GAAR rising
Strengthening the European Union Parent-Subsidiary Directive with a new general anti-abuse rule
Late 2014 and early 2015 have seen many spectators focused on the rapid succession of discussion drafts, public comments and consultations in relation to the Organisation for Economic Co-operation and Development’s (OECD) Base Erosion and Profit Shifting (BEPS) project, not to mention heightened activity of many countries seeking to adopt BEPS-inspired national legislation. But at the same time, under the leadership of a new President, Jean-Claude Juncker and a new European Commissioner for Economic and Financial Affairs, Taxation and Customs, Pierre Moscovici, the European Commission has been launching measure after measure designed to tackle what they perceive as tax evasion, avoidance, unfair tax competition and base erosion.

With many such measures still to be unveiled by the European Commission (EC) (and then vigorously debated by the Member States) through the remainder of 2015, one particular measure is now set in stone: on 27 January 2015, the European Council formally adopted a binding general anti-abuse rule (GAAR) to be included in the European Union’s (EU) Parent-Subsidiary Directive (PSD).

Member States now have until 31 December 2015 to implement the GAAR into their own national law, and no doubt the round of finance bills and acts that we see each year-end will reflect this. Some Member States are already moving in this direction; Denmark, for example, has been a notable early adopter, already introducing the PSD GAAR language as a draft bill on 26 January 2015 – a day before it was publically released by the European Commission.

While the original version of the PSD only allowed Member States to apply domestic or agreement-based provisions required by anti-abuse rules, the PSD will now contain a mandatory GAAR, meaning that the Member States are required to deny the dividend withholding tax exemption under the PSD in cases of tax avoidance. For situations that fall outside the scope of the PSD, the GAAR is non-binding. Member States are free to also extend the GAAR to situations not covered by the PSD.

Impact of the new GAAR

Based on the new rule, “Member States shall not grant the benefits of the PSD to an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the PSD, are not genuine having regard to all relevant facts and circumstances. An arrangement may comprise more than one step or part.”

For the purposes of the GAAR, “an arrangement or a series of arrangements shall be regarded as not genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.”

The underlying objectives

The objectives behind the introduction of the PSD GAAR are clear. In common with the many developments in the evolution of the corporate substance debate, the PSD GAAR is intended to encourage corporate groups to further align their businesses toward an operating model where operational and management structures more closely match the holding structure. Whether or not this objective aligns to the realities of existing (and in particular, newer) business models is an academic point.

For business, the existence of the new rule will have significant implications. As of 1 January 2016 (or earlier, depending on national adoption), the PSD GAAR may affect new and also existing international EU holding structures, particularly in cases where the EU holding is deemed to have insufficient economic substance (e.g., insufficient employees, premises or performance of managerial activity), subject to proof to the contrary by the taxpayer.
The new PSD GAAR would have provided a new arrow in the quiver of tax administrators on a stand-alone basis. Its interaction with an additional Commission measure – the launch on 18 March 2015 of a Tax Transparency Package – makes it even more powerful.

Specifically, this will impact those cases where a withholding tax exemption could have been available, with cash-strapped European tax authorities now relying on the subjective interpretation of the PSD GAAR clause to deny such exemption. In terms of double taxation, this may also mean that access to the participation exemption regime may also be denied in cases where abuse is perceived to have occurred.

Interaction with the Tax Transparency Package

The new PSD GAAR provides a new arrow in the quiver of tax administrators. Its interaction with an additional Commission measure – the launch on 18 March 2015 of a Tax Transparency Package makes it even more powerful. As the Commission itself notes, “Member State Y would find out about the artificially high prices that the subsidiary is charging to the parent company, in order to shift profits to Member State X. As a result, it may be able to apply the anti-abuse element of the Parent-Subsidiary Directive, and deny the company the usual tax exemption for dividends.”

About this study

This high-level impact study seeks to establish whether it is expected that the new PSD GAAR could impact domestic or tax treaty-based WHT exemptions or reductions in each of the 28 EU Member States in the relations with relevant EU holding jurisdictions, and if so, to what extent. However, it does not assess the legislation implementing the PSD GAAR in the 28 EU Member States.

Based on a high-level analysis, the impact may be low, medium, high or undeterminable as compared to the existing relevant tax legislation and tax treaties in force in the EU Member States concerned. These potential impacts are summarized per EU Member State through the use of a color-coded heat map.

It must be stressed that this study does not give a statement, opinion or guidance on the feasibility of any existing holding structure involving any EU Member State under its existing tax legislation and tax treaties. Neither does this study seek to establish the impact, if any, of the PSD GAAR on domestic participation exemption regimes. It is noted in this regard, according to a statement of the EC, that the PSD GAAR is not intended to affect national participation exemption systems in so far as these are compatible with the treaty provisions.

Finally, this study is of a high level nature only. It seeks to establish whether an impact is expected. Based on the summary presented in the heat map, enterprises investing in the EU through an EU Holding company are recommended to seek advice from local tax counsel.

With the PSD GAAR amendment, the EU Member States have effectively agreed on a set of common, binding rules, ahead of (and in anticipation) of other international developments which may also seek to tackle tax evasion and avoidance in Europe.

Notably, the text of the GAAR provides no guidance on how national governments should interpret it. As is the case with many of the OECD BEPS Action items, this may in itself give rise to a protracted period of uncertainty for business, as tax authorities and taxpayers alike struggle to identify what constitutes a “main purpose or one of the main purposes” or “valid commercial reasons.”

Of course, as is always the case in the EU, jurisprudence will be developed (over many years) at the Court of Justice of the European Union. Until then, multinational groups will face deep uncertainty in an area of tax law that has always been (and always will be) highly subjective.

This is a fast-moving issue, calling for adoption into national law by all 28 EU Member States by 1 January 2016. But of course, different countries move at different speeds and the remainder of 2015 will see countries transposing the new GAAR into local law at different speeds, based upon their legislative cycle. Because of this, companies should continue to monitor the situation closely.

I hope you find this a useful source of information as we all enter this period of looming uncertainty.

Dr. Klaus von Brocke
EU Tax Services Leader – Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft
Some commentators have questioned whether the EC has become largely irrelevant in the tax avoidance space, given all the BEPS work at the OECD and the history of the EC launching ambitious tax initiatives only to see them fail to fully flourish.

But in fact, the opposite may well be true – the EU has become the motor for much of the work that is being done in the evasion, avoidance and BEPS space. The EC, in many ways, is taking up responsibility on behalf of EU Member States and using its own political power to forge many decisions on which the OECD has struggled to find consensus among its members.

In fact, much of the EC work in this area preceded the OECD’s BEPS project by some time, centering upon the December 2012 publication of “An Action Plan to strengthen the fight against tax fraud and tax evasion.”

Since then, much of the EC’s work has been surpassed by developments within the OECD’s BEPS project. 2013 was a relatively quiet year for the EC in this area, characterized mainly by the EC’s calls for increased financial transparency and the 23 May European Council conclusions1 on taxation which included a call for “rapid progress” on a number of issues including a statement that “… the proposal amending the Directives on disclosure of non-financial and diversity information by large companies and groups will be examined notably with a view to ensuring country-by-country reporting by large companies and groups.”

Simultaneously, of course, the OECD was gearing up for the July 2013 launch of the “Action Plan on Base Erosion and Profit Shifting,” which followed the February release of the report “Addressing Base Erosion and Profit Shifting.” With the huge publicity and support it received (not least from the G20 leaders at the conclusion of the G20 Leader’s Summit in Moscow in September that year), it is probably fair to say that some of the focus and attention was taken away from European efforts.

Gearing up for action

It was not until later in 2013 that we saw the EC fully react to the demands of many Member States that were concerned that some elements of the BEPS project may not protect their tax bases to the extent they hoped. That rallying cry set in motion a new phase of developments that has added to the volume, pace and complexity of new issues for business to try and keep up with and assess. In fact, it was the PSD that was one of the first developments to move forward (along with the genesis of the many ongoing state aid investigations), when in November 2013 the EC issued a proposal for an amendment to the PSD. The essential elements of that proposal were a “linking rule” that is supposed to deal with hybrid loan arrangements and the more detailed GAAR. The proposed rule to deal with hybrid loan followed the 2012 EC public consultation on double non-taxation that focused on hybrid mismatch arrangements.

In turn, the proposed amendment has been followed by a steady flow of events right up to the present day, with many more new proposals expected through 2015.

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At its heart, the PSD aims to remove double taxation in the case of profit distributions made by a subsidiary located in one Member State and received by its parent located in another Member State.

In November 2013, the EC proposed amending the Directive to stop it from being misused for the purposes of tax avoidance. Two amendments were proposed:

1. Provisions designed to prevent corporate groups from using hybrid loan arrangements to benefit from double non-taxation under the PSD

2. Introduction of a GAAR

In July 2014, the Council adopted a specific linking rule that seeks to prevent corporate groups from using hybrid loan arrangements to benefit from double non-taxation under the PSD. The deadline for transposition of the linking rule is 31 December 2015, and again, some countries have pressed forward with early adoption. More information on the specific linking rule can be found at: ey.com/PSD-linkingrule

Since that point, work continued on the GAAR. The new PSD GAAR aims at preventing Member States from granting the benefits of the PSD to arrangements that are not “genuine,” i.e., that have been put into place to obtain a tax advantage without reflecting economic reality. The clause is formulated as a *de minimis* rule, meaning that Member States can apply stricter national rules, as long as they meet the minimum EU requirements.

Reaching consensus on the legislative language

In December 2014, political agreement was reached on the wording of the GAAR, whereby in Directive 2011/96/EU, Article 1(2) is replaced by the following paragraphs:

“2. Member States shall not grant the benefits of this Directive to an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of this Directive, are not genuine having regard to all relevant facts and circumstances.

An arrangement may comprise more than one step or part.

3. For the purposes of paragraph 2, an arrangement or a series of arrangements shall be regarded as not genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.

4. This Directive shall not preclude the application of domestic or agreement-based provisions required for the prevention of tax evasion, tax fraud or abuse.”

On 27 January 2015, the Council formally adopted the binding GAAR to be included in the PSD. Member States will have until 31 December 2015 to implement the GAAR into national law. In applying the general anti-abuse clause, the Council anticipates that Member States will endeavor to inform each other when information may be useful to the other Member State.

The amendments must be seen in light of the Action Plan against tax evasion and tax fraud released by the EC in December 2012 and the OECD’s BEPS project.

Finally, it is worth noting that the Council will take into consideration the binding anti-abuse provision in its future work on a possible anti-abuse provision to be included in the Interest & Royalty Directive.
The EC’s Tax Transparency Package

As noted in the introduction to this document, the potential application of GAAR (whether within the PSD or in a Member States existing national law) is based upon the subjective evaluation of data. The volume of data available to countries will grow exponentially upon the adoption of the Commission’s Tax Transparency Package that was unveiled on 18 March 2015. It is therefore reasonable to assume that the overall volume of tax disputes will also grow in tandem.

A key element of the Tax Transparency Package is a proposal to introduce quarterly, automatic exchange of information between Member States regarding their cross-border tax rulings, including advance pricing agreements (APAs), while a second element also calls for a one-off exchange of cross-border tax rulings made within the last 10 years, where such rulings remain active at the point the revised Directive is adopted.

The proposal takes the form of new requirements to be included in the existing legislative framework for information exchange, via amendments to the Directive on Administrative Cooperation. The Commission notes that this will enable automatic information exchange on tax rulings to be rapidly implemented, as the procedures, processes and framework to do so are already in place.

The legislative proposals of the Transparency Package will be submitted to the European Parliament for consultation and to the Council for adoption. The Commission in its press release calls upon Member States to agree on the rulings proposal by the end of 2015, allowing it to enter into force on 1 January 2016. On the basis that the European Council in December 2014 called for the proposal, the Commission expects full political commitment on reaching a timely agreement.

So – and notwithstanding the fact that some Member States may oppose such a broad scope as that contained within the Tax Transparency Package – 1 January 2016 will potentially see the adoption of both the PSD GAAR and the exchange of rulings between Member States. Any potential thoughts that the European Commission remains irrelevant in the tax avoidance space have thus been thoroughly washed away.
Complexity in the world’s tax systems has grown in tandem with the challenges of doing business in an increasingly connected global economy. Today, the application of many of those laws lags behind business innovation.

As a result, some laws do not operate as originally intended, or create uncertainties that were not foreseen. At their extreme, they can impede desirable business activity. In other instances, taxpayers may be seen as taking advantage of some laws in ways that tax administrators find undesirable. These resulting uncertainties can limit economic growth and impede tax administration.

As a general concern, businesses increasingly fear that countries that once used GAAR only reluctantly and/or in the most extreme circumstances, are beginning to use it more extensively than it was originally designed to be used. The existence of the new PSD GAAR may increase those fears, particularly where some European tax administrations have been perceived to be more assertive than others in their approach.

The basic guiding principles of EU case law

While no jurisprudence currently exists in relation to the PSD GAAR, there are a set of guiding principles which underpin EU case law that may provide some form of direction, if not comfort. For example, in the Halifax case, taxpayers may choose to structure their business so as to limit their tax liability. In the Cadbury Schweppes case, the fact that a taxpayer decides to establish a subsidiary in another Member State in order to benefit from the favorable tax regime which that establishment enjoys (e.g., lower tax rate) does not in itself constitute abuse (Cadbury Schweppes).

However, the Cadbury Schweppes case also found that arrangements that do not reflect economic reality and that have been set up with a view to escaping the tax normally due on the profits generated by activities carried out on the national territory of a Member State need not to be allowed. Finally, it is long-standing jurisprudence (see in particular the case Test Claimants in the Thin Cap GLLO) that taxpayers must at all times be given the opportunity to provide evidence of any commercial justification without being subject to undue administrative constraints.

Potential implications

How to deal with such a highly subjective set of concepts

GAAR and other anti-avoidance approaches frequently utilize subjective criteria, often looking beyond the form of a transaction to its underlying substance, purpose or intent. As a result, there is often a close connection between developments with respect to GAAR and developments in the courts, with litigation arising over the application of GAAR provisions and pre-GAAR litigation experience often one of the driving forces for enactment of such provisions. The number of controversies litigated based on GAAR or GAAR-like arguments is on the rise around the world, sometimes involving the first court tests of long-established but rarely used or challenged statutes.

And this exemplifies the issue in regard to the PSD GAAR. As noted in the introduction to this report, the text of the PSD GAAR provides no guidance on how national governments should interpret it. This may give rise to a protracted period of uncertainty for business, as tax authorities and taxpayers alike struggle to identify what constitutes a “main purpose or one of the main purposes” or “valid commercial reasons.”

Again, while no specific jurisprudence exists, the guiding principles that underpin EU case law provide some guidance in relation to the concept of “valid commercial reasons” in particular. For example, in the Cadbury Schweppes case, an actual establishment intended to carry on genuine economic activities that physically exist in terms of premises, staff and equipment (“substance”) implies sufficient economic reality. In Somafer, this may be the case if an adequate staff is available which performs the functions relevant to the management activities carried out, while a direct or indirect involvement in the management of the company in which the holding has been acquired may also qualify (Cassa di Risparmio di Firenze and others). On the other hand, “letterbox” or “front” companies may be regarded as abusive (Cadbury Schweppes).
Businesses increasingly fear that countries that once used GAAR only reluctantly and/or in the most extreme circumstances, are beginning to use it more extensively than it was originally designed to be used. The existence of the new PSD GAAR may increase those fears.
How a corporation manages GAAR is typically dictated by its own overall risk appetite. That is, what level of risk is the corporation willing to accept in a transaction? That risk appetite should be decided at the board level, and it will determine the manner in which transactions are planned and executed. Leading practice in this area – and something that tax administrators continue to encourage – is for the corporation to operate under a tax corporate governance framework that includes a documented process for significant transaction sign-off. At the highest level, this framework should outline the process for escalating transactions that are material or that have particular characteristics that may attract tax authority scrutiny.

With the overall risk tolerance set and communicated, there are five key areas within which we recommend activity.

1. Monitoring
The global and European tax landscapes continue to shift and change at an increasingly fast pace. This is apparent in the evolving approach to tax enforcement and the growing implementation of tax policies designed to tackle anti-avoidance and BEPS. In that regard, making sure that new proposals for country adoption of the PSD GAAR are continuously monitored and factored into the corporation’s tax life cycle is an imperative for any multinational business. Having detailed, up-to-date and accurate information available is essential so that transactions are measured against the most current rules in each jurisdiction.

2. Planning
The presence of a GAAR or GAAR regime does not affect the need to plan appropriately, including the consideration of potential tax consequences. Rather, it means that tax planning should continue in a thoughtful manner, with practical steps taken through all stages of the tax life cycle to protect the business from a GAAR or GAAR challenge. In particular, all alternatives should continue to be considered as part of the planning approach, and sufficient documentation should be maintained to support the decisions taken.
Defense files

Contemporaneous documentation can be valuable in defending a company’s position against a GAAR or GAAR challenge. Making sure there are documents that set out the intended purpose of the overall transaction, as well as each step within the transaction, can significantly enhance a taxpayer’s position in forestalling or defending against such a challenge. Additionally, documentation outlining the consideration of alternative options in relation to the transaction settled upon is, in some jurisdictions, critical in demonstrating that the final position taken was the only one that could reasonably be carried out to obtain the commercial objectives sought, and that there were no transactional steps taken that were explicable only in the context of obtaining a tax benefit.

Consultation

Taking advice on significant transactions is seen by many as good corporate governance. Receiving an opinion on a GAAR or GAAR regime should provide more than a mere reassurance that the position satisfies the technical requirements of the law. It can also affect the manner in which a position is disclosed in financial statements or to a revenue authority, as well as have a bearing on the imposition of penalties.

Provisioning and disclosure

Recent years have seen a significant increase in a broad range of new information reporting and disclosure requirements for business taxpayers. Both the United States and Australia have recently put in place disclosure regimes for “uncertain tax positions.” In short, these regimes require the disclosure of tax positions where there is some level of uncertainty as to whether the taxpayer would prevail if challenged. While these two countries are the first to put in place requirements of this type, other countries might adopt similar approaches as they look to expand their own disclosure regimes. In addition, companies should pay close attention to developments under OECD BEPS Action 13 (“Disclosure of aggressive tax planning arrangements”) for which an OECD Discussion Draft is currently awaited and for which a public consultation will be held. In a post-BEPS world, this Action may result in new requirements for taxpayers in OECD member countries to disclose certain arrangements. And with not all EU Member States being OECD members, it is also reasonable to expect that the EC will include such requirements as part of their forthcoming action plan.

Leading practice in this area – and something that tax administrators continue to encourage – is for the corporation to operate under a tax corporate governance framework that includes a documented process for significant transaction sign-off.
On the following pages you will find high-level impact assessments for each EU Member State. The impact assessments seek to establish whether it is expected that the new PSD GAAR could impact domestic or tax treaty-based WHT exemptions or reductions in each of the 28 EU Member States in the relations with commonly utilized EU holding jurisdictions.
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Impact assessment for commonly utilized EU holding jurisdictions

Domestic law

Statutory WHT rate
- 25%

General conditions for WHT exemption
- Minimum holding of 10%
- Holding period of more than 1 year
- Qualified EU/EEA parent company according to Annex 2 of the PSD
- No abuse of the PSD

Substance requirements for WHT exemption
- Austria generally applies a substance over form and anti-abuse concept according to which the dividend exemption under the PSD may not be granted.
- The Austrian Ministry of Finance (MoF) has published a Regulation dealing with the requirements for relief at source regarding the Austrian WHT on dividends distributed to qualified EU/EEA parent companies.
- According to the Regulation, direct relief at source is – besides the general requirements of the PSD – only granted if no abuse of the PSD has occurred. In order to prove this fact, the dividend recipient must provide the Austrian dividend paying entity with a written statement that it performs business activities beyond mere asset management, that it has its own employees and that it has its own business premises.
- In cases where these conditions are not met (e.g., in the case of pure holding companies), relief at source must generally not be granted but the recipient must instead apply for a refund. During the refund procedure, the (Holding) company must prove that it has certain economic functions (especially that it was not interposed by a non-EU/EEA resident for the only purpose of buying into the benefits of the PSD (“directive shopping”)).
- The anti-abuse concept of the Regulation refers to a domestic anti-abuse rule which is implemented in Sec. 22 of the Austrian Federal Fiscal Code. This rule serves as a typical general anti-avoidance rule (GAAR) and has already been applied to directive shopping (as well as treaty shopping) structures by the Austrian tax administration as well as by the Austrian courts.
Austria

Tax treaty law

WHT relief (exemption/reduced rate)
- DTC with Cyprus: 10%
- DTC with Luxembourg: 5%/15%
- DTC with Netherlands: 5%/15%

General conditions for WHT relief
- DTC with Cyprus: N/A (no further holding requirements)
- DTC with Luxembourg: 5% if holding directly at least 25% of the capital of the company paying the dividends. 15% in all other cases.
- DTC with Netherlands: 5% if holding directly at least 25% of the capital of the company paying the dividends. 15% in all other cases.

WHT treaty relief overrules mandatory GAAR
- DTC with Cyprus: No
- DTC with Luxembourg: No
- DTC with Netherlands: No

Substance requirements to secure WHT relief
- DTC with Cyprus: Domestic substance requirement applies.
- DTC with Luxembourg: Domestic substance requirement applies.
- DTC with Netherlands: Domestic substance requirement applies.

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| Cyprus            |   |   | Domestic WHT exemption: Austria already applies a substance over form and anti-abuse concept according to which the dividend exemption under the PSD may not be granted. Hence, the new PSD GAAR is expected to have a relatively low impact on Austria.  
|                   |   |   | Tax treaty WHT exemption/reduction: The Austrian tax authorities consider all tax treaties as being subject to the domestic Austrian GAAR. Therefore, there will be a potentially low impact of the PSD GAAR on Austrian structures. |
| Luxembourg        |   |   | Domestic WHT exemption: Austria already applies a substance over form and anti-abuse concept according to which the dividend exemption under the PSD may not be granted. Hence, the new PSD GAAR is expected to have a low impact on Austria.  
|                   |   |   | Tax treaty WHT exemption/reduction: The Austrian tax authorities consider all tax treaties as subject to the domestic Austrian GAAR. Therefore, there will be low impact of the PSD GAAR on Austrian structures. |
| Netherlands       |   |   | Domestic WHT exemption: Austria already applies a substance over form and anti-abuse concept according to which the dividend exemption under the PSD is not granted. Hence, the new PSD GAAR is expected to have a low impact on Austria.  
|                   |   |   | Tax treaty WHT exemption/reduction: The Austrian tax authorities consider all tax treaties as subject to the domestic Austrian GAAR. Therefore, there will be low impact of the PSD GAAR on Austrian structures. |
| Non-EU            |   |   | The same substance over form and abuse concepts as mentioned above also apply to Austrian structures with non-EU countries.  

Expected timing of PSD GAAR adoption
- There is no information currently available.
Belgium

Impact assessment for commonly utilized EU holding jurisdictions

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• Netherlands
• Luxembourg
• United Kingdom

Domestic law

Statutory WHT rate

- 25%

General conditions for WHT exemption

- A shareholding of at least 10%
- An uninterrupted holding period of one year or more
- Both the recipient and the distributing company must be legal entities qualifying for the application of the EU PSD Directive (or a similar entity in case the company is resident in a country with whom a treaty is concluded that foresees an exchange of information required for enforcing domestic legislation)

Substance requirements for WHT exemption

- There is no specific anti-abuse rule for dividend distributions, but the Belgian general anti-abuse rule allows the tax authorities to deny certain tax treatment/benefits in cases where there are deemed to be no sufficient business reasons.
- Moreover, depending on the situation, specific anti-abuse provisions may apply (e.g., in case of leveraged dividend distribution).

Tax treaty law

WHT relief (exemption/reduced rate)

- DTC with Netherlands: 5%/15%
- DTC with Luxembourg: 10%/15%
- DTC with United Kingdom: Exempt/10%/15%

General conditions for WHT relief

- DTC with Netherlands:
  - 5% – in the case the beneficial owner is a company that holds a direct participation of at least 10% in the capital of the paying company.
  - 15% – in all other cases.
- DTC with Luxembourg:
  - 10% – if the receiving company (or several receiving companies together in cases where one of them holds more than 50% of the capital of each of the other receiving companies) holds a direct participation of at least 25% in the capital of the distributing company or of a purchase price of at least 6.25 million EUR as of the start of its financial year.
  - 15% – in all other cases.
- DTC with United Kingdom:
  - 10% – if the beneficial owner of the dividends is a resident of the other Contracting State.
  - 15% – if the dividend is paid out of income (including gains) derived by an “investment vehicle” directly or indirectly from immovable property (subject to additional conditions).
- Exempt if the beneficial owner of the dividends is:
  - A company which is a resident of the other Contracting State and which holds, for an uninterrupted period of at least twelve months, shares representing directly or indirectly at least 10% of the capital of the company paying the dividends.
  - A pension scheme which is a resident of the other Contracting State, provided that such dividends are not derived from the carrying on of a business by the pension scheme or through an associated enterprise.
Belgium

WHT treaty relief overrules mandatory GAAR

- Belgian tax authorities will likely take the position that the Belgian GAAR also applies to benefits granted under treaties signed by Belgium. However, this position may be debatable in cases where the treaty already contains a GAAR provision or where one of the treaty countries did not have a GAAR provision in its domestic legislation at the time of signing the treaty. Moreover, the Belgian domestic GAAR was recently amended and it may therefore be debatable as to which version of the GAAR would be applicable.

General conditions for WHT exemption

- DTC with Netherlands:
  - The treaty does not contain a specific anti-abuse provision. However, only the “beneficial owner” can benefit from treaty relief.
  - We refer to the domestic substance requirements mentioned in the previous slide.
- DTC with Luxembourg:
  - The protocol to the treaty states that the application of a domestic GAAR is permitted.

Holdings that have their fiscal residency in Luxembourg, and enjoy specific tax advantages (e.g. Holding 29) are, however, excluded from the scope of the DTC. Belgian residents who derive income from these entities or have participations in these entities, will not benefit from the treaty benefits.

We refer to the domestic substance requirements mentioned in the previous slide.

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<th>Country of impact</th>
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<tr>
<td>Netherlands</td>
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<td>Domestic WHT exemption: There is no specific anti avoidance rule for dividend distributions, but the Belgian general anti-avoidance rule allows the tax authorities to deny a certain tax treatment/ benefit in cases where there are no sufficient business reasons. Moreover, depending on the situation, specific anti-abuse provisions may apply (e.g., in cases of leveraged dividend distribution). Consequently, the new PSD GAAR is expected to have a low impact on Belgian structures as the Belgian general anti-avoidance already requires a form of substance for the exemption to apply.</td>
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<td>Luxembourg</td>
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<tr>
<td>Non-EU</td>
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<td>Tax treaty WHT exemption/reduction: If the domestic GAAR applies, it is possible that the Belgian tax authorities will try to deny a treaty dividend withholding tax reduction. Note, however, that it should be further analyzed how and whether the Belgian GAAR can be applied in a treaty context.</td>
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<tr>
<td>Expected timing of PSD GAAR adoption</td>
<td></td>
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<td>There is no information currently available as to whether Belgium will also apply the mandatory GAAR to non-EU countries.</td>
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1. Domestic WHT exemption
2. Tax treaty WHT exemption/reduction

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<th>High impact</th>
<th>Medium impact</th>
<th>Low impact</th>
<th>Indeterminable</th>
</tr>
</thead>
</table>
Impact assessment for commonly utilized EU holding jurisdictions

Viktor Metev
viktor.miteit@bg.ey.com

EY contact

Cyprus
Ireland
Malta
Netherlands
United Kingdom

Bulgaria

Domestic law

Statutory WHT rate
- 5%, however, exempt from tax if the dividend is paid to a foreign company that is resident in the EU/EEA.

General conditions for WHT exemption
- The only condition is that the recipient of the dividend must be a legal person, resident for tax purposes in another EU or EEA Member State.

Substance requirements for WHT exemption
- The dividend exemption does not apply to deemed dividends which are considered as hidden profit distribution (HPD). The definition of HPD covers:
  - Any amounts that exceed market rates or have no relation to the business operations of the taxpayer that are paid, accrued or distributed in favor of related parties.
- Interest expense on hybrid debt arrangements which meet three out of the four following conditions: the debt instrument exceeds the equity, there is no fixed maturity date, payment of interest is dependent on profits; repayment is related to repayments of claims of other creditors or distributions of dividends.

Tax treaty law

WHT relief (exemption/reduced rate)
- DTC with Cyprus: 5%/10%
- DTC with Ireland: 10%
- DTC with Malta: Exempt
- DTC with Netherlands: 5%/15%
- DTC with United Kingdom: 10%

General conditions for WHT relief
- In order to apply for WHT relief under any DTT, the recipient of the income must be the beneficial owner of the income. Bulgaria has a specific set of rules for determining beneficial ownership in its domestic law which are aimed at tackling back-to-back arrangements and companies that have no business substance.
- DTC with Cyprus: The recipient is a beneficial owner. 5% if holding directly at least 25% of the capital of the company paying the dividends. 10% in all other cases.
- DTC with Ireland: The recipient is a beneficial owner. 5% if holding directly at least 25% of the capital of the company paying the dividends. 10% in all other cases.
- DTC with Malta: The recipient is a beneficial owner. Exempt.
- DTC with The Netherlands: The recipient is a beneficial owner. 5% if holding directly at least 25% of the capital of the company paying the dividends. 15% in all other cases.
- DTC with United Kingdom: The recipient is a beneficial owner. 10%

WHT treaty relief overrules mandatory GAAR*
- DTC with Cyprus: Yes
- DTC with Ireland: Yes
- DTC with Malta: Yes
- DTC with Netherlands: Yes
- DTC with United Kingdom: Yes

Substance requirements to secure WHT relief
- DTC with Cyprus: No LOB or specific anti-avoidance rules implemented
- DTC with Ireland: No LOB or specific anti-avoidance rules implemented
- DTC with Malta: No LOB or specific anti-avoidance rules implemented
- DTC with Netherlands: No LOB or specific anti-avoidance rules implemented
- DTC with United Kingdom: No LOB or specific anti-avoidance rules implemented

*If the shareholder qualifies as a beneficial owner of the dividend income based on the domestic rules.
<table>
<thead>
<tr>
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</table>
| Cyprus           |   |   | • Domestic WHT exemption: In the context of the dividend tax exemption transposed in the national law, Bulgaria does not impose an economic substance test at the level of the EU holding nor does it impose an economic rationality test of the transaction. This means that interposing the mandatory GAAR under the PSD may have a high impact on existing structures that do not have substance.  
• Tax treaty WHT exemption/reduction: For applying DTT exemptions, substance requirements under local rules needs to be met. However, since the domestic rate (5%) is lower than the rate under the treaty (5%/10%) the impact of interposing the mandatory PSD GAAR is expected to be low. |
| Ireland          |   |   | • Domestic WHT exemption: In the context of the dividend tax exemption transposed in the national law, Bulgaria does not impose an economic substance test at the level of the EU holding nor does it impose an economic rationality test of the transaction. This means that interposing the mandatory GAAR under the PSD may have a high impact on existing structures that do not have substance.  
• Tax treaty WHT exemption/reduction: For applying DTT exemptions, substance requirements under local rules needs to be met. However, since the domestic rate (5%) is lower than the rate under the treaty (10%) the impact of interposing the mandatory PSD GAAR is expected to be low. |
| Malta            |   |   | • Domestic WHT exemption: In the context of the dividend tax exemption transposed in the national law, Bulgaria does not impose an economic substance test at the level of the EU holding nor does it impose an economic rationality test of the transaction. This means that interposing the mandatory GAAR under the PSD may have a high impact on existing structures that do not have substance.  
• Tax treaty WHT exemption/reduction: For applying DTT exemptions, substance requirements under local rules needs to be met. Thus, the interposition of the new mandatory GAAR may have a high impact on current structures involving Bulgaria and Malta. EY NL: UNLESS DTC RELIEF OVERRIDES PSD GAAR. |
| Netherlands      |   |   | • Domestic WHT exemption: In the context of the dividend tax exemption transposed in the national law, Bulgaria does not impose an economic substance test at the level of the EU holding nor does it impose an economic rationality test of the transaction. This means that interposing the mandatory GAAR under the PSD may have a high impact on existing structures that do not have substance.  
• Tax treaty WHT exemption/reduction: For applying DTT exemptions, substance requirements under local rules needs to be met. However, since the domestic rate (5%) is lower than the rate under the treaty (5%/15%) the impact of interposing the mandatory PSD GAAR is expected to be low. |
| United Kingdom   |   |   | • Domestic WHT exemption: In the context of the dividend tax exemption transposed in the national law, Bulgaria does not impose an economic substance test at the level of the EU holding nor does it impose an economic rationality test of the transaction. This means that interposing the mandatory GAAR under the PSD may have a high impact on existing structures that do not have substance.  
• Tax treaty WHT exemption/reduction: For applying DTT exemptions, substance requirements under local rules needs to be met. However, since the domestic rate (5%) is lower than the rate under the treaty (10%) the impact of interposing the mandatory PSD GAAR is expected to be low. |
| Non-EU           |   |   | • There is no information currently available as to whether Bulgaria will also apply the mandatory GAAR to non-EU countries. |

**Expected timing of PSD GAAR adoption**

- There is no information currently available as to when a legislative proposal implementing the mandatory GAAR will be released.
Domestic law

<table>
<thead>
<tr>
<th>Statutory WHT rate</th>
<th>General conditions for WHT exemption</th>
<th>Substance requirements for WHT exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td>12%</td>
<td>Recipient of the dividend must hold at least 10% of the share capital of the payer of the dividend in a continuous period of 24 months.</td>
<td>The Croatian corporate income tax legislation states that the exemption will not apply if it is evident that the payment of dividend is made with the purpose of tax evasion or tax avoidance.</td>
</tr>
</tbody>
</table>

Tax treaty law

WHT relief (exemption/reduced rate)

- DTC with Austria: Exempt/15%
- DTC with Cyprus: No treaty
- DTC with Germany: 5%/15%
- DTC with Netherlands: Exempt/15%

General conditions for WHT relief

- DTC with Austria: The recipient must be a beneficial owner. Exempt if holding directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
- DTC with Germany: The recipient must be a beneficial owner. 5% if holding directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
- DTC with Netherlands: The recipient is a beneficial owner. Exempt if holding directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.

WHT treaty relief overrules mandatory GAAR

- DTC with all assessed EU Holding Jurisdictions: this is unclear.

Substance requirements to secure WHT relief

- DTC with Austria: No LOB or specific anti-avoidance rules implemented
- DTC with Germany: No LOB or specific anti-avoidance rules implemented
- DTC with Netherlands: No relief shall be available under the DTC if the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this DTC by means of that creation or assignment.
### Croatia

<table>
<thead>
<tr>
<th>Country of impact</th>
<th>1</th>
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<th>Impact assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td></td>
<td></td>
<td><strong>Domestic WHT exemption</strong>: A substance-over-form principle already applies in Croatia, but its scope is unclear. The mandatory PSD GAAR is therefore expected to have a medium impact on domestic WHT exemption.</td>
</tr>
<tr>
<td>Germany</td>
<td></td>
<td></td>
<td><strong>Tax treaty WHT exemption/reduction</strong>: It is unclear whether the WHT relief available under existing tax treaties overrules the mandatory GAAR. Given the high degree of uncertainty, the impact of the PSD GAAR on tax treaties relief is indeterminable.</td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
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<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td><strong>Domestic WHT exemption</strong>: The Croatian corporate income tax legislation states that the exemption will not apply if it is evident that the payment of a dividend is made for the purpose of tax evasion or tax avoidance. Considering the new PSD GAAR is more far reaching, there may be medium impact in Croatia when this rule is transposed into Croatian Law.</td>
</tr>
<tr>
<td></td>
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<td></td>
<td><strong>Tax treaty WHT exemption/reduction</strong>: Not applicable as there is no tax treaty in force between Croatia and Cyprus.</td>
</tr>
<tr>
<td>Non-EU</td>
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<td></td>
<td><strong>Expected timing of PSD GAAR adoption</strong>: There is no information currently available as to whether Croatia will also apply the mandatory GAAR to non-EU countries.</td>
</tr>
</tbody>
</table>

1. Domestic WHT exemption  
2. Tax treaty WHT exemption/reduction

- High impact  
- Medium impact  
- Low impact  
- Indeterminable
Czech Republic

Domestic law

- **Statutory WHT rate**
  - 15% or 35% for non-treaty countries

- **General conditions for WHT exemption**
  - Minimum holding of 10%
  - Holding period of more than one year
  - Qualified EU/EEA parent company according to Annex 2 of the PSD

- **Substance requirements for WHT exemption**
  - No economic substance test is formally applied, however this principle is followed based on Czech case law.

Tax treaty law

- **WHT relief (exemption/reduced rate)**
  - DTC with Cyprus: 0%/5%
  - DTC with Luxembourg: 0%/5%
  - DTC with Netherlands: 0%/10%

- **General conditions for WHT relief**
  - DTC with Cyprus: The recipient must be a beneficial owner. 0% if holding directly at least 10% of the capital of the company paying the dividends for an uninterrupted period of at least one year; 5% in all other cases.
  - DTC with Luxembourg: The recipient must be a beneficial owner. 0% if holding directly at least 10% of the capital of the company paying the dividends for an uninterrupted period of at least one year; 10% in all other cases.
  - DTC with Netherlands: 0% if holding directly at least 25% of the capital of the company paying the dividends; 10% in all other cases.

- **WHT treaty relief overrules mandatory GAAR**
  - DTC with Cyprus: Yes
  - DTC with Luxembourg: Yes
  - DTC with Netherlands: Yes

- **Substance requirements to secure WHT relief**
  - DTC with Cyprus: No LOB or specific anti-avoidance rules implemented
  - DTC with Luxembourg: No LOB or specific anti-avoidance rules implemented
  - DTC with Netherlands: No LOB or specific anti-avoidance rules implemented
<table>
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<tr>
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<tbody>
<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td>• <strong>Domestic WHT exemption</strong>: Czech tax law does not include any anti-abuse concept according to which the dividend exemption under the PSD may not be granted. However, this concept is followed by the Czech case law. As a result, the new mandatory GAAR may have a medium impact on current structures.</td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td>• <strong>Domestic WHT exemption</strong>: Czech tax law does not include any anti-abuse concept according to which the dividend exemption under the PSD may not be granted. However, this concept is followed by the Czech case law. As a result, the new mandatory GAAR may have a medium impact on current structures.</td>
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<tr>
<td>Netherlands</td>
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<td></td>
<td>• <strong>Domestic WHT exemption</strong>: Czech tax law does not include any anti-abuse concept according to which the dividend exemption under the PSD may not be granted. However, this concept is followed by the Czech case law. As a result, the new mandatory GAAR may have a medium impact on current structures.</td>
</tr>
<tr>
<td>Non-EU</td>
<td></td>
<td></td>
<td>• <strong>Domestic WHT exemption</strong>: No information is currently available as to whether Czech Republic will also apply the mandatory GAAR to non-EU countries.</td>
</tr>
<tr>
<td><strong>Expected timing of PSD GAAR adoption</strong></td>
<td></td>
<td></td>
<td>• The legislative proposal implementing the mandatory GAAR is expected to be released mid-2015.</td>
</tr>
</tbody>
</table>

1. Domestic WHT exemption
2. Tax treaty WHT exemption/reduction

- **High impact**
- **Medium impact**
- **Low impact**
- **Indeterminable**
**Domestic law**

**Statutory WHT rate**
- 27%

**General conditions for WHT exemption**
- Minimum holding of 10%
- Danish taxation must be reduced under PSD or tax treaty

**Substance requirements for WHT exemption**
- None. However, the Danish Minister of Taxation proposed a GAAR on 26 January 2015. The GAAR will be comparable to the new GAAR incorporated into the PSD.

**Tax treaty law**

**WHT relief (exemption/reduced rate)**
- DTC with Luxembourg: 5%/15%
- DTC with Netherlands: 0%/15%

**General conditions for WHT relief**
- DTC with Luxembourg: The recipient must be a beneficial owner. 5% if holding directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
- DTC with Netherlands: 0% if holding directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.

**WHT treaty relief overrules mandatory GAAR**
- DTC with Luxembourg: No
- DTC with Netherlands: No

**Substance requirements to secure WHT relief**
- DTC with Luxembourg: No LOB or specific anti-avoidance rules implemented
- DTC with Netherlands: No LOB or specific anti-avoidance rules implemented
<table>
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</tr>
</thead>
</table>
| Luxembourg       |   |   | • **Domestic WHT exemption**: Since Danish law did not include any general anti-abuse provisions prior to 26 January 2015, the impact of the introduction of this provision is deemed to be high.  
• **Tax treaty WHT exemption/reduction**: The newly-enacted GAAR will apply also to treaty reductions and exemptions, therