</tr>
<tr>
<td>Germany</td>
<td>19</td>
</tr>
<tr>
<td>Netherlands</td>
<td>19</td>
</tr>
<tr>
<td>Belgium</td>
<td>21</td>
</tr>
</tbody>
</table>
**Direct sales activity**

A short distribution channel is a way of marketing agricultural products that takes place either through direct sales from producer to consumer or through indirect sales provided that there is only one intermediary between the farmer and the consumer. Sale at the farm is the main method of marketing. Farms are generally smaller and need more labour. (Source: *SSP–Agreste* no. 275).

Marketing through short distribution channels with direct sales depends primarily on the nature of the products. Direct selling is done either at the farm level or in local markets. Some regulations may limit its volume. Also in order to be attractive, a sales point should provide a wide range of products. This often forces farmers to buy goods they do not produce themselves. This may present an obstacle for French and German farmers to the extent that purchase/resale is by nature a commercial activity, and therefore incidental to agricultural activity (see diversification).

The question of choosing the marketing type of farm products is first and foremost an economic choice. However, this choice has no consequence on taxation.
PARTIE III

CASE STUDIES:

EXAMPLES WITH FIGURES
This section aims to illustrate the treatment of tax regulations and their impact through specific case studies. It will focus on:
- The applicable tax rules;
- The tax optimization and strategies implemented;
- The actual practical application of these rules;
- The impact on the economic choices of these tax rules.
To analyze these elements, a case study of a company in cruise regime (A) will be presented and then analyzed in a situation of total transfer of activity (B).
Then, diverse situations in a company in cruise regime will be presented for the following activities (biogas, snow removal and direct sales) (C).
Finally, a last situation will be presented: the case of strong fluctuations in economic performance and tax measures concerning volatility and risk management tools (D).

**A. Situation 1: Farming in cruise regime**

1) Description in figures for farming in cruise regime

**Case:** Take the case of an unmarried farmer, milk producer. Let the average turnover be €300,000 per year.
Depreciation and social contributions are the elements that change across countries. Also, the calculation is based on income before depreciation and social contributions. To allow for a comparative study, economic performance is assumed to be identical in all countries.

These data were selected in order to represent a common and real situation.
- Land (60 hectares owned): €300,000
- Buildings: €400,000 including €50,000 for housing
- Material:
  - Tractor: €100,000
  - Tilling of land: €80,000
  - Milking of cows: €280,000
  - 75 dairy cows: €75,000
  - Livestock renewal: €25,000
  - Stocks: €60,000
  - Intangible rights: €120,000
Influence of tax regimes for agricultural businesses on production structures: a comparative analysis of five European countries: Germany, Belgium, Denmark, France and the Netherlands

2) Calculation of Depreciation in cruise regime

**Figure 11**

**Calculation of depreciation in cruise regime**

<table>
<thead>
<tr>
<th>Base of depreciation</th>
<th>Denmark</th>
<th>France</th>
<th>Germany</th>
<th>Netherlands</th>
<th>Belgium</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Buildings</strong></td>
<td>€400,000</td>
<td>25 years 4% + 3%</td>
<td>28 000 €</td>
<td>20 years</td>
<td>20 000 €</td>
</tr>
<tr>
<td><strong>Tractor</strong></td>
<td>100 000 €</td>
<td>5 years</td>
<td>20 000 €</td>
<td>8 years</td>
<td>12 500 €</td>
</tr>
<tr>
<td><strong>Tilling of work</strong></td>
<td>80 000 €</td>
<td>10 years</td>
<td>8 000 €</td>
<td>10 years</td>
<td>8 000 €</td>
</tr>
<tr>
<td><strong>Material for milking</strong></td>
<td>280 000 €</td>
<td>0 to 25%</td>
<td>115 000 €</td>
<td>12 years</td>
<td>23 333 €</td>
</tr>
<tr>
<td><strong>Total depreciation</strong></td>
<td>122 283 €</td>
<td>71 333 €</td>
<td>54 900 €</td>
<td>68 535 €</td>
<td>112 000 €</td>
</tr>
</tbody>
</table>

The first step is the calculation of depreciation (Table 1) and the second step is the calculation of taxable income (Table 2):

**Conclusion:**

Among the five countries in this study, Denmark has the most flexible depreciation system for specific pools. It should however be noted that the choice of very high depreciation rate limits depreciations for subsequent years. The other four countries (Germany, Belgium, France and Netherlands) have meanwhile a similar and less flexible system. It is even the most rigid in Germany (because durations are determined by the administration) with the effect that it is the only country where depreciation is the lowest. In Belgium, the rates are not determined but must be consistent. Also, each taxpayer may be required to negotiate with the tax authorities.

Total depreciation figures vary from one country to another (from € 68,535 to € 122,283). To analyze these results, we will discuss the data item by item:

For buildings: depreciation varies from simple to double because of the duration. It shows that in Germany, the duration is of 33.33 years. With the same period as in Netherlands, the rate has been increased by 3% in Denmark and it is to be the country with the highest depreciation rates.

For equipment: Depreciation is relatively similar in France, Belgium, Germany and Netherlands. Denmark stands out with its pool system that allows great latitude (from 0% to 25%). In this case, the total selected corresponds to a zero income tax.
Calculation of compulsory payments on identical income

Initially, in order to reflect the tax arrangements applicable to the income of a farm, let us observe what happens if the declared income was the same in all five countries, for example 30 K€ and 60 K€.

<table>
<thead>
<tr>
<th>Figure 12</th>
<th>Calculation of compulsory payments in cruise regime on an identical income of 30 K€</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Denmark</td>
</tr>
<tr>
<td>Income</td>
<td>30 000 €</td>
</tr>
<tr>
<td>Social contributions</td>
<td>-</td>
</tr>
<tr>
<td>Unemployment contributions</td>
<td>2 400 €</td>
</tr>
<tr>
<td>Income tax</td>
<td>9 108 €</td>
</tr>
<tr>
<td>Total compulsory payments</td>
<td>11 508 €</td>
</tr>
<tr>
<td>Rates compulsory payments</td>
<td>38.36%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Figure 13</th>
<th>Calculation of compulsory payments in cruise regime on an identical income of 60 K€</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Denmark</td>
</tr>
<tr>
<td>Income</td>
<td>60 000 €</td>
</tr>
<tr>
<td>Social contributions</td>
<td>-</td>
</tr>
<tr>
<td>Unemployment contributions</td>
<td>4 800 €</td>
</tr>
<tr>
<td>Income tax</td>
<td>18 580 €</td>
</tr>
<tr>
<td>Total compulsory deductions</td>
<td>23 380 €</td>
</tr>
<tr>
<td>Rates compulsory payments</td>
<td>38.96%</td>
</tr>
</tbody>
</table>
Conclusion:

Different compulsory payments are practised on a similar income of € 30K. These figures vary from about 22% (Netherlands) to 60% (France).
Different compulsory payments are practised on a similar income of € 60 K. These figures vary from about 28% (Netherlands) to 47% (France and Germany) and to 51.12% in Belgium.

On doubling the income (€ 30 K to €60 K), we find:

- The percentage change on compulsory payments is different in different countries. They remain relatively stable in Denmark and Germany. In Netherlands and France there is a significant variation but it is reversed.
- The relative stability observed in Germany and Denmark is caused due to different reasons: in Germany, it is the fixed base of social security contributions combined with progressive taxation which explains this stability. In Denmark it is explained by the amplitude of the tax brackets.
- The reversed variation in France and in Netherlands is explained by the variation in social security contributions, tax-deductible in France and non-deductible in Netherlands. Tax progression is almost exactly the same.

Total compulsory payments are similar (around € 28,400, or about 47%) in France and Germany on a similar income of 60 K €, but when income is lowered (30 K €) deductions are much higher in France.

In the Netherlands, the decrease was by 5.3%;
These differences can be explained by the tax rate, the base rate and social security contributions.

On Tax: On an income of 30 K€, the magnitude is from 3% to 30%. On an income of 60 K€ again, the magnitude is significant from 6% to 32%.
Tax (including social contributions) is highest in Denmark (around 30% irrespective of income). Tax is most progressive in Germany, moving from 16% to 32%.

On social security contributions: on an income of € 30 K, they vary from 0% to 44% and from 0% to 37% on an income of € 60 K.
Note that in Denmark, social contributions are included in taxes, and are therefore not apparent.

In Germany, the basis of social contributions is fixed and in the Netherlands, social security contributions are not tax deductible. In contrast, in France, they are regressive beyond the maximum annual Social Security ceiling. In Belgium, they are regressive beyond € 54,000 and the share of income in excess of € 80,165 is not subject to social security contributions. Thus, compulsory tax deduction rates for the same level of farm income differ between the five countries studied. But this comparison is not sufficient for the analysis because it does not accurately reflect the tax which would be imposed on the same farm in the five countries.

The tax base is not the same, especially because the rules on depreciation are not identical.
3) Calculation of compulsory payments in cruise regime

Consider now the central hypothesis that all farms have the same economic performance, thereby generating the same profits of €128,500 before depreciation and social contributions. Given the differences in the potential depreciation of each country, the tax base will be different.

Figure 14

<table>
<thead>
<tr>
<th>Calculation of compulsory payments in cruise regime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Country</td>
</tr>
<tr>
<td>---------</td>
</tr>
<tr>
<td>Denmark</td>
</tr>
<tr>
<td>France</td>
</tr>
<tr>
<td>Germany</td>
</tr>
<tr>
<td>Netherlands</td>
</tr>
<tr>
<td>Belgium</td>
</tr>
</tbody>
</table>

**Conclusion:**

Starting from a similar income of €128,500 in the five countries, it is obvious to see a significant difference in the total compulsory payments without taking into account any particular mechanism that is a direct consequence of the more or less important possibilities in the depreciation choices.

Beyond the already mentioned depreciation calculations, including the more flexible approach in
Denmark and to a certain extent in Belgium, and which explains a significant share of differences, the systems differ in the financing of social protection and the level of social fees. In Denmark and The Netherlands, it is the income after depreciation that is used to calculate tax and social security contributions (the latter being included in the tax in Denmark). In both countries, contributions are not considered as deductible expenses from taxable income.

France, Belgium and Germany, social contributions constitute a deductible expense in income. However, they are calculated on taxable income in France and Belgium and on a fixed base that is independent of income in Germany. In the end, the main share of tax burden in France lies in social security contributions, which are regressive, and in Germany, in income tax, which is progressive.

In our example, without practicing extraordinary depreciation, taxation is almost zero in Denmark. In the Netherlands, the tax is fairly moderate.

The question of optimization of profits:

One way to optimize tax profit is to play on depreciation provided that it is permitted by the law of the country. Denmark has the greatest flexibility in the choice of depreciation with rates ranging from 0 to 25% for equipment and facilities. In France, the only possibility is the practice of derogatory depreciation only for new equipment. The result is the artificial acceleration of the rate of renewal of equipment. In The Netherlands and Germany, the optimization does not pass through depreciation but through non-accounted deductions from payments to voluntary pension schemes but that have not been taken into account in this example. This possibility also exists in France and Denmark.
B. Situation 2: Total sale of a farm business

Based on the data used for businesses in cruise regime, the analysis will focus on the total sale of the farm business. The buyer of the business can be in a phase of establishment or expansion. This will not affect the value of the sale or the tax treatment applied to it.

1) Description in figures of the business on sale

Case:

Total sale of farm by a 55 year old entrepreneur of an individual dairy production farm outside the family.

The average turnover is €300,000 per year and the annual income generated is €40,000.

For SIPES and milk quota, two assumptions were made, taking into account the uncertainty of the date of the end of milk quotas and uncertainty about the future value of SIPES.

Thus, two assumptions are made about the intangible assets, the first is the sale at a price lower than their value, and the second is the sale at a price higher than their value.

The analysis is carried out excluding land. Indeed, the transfer prices are those recorded on an average in the market in the different countries and given the large differences in the selling price of land in the five countries studied, it appears that for a study on comparable situations, land is not within the scope of the calculations. Moreover, in practice, depending on the country (or region), transfers are made with or without land.

The table below shows the additional tax generated by the sale (capital gains) to be added to the tax on the current income of €40,000.

For tax purposes, the sale of a business generates a substantial income and / or capital gains for the seller. For the buyer, whether it is for the purpose of establishment or expansion, tax arrangements that accompany purchase are unrelated to the amount of the sale. They are more concerned with finance and tax deductions (see Part II. B. Establishing the business). We will also study in detail the tax consequences from the perspective of the transferor and its impact on the negotiations with the buyer.
Figure 18: Sale of farm business

<table>
<thead>
<tr>
<th>Nature of assets</th>
<th>Cost price</th>
<th>Net book value</th>
<th>Sales price</th>
<th>Accounted capital gains</th>
<th>Taxable capital gains</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Germany</td>
<td>Denmark</td>
<td>France</td>
<td>Netherlands</td>
<td>Belgium</td>
</tr>
<tr>
<td>Buildings</td>
<td>€400,000</td>
<td>€250,000</td>
<td>€200,000</td>
<td>€150,000</td>
<td>€0</td>
</tr>
<tr>
<td></td>
<td>€500,000</td>
<td>€500,000</td>
<td>€200,000</td>
<td>€150,000</td>
<td>€0</td>
</tr>
<tr>
<td></td>
<td>Exonerated</td>
<td>Exonerated</td>
<td>Exonerated</td>
<td>€150,000</td>
<td>€0</td>
</tr>
<tr>
<td></td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
</tr>
<tr>
<td>Machinery and equipment</td>
<td>€460,000</td>
<td>€250,000</td>
<td>€275,000</td>
<td>€25,000</td>
<td>€12,500 short term</td>
</tr>
<tr>
<td></td>
<td>€250,000</td>
<td>€250,000</td>
<td>€25,000</td>
<td>€25,000</td>
<td>€12,500 short term</td>
</tr>
<tr>
<td></td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
</tr>
<tr>
<td></td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
</tr>
<tr>
<td>Livestock: 75 cows</td>
<td>€75,000</td>
<td>€75,000</td>
<td>€90,000</td>
<td>€15,000 (income)</td>
<td>€15,000 (income)</td>
</tr>
<tr>
<td></td>
<td>€75,000</td>
<td>€75,000</td>
<td>€90,000</td>
<td>€15,000 (income)</td>
<td>€15,000 (income)</td>
</tr>
<tr>
<td></td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
</tr>
<tr>
<td></td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
</tr>
<tr>
<td>Livestock: 45 heifers (renewal)</td>
<td>€25,000</td>
<td>€25,000</td>
<td>€30,000</td>
<td>€5,000</td>
<td>€5,000</td>
</tr>
<tr>
<td></td>
<td>€25,000</td>
<td>€25,000</td>
<td>€30,000</td>
<td>€5,000</td>
<td>€5,000</td>
</tr>
<tr>
<td></td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
</tr>
<tr>
<td></td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
<td>€0</td>
</tr>
<tr>
<td>Stocks</td>
<td>€60,000</td>
<td>€60,000</td>
<td>€60,000</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Intangible rights (production rights and SIPES)</td>
<td>€120,000</td>
<td>€120,000</td>
<td>Hypothesis 1: €80,000</td>
<td>Hypothesis 1: -€40,000 Hypothesis 2: €80,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>€120,000</td>
<td>€120,000</td>
<td>€120,000</td>
<td>€120,000</td>
<td>€120,000</td>
</tr>
<tr>
<td>Total</td>
<td>€1,440,000</td>
<td>€780,000</td>
<td>Hypothesis 1: €935,000</td>
<td>Hypothesis 1: €5,000 Hypothesis 2: €275,000</td>
<td></td>
</tr>
<tr>
<td>Raw taxation without optimisation (generated by the capital gain)</td>
<td>€1,650</td>
<td>€1,055,000</td>
<td>Hypothesis 1: €80,000</td>
<td>Hypothesis 1: €5,000 Hypothesis 2: €275,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>€2,050</td>
<td>€125,000</td>
<td>Hypothesis 1: €32,500 (short-term)</td>
<td>Hypothesis 1: €32,500 (short-term)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>€51,341</td>
<td>€125,000</td>
<td>Hypothesis 1: €32,500 (short-term)</td>
<td>Hypothesis 1: €32,500 (short-term)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>€68,149</td>
<td>€125,000</td>
<td>Hypothesis 1: €32,500 (short-term)</td>
<td>Hypothesis 1: €32,500 (short-term)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>€108,689</td>
<td>€125,000</td>
<td>Hypothesis 1: €32,500 (short-term)</td>
<td>Hypothesis 1: €32,500 (short-term)</td>
<td></td>
</tr>
</tbody>
</table>

Taxable capital gains:
- Hypothesis 1: €1,650
- Hypothesis 2: €51,341
- Hypothesis 1: IR (€9,934) + Capital gains (€12,520) = €22,454.
- Hypothesis 1: €60,367
- Hypothesis 1: €1,500
- Hypothesis 1: €85,000
2) Data analysis:

In light of these data, it appears that from an identical accounting capital gain (€ 155,000 or € 275,000, depending on the assumptions), the taxable incomes for the seller are very different. The explanation lies, depending on the country, especially in the treatment of capital gains (as in France and Belgium) and the tax rates applicable therein.

Thus, all countries except The Netherlands exempt capital gains on housing provided it is the principal residence of the farmer.

Only France and Belgium distinguish between short term capital gains (taxed as income at progressive rates) and long term capital gains (taxed at a fixed rate of 19%+ 12.3% of social contributions). Finally, in France, unlike in other countries, long term capital losses on non-depreciable items cannot be deducted from long-term capital gains recorded on depreciable items.

Thus, in case of Hypothesis 1, the excess tax will vary from € 1,650 in Germany to € 60,367 in the Netherlands. France will submit € 32,500 at the progressive rate of income tax.

Therefore, the results of the gross tax without optimization are highly variable depending on the country, and differ depending on assumptions.

The Netherlands tax the most (with € 60,367 paid for hypothesis 1 and € 108,689 for hypothesis 2). Germany taxes the least in hypothesis 1 with € 1,650 and France has the lowest tax in hypothesis 2 with € 22,454.

According to hypothesis 2, as a percentage of the capital gain (i.e. financial), the surplus tax is 39, 52%for The Netherlands, 24, 78% for Denmark, 18.67% for Germany and 8.17% for France and 4.95% for Belgium.

Note These results are valid for the situations studied, related mainly to the size of farms in the five countries. While in Germany or Denmark size does not have or has little impact, the tax could be higher or lower in France according to the turnover (see Part 2 C). In the Netherlands, it would be lower for a small business. Finally we are not considering the case of retirement for which exemption is almost total in France.

The above items correspond to a transaction that is carried out on the patrimonial value of the company (based on the value of assets). This value does not have the same economic significance in the five countries because companies do not generate the same income after compulsory payments as shown in the table below using the example of the company in cruise regime.
Influence des régimes de fiscalité de l’entreprise agricole sur les structures de production : une analyse comparée dans cinq pays européens : Allemagne, Belgique, Danemark, France et Pays-Bas

Figure 16

<table>
<thead>
<tr>
<th></th>
<th>Germany</th>
<th>Denmark</th>
<th>France</th>
<th>Netherlands</th>
<th>Belgium</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profits before depreciation and social contributions</td>
<td>€128,500</td>
<td>€128,500</td>
<td>€128,500</td>
<td>€128,500</td>
<td>€128,500</td>
</tr>
<tr>
<td>Total compulsory payments</td>
<td>€497</td>
<td>€26,924</td>
<td>€30,654</td>
<td>€16,358</td>
<td>€5,611</td>
</tr>
<tr>
<td>Disposable income after compulsory payments</td>
<td>€128,003</td>
<td>€101,576</td>
<td>€97,666</td>
<td>€112,142</td>
<td>€122,889</td>
</tr>
</tbody>
</table>

The ability to resume business operations in order to obtain the financial resources necessary to fund its acquisitions is a criterion that represents the economic value of the company.

This is different from the patrimonial value. Negotiations between buyer and seller take into account these two values. To reflect the relative weight of these two values according to the taxation systems of the four countries, the following tables express on one hand, the time required to generate funding for purchase on the basis of its patrimonial value, then on the other hand net sale value for the same period (that is to say, for the same economic value).

3) The economic burden of negotiations based on the patrimonial value

Figure 17

<table>
<thead>
<tr>
<th>No. of years required for an identical sale value (patrimonial value)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disposable income after compulsory payments</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>DK</td>
</tr>
<tr>
<td>D</td>
</tr>
<tr>
<td>F</td>
</tr>
<tr>
<td>NL</td>
</tr>
<tr>
<td>BE</td>
</tr>
</tbody>
</table>

Acquisition at patrimonial value represents less than six years of disposable income (see Figure 17) in Denmark but seven and a half years in Germany. The balance in the negotiation should be not at the same level in the different countries.

The economic burden for the Danish buyer is the lowest among the five countries, at the expense of the seller who is heavily taxed. In Belgium, the economic effort for the buyer is quite low and the seller is taxed very little. France and Germany have compulsory levies that are quite identical and disadvantageous for the buyer. In The Netherlands, the transferee and the transferor are taxed less than in France and Germany.
4) The result of a negotiation dominated by economic value for the seller

To clarify the position of the purchaser in the negotiation, let us take the investment effort in the Netherlands as a reference.

<table>
<thead>
<tr>
<th></th>
<th>Disposable income after compulsory payments</th>
<th>Sales value excluding land and dwelling</th>
<th>Years of disposable income on sale excluding land</th>
<th>Compulsory payments for seller</th>
<th>Net sale</th>
</tr>
</thead>
<tbody>
<tr>
<td>DK</td>
<td>128 003</td>
<td>2 238 956</td>
<td>838 956</td>
<td>6.55</td>
<td>523 398</td>
</tr>
<tr>
<td>D</td>
<td>97 666</td>
<td>2 040 122</td>
<td>640 122</td>
<td>6.55</td>
<td>137 531</td>
</tr>
<tr>
<td>F</td>
<td>101 576</td>
<td>2 065 748</td>
<td>665 748</td>
<td>6.55</td>
<td>140 850</td>
</tr>
<tr>
<td>NL</td>
<td>112 142</td>
<td>2 135 000</td>
<td>735 000</td>
<td>6.55</td>
<td>70 928</td>
</tr>
<tr>
<td>BE</td>
<td>122 889</td>
<td>2 205 438</td>
<td>805 438</td>
<td>6.55</td>
<td>1 500</td>
</tr>
</tbody>
</table>

In the event where negotiation is dominated by economic value, valuation for the seller is a little better in Denmark. It depreciates in Germany and France in similar proportions but according to different mechanisms. In Germany, the capital loss on operating assets is deductible from capital gains from real estate. In France, the capital losses are not deductible, but they are lower.

**Conclusion with respect to economic aspects:**

**In France:**
The seller will seek to be below the taxation threshold for capital gains (turnover less than €250,000). In this situation, tax optimization prior to the sale as at the outcome, encourages possession of new equipment as far as possible. The result can be a very high patrimonial value and therefore away from economic value. For the buyer, negotiation based on the economic value will be much more difficult. If the seller is taxable for capital gains, he will go until retirement age and in this case, capital gains will be exempt. In general it may tend to delay the sale in France, the only country where this consideration is taken into account.

**In Denmark:**
The seller may make better profits because the tax burden and social contributions on the buyer is lower. However the gap with other countries remains high and the buyer is strongly favoured. The system of depreciation according to pool which also leads to focus on regular investment is likely to create not too big a gap between economic value and patrimonial value. This works more when the contractor prepares the transfer operation, since it is the only time in Denmark when taxation of capital gains takes place.

**In Germany:**
The tax burden being important, the only strategy for the seller is to deposit on a pension fund or to negotiate with the purchaser for payment of an annuity, rather than a cash payment.
In The Netherlands:
The tax burden being fairly balanced and rather favourable to the seller with a reduction on capital gains below a certain threshold, the patrimonial value will tend to be quite high and sought after by the seller. The only solution for the buyer is payment of an annuity to the seller, as in Germany.

In Belgium:
Taxation is not a determining factor of the sale amount given the low tax burden on the seller.

A review of optimization options, such as payment on pension fund (allowing the seller to secure his financial future in Denmark, Germany and The Netherlands) or the exemption of capital gains on the basis of turnover (in France, Belgium, The Netherlands) highlights the important role of the tax position of the transferor regarding the amount of the sale.

An exception to this rule is the initiative taken in Denmark, of expanding the principle of continuity of the business through selling to employees.

However, since farm size tends to increase, the profit value of the sales operation will be constrained by its ability to generate profits from the farm business that has been sold.

Solutions are designed to provide progressivity in the financial burden: as in the case of an annuity, or a funding mechanism known as "Aunt Agatha" in The Netherlands and "win-win loan" in Belgium. Finally, we should consider the question of the sale of land in The Netherlands, where the stakes are high.

Indeed, in this country, the price of land is very high and the capital gains on agricultural land are not taxed. For the sake of equality between agricultural and non-agricultural farms, current thinking focuses on changing tax rules, while in Germany this topic does not seem relevant.

C. Situation 3: Diversification of activities

1) Preamble: tax rules for diversification in the different countries

Diversification of activities is handled differently in the different countries studied. Two approaches exist for income tax: scheduled and economic.

In Denmark, Belgium and The Netherlands, all non-salaried economic activity - whether it is agricultural, commercial or industrial - is taxed as income from self-employment.

In Germany and France, agriculture has its own income tax category, different from the industrial and or commercial. See rules for agriculture income part (Part II. A. 1.).

Three diversification activities were discussed: biogas, construction activities and direct sales (see Part II. General rules). In the context of a fiscal analysis, it appears that the very type of activity (agricultural or non-agricultural) does not affect the final result in terms of tax and social security contributions. In France and Germany (the two countries that differentiate between agricultural and non-agricultural activities), the only constraint will be displayed if thresholds are exceeded. Indeed, the holding of a second accounting is required but will not change the tax level as the farming income and industrial and commercial income will be added together to calculate the Income Tax. In addition, in France, in order to simplify matters, the farmer engaged in a diversification activity will contribute to only one social security system, that of his main activity.

In contrast, in France the possible deficits of one of the activities thus separated cannot be deducted from the profits of another one. This is a handicap often prevalent in initial periods of diversification activity.
2) Diversification: data and tax calculation

Data:

For this example we will assume that the diversification activity (agricultural or not) is added to an agricultural activity in cruise regime that generates the same income of € 60,000 in the five countries. The diversification activity generates a turnover of € 331,000 and an income of € 56,900.

<table>
<thead>
<tr>
<th></th>
<th>Denmark</th>
<th>France</th>
<th>Germany</th>
<th>Netherlands</th>
<th>Belgium</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial income</td>
<td>60 000 €</td>
<td>60 000 €</td>
<td>60 000 €</td>
<td>60 000 €</td>
<td>60 000 €</td>
</tr>
<tr>
<td>Diversification income</td>
<td>56 900 €</td>
<td>56 900 €</td>
<td>56 900 €</td>
<td>56 900 €</td>
<td>56 900 €</td>
</tr>
<tr>
<td>Social contributions</td>
<td>-</td>
<td>39 169 €</td>
<td>9 240 €</td>
<td>17 830 €</td>
<td>15 616 €</td>
</tr>
<tr>
<td>Unemployment contributions</td>
<td>9 352 €</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Income tax</td>
<td>47 798 €</td>
<td>18 512 €</td>
<td>39 355 €</td>
<td>19 925 €</td>
<td>46 230 €</td>
</tr>
<tr>
<td>Total compulsory payments</td>
<td>57 150 €</td>
<td>57 681 €</td>
<td>48 595 €</td>
<td>37 755 €</td>
<td>61 846 €</td>
</tr>
<tr>
<td>Total compulsory payments before diversification</td>
<td>23 380 €</td>
<td>28 348 €</td>
<td>28 578 €</td>
<td>16 669 €</td>
<td>30 672 €</td>
</tr>
<tr>
<td>Difference in compulsory payments</td>
<td>33 770 €</td>
<td>29 333 €</td>
<td>20 017 €</td>
<td>21 081 €</td>
<td>31 174 €</td>
</tr>
</tbody>
</table>

3) Data analysis

Starting with a business in cruise regime (generating an income of € 60 000) to which it is added a diversification activity (generating an income of € 56 900), consequences are actually different from one country to another.

In Denmark:

Compulsory levies before and after diversification are respectively € 23,380 and € 57,150. Calculation of percentage of compulsory levies before and after diversification gives 38.97% and 48.88%. This increase in the rates of compulsory payments (about 10%) is a direct consequence of the progressivity of tax in Denmark.

In France:

Compulsory levies before and after diversification are € 29,333 and € 55,781. Calculation of percentage of compulsory levies before and after diversification gives 47.25% and 47.72%. The lack of variation in the rate of compulsory levies in France is the result of a low social contributions cap rate as soon as it exceeds the maximum annual Social Security Ceiling (€ 36,372).
In Germany:
Compulsory levies before and after diversification are € 28,578 and € 48,595. Calculation of percentage of compulsory levies before and after diversification gives 47.63% and 41.58%. The rate of compulsory payments comes down due to the simple fact that social security contributions are not calculated on income accruing but on a fixed amount.

In The Netherlands:
Compulsory levies before and after diversification are € 16,669 and €37,755. Calculation of percentage of compulsory levies before and after diversification gives 27.78% and 32.30%. The little change in the rate of compulsory payments in The Netherlands is the result of capping social security contributions that are no longer called for payment when income exceeds an amount. (It should be noted that this amount (€ 33,063) is close to the maximum annual Social Security Ceiling in France (€ 36,372)).

In Belgium:
There is no differentiation in taxation according to the source of income. The difference lies only in the application of tax rates and social security contributions.
Conclusion:

Three trends related to the calculation of the tax burden after the addition of a diversification activity emerge from this analysis:

- Decreasing compulsory payments rate: In Germany, the decrease in the percentage of compulsory levies is related to the fact that social security contributions are calculated on a fixed base.
- Stable compulsory payments rate: In France and Belgium, this stability is logical given the progressivity of income tax and the limitation of social security contributions.
- Increasing compulsory payments rates: In Denmark and The Netherlands, this increase in the percentage of compulsory payments is explained by the fact that the tax base and social security contributions base is common. Social security contributions do not constitute a deductible expense.

These trends are a combination of the progressiveness of the tax (see Part I) and the tax base and social contribution rates.

With regard to the tax system or the taxation of income derived from this secondary activity, it does not seem that there is an influence on the economic decision of diversification. In addition, having to split activities (in Germany and France) does not change in any way the financial profit or the total taxable income (the sum of agricultural and non-agricultural incomes if both activities are beneficiaries) especially as social fees are paid to only one organisation, and based on the total agricultural and non-agricultural income. However, if one of the two activities is negative, the special rules for allocating losses of different categories may penalize the contractor who will pay tax on a taxable income that is higher than his actual overall income.

However, in France, the preferred means of diversification of activities is the organization of the company by creating two different structures (one for production and one for marketing). The disadvantage of a dual structure is often offset by the maintenance of the production structure below the limits of capital gains taxation.
Situation 4: Management of economic risks

Economic risk is reflected, for accounting and tax purposes, in an exceptional variation of income. This variation may be upward or downward. In economic terms, to limit the risks, consultants in the four neighbouring countries essentially give advice in marketing or finance. On the fiscal side, there are tools to mitigate the effects of these changes on the tax burden (for a description of the tools, see Part II. E: The economic variability).

It should be noted that these fiscal tools are mainly used when the risk arises or is noted in the accounting. In addition, it should be borne in mind that these tools are not operative in preventing economic risk. They are used only for managing the consequences of this risk.

In practice:
- In The Netherlands, in case of loss, the most commonly used solution is the "carry-back", and in case of gain, three-year average method.
- In Denmark and Germany, according to the tax regime, in case of loss, the most commonly used solution is the "carry-back" or "carry-forward".
- In Belgium, the carry-back does not exist, only the carry-forward.
- It is only in France that the DPA mechanism exists. In practice, the DPA is usable both in terms of anticipation and in terms of risk occurred, but is seldom utilised5.

In view of this practice, a numerical example is presented below for the three-year average mechanism.

1) Risk management: data and income tax calculation in case of exceptional income

In case of exceptional income, the tax tool used in France and the Netherlands is the three-year average mechanism. This tool exists neither in Denmark nor in Germany nor in Belgium. The numerical example is used to quantify the impact of the three-year average on the same exceptional income.
2) **Data Analysis**

In The Netherlands, the impact of the three-year average mechanism in case of exceptional income, is higher than in France. It is double. The main reason is that the three-year average mechanism plays on the taxable income that is used to calculate both social security contributions and taxes in The Netherlands. In France, the basis for calculating social security contributions is always the taxable income of the year before calculation of the three-year average.

**Figure 20**

**Calculation of tax burden in case of exceptional income by using the three year average mechanism**

<table>
<thead>
<tr>
<th></th>
<th>Denmark</th>
<th>France</th>
<th>Germany</th>
<th>Netherlands</th>
<th>Belgium</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average income(n-1 et n-2)</td>
<td>60 000 €</td>
<td>60 000 €</td>
<td>60 000 €</td>
<td>60 000 €</td>
<td>60 000 €</td>
</tr>
<tr>
<td>Income for the year n</td>
<td>116 900 €</td>
<td>116 900 €</td>
<td>116 900 €</td>
<td>116 900 €</td>
<td>116 900 €</td>
</tr>
<tr>
<td>Three-year average</td>
<td>-</td>
<td>78 967 €</td>
<td>-</td>
<td>78 967 €</td>
<td>-</td>
</tr>
<tr>
<td>Social contributions before three-year average</td>
<td>-</td>
<td>39 169 €</td>
<td>9 240 €</td>
<td>17 830 €</td>
<td>15 446 €</td>
</tr>
<tr>
<td>After three-year average</td>
<td>-</td>
<td>39 169 €</td>
<td>-</td>
<td>16 389 €</td>
<td>-</td>
</tr>
<tr>
<td>Unemployment contribution</td>
<td>9 352 €</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Income tax before three-year average</td>
<td>47 798 €</td>
<td>18 512 €</td>
<td>39 355 €</td>
<td>19 925 €</td>
<td>43 180 €</td>
</tr>
<tr>
<td>After three-year average</td>
<td>-</td>
<td>10 638 €</td>
<td>-</td>
<td>7 816 €</td>
<td>-</td>
</tr>
<tr>
<td>Total tax burden without optimisation</td>
<td>57 150 €</td>
<td>57 681 €</td>
<td>48 595 €</td>
<td>37 755 €</td>
<td>58 626 €</td>
</tr>
<tr>
<td>Total tax burden after optimisation</td>
<td>-</td>
<td>49 807 €</td>
<td>-</td>
<td>24 205 €</td>
<td>-</td>
</tr>
<tr>
<td>Difference in tax burden</td>
<td>-</td>
<td>7 874 €</td>
<td>-</td>
<td>13</td>
<td>50 €</td>
</tr>
</tbody>
</table>
CONCLUSION:

The comparative study of tax systems in the five countries reveals some strategic lines in each country and opens some tracks of evolution:

**Strategic lines in each country:**

**Denmark, with the flexibility, promotes a policy of regular investment**

The Danish tax system has tax incentives for significant flexibility. This flexibility is present in different devices:

- The choice of depreciation in the pool system that allows smoothening of income and reduces the impact of capital gains.
- The possibility for an individual farmer to use the principle of non-distributed profits that promotes the maintenance of capital in the business.

All this allows an investment policy for the development of the company. Taxation, through the taxation of capital gains, comes into play mainly at the time of sale. This feature, combined with low taxation of annual income favours negotiation with the buyer based on the economic value of the company. The principle of economic continuity (the buyer continues the depreciation schedules of the seller, who does not generate a taxable capital gain) that is extended to employees also illustrates this trend.

In essence, the lack of specificity of the agricultural tax has no impact on the diversification of activities or on direct sales. On this point, it is the same case in The Netherlands.

**The Netherlands uses fiscal restraint in the logic of patrimonial considerations and financial support at the start-up phase**

The Dutch tax system moderates the tax burden by the method of calculation of the taxable income. The system of exemption of capital gains for medium-sized farm businesses (and the general exemption on the capital gains on agricultural land – a current topic of discussions in the country) promotes investment logic with a high patrimonial degree. In compensation, the "Aunt Agatha" loan helps at the start up stage by providing access to credit and the system of paying annuities to the seller allows a progressive payment of the business acquisition.

**Germany practices tax neutrality**

The tax burden seems to be quite similar to that observed in France, higher than in Denmark and The Netherlands. Specificity to agriculture exists like in France. The choice made seems to arise more from a desire to tax all income in a fairly systematic manner, whether arising from an activity or from capital gains through sales, rather than to orient economy activity in one way or another.

The German system is characterized by strict administrative control: depreciation rates are set by the administration and provisions are closely supervised. In addition, it should be noted that social security contributions are independent of income.

While Germany implements sustainable fiscal tools, the fact remains that a policy to boost investment was implemented in 2009-2010. One of the few departures from tax neutrality is to promote purchase by progressive payment in the form of annuity to the seller.
France combines a targeted support system with specific legal provisions to guide business structures

The agricultural tax policy mainly benefits small and medium size enterprises in particular through the DPI and through capital gains exemptions related to turnover.

To offset the effects of increasing patrimonial value of firms that follows as a result, the selected option combines:

- Distinguishing between long-term capital gains that considerably limit taxation during sale;
- Tax exemptions during the beginning of the activity, and
- Specific features of agricultural companies that are a real asset for creation and transfers.

Diversification is preferred if it remains marginal (that is to say below turnover thresholds) because there are no additional formalities to the extent that only one single accounting is required. For larger scale developments, partitioning activity and the taxation of income is required.

Belgium supports economic competitiveness

Belgium does not have a tax policy specifically dedicated to agriculture. However, it supports this activity through mechanisms promoting economic competitiveness. Thus, there is in Belgium a flat-rate system for farmers (who do not have the obligation of bookkeeping) irrespective of size and turnover.

There are tax rules that are beneficial to farmers, such as the tax exemption on capital gains for the sale of land (long term).

Economic or wealth orientation:

It appears therefore that the question of the influence of taxation on farm businesses arises particularly in France but it is expressed only when combined with the legal structure of the farm.

Only The Netherlands has some tax features related to the size of the company. Some measures apply only to small farms, such as the reduction on the capital gains arising from sale of the farm.

While Germany has tax rules specific to agriculture like France, the income from the different activities are fungible, avoiding the handicap of non-deductibility of any deficits of one activity from the other (an important issue at the starting of a diversification activity). In France there are restrictions placed on such imputations.

Finally, going beyond the issue of farm structures, taxation is more economic oriented in Denmark, Belgium and to a lesser extent in Germany, and more wealth oriented in the Netherlands and in France.
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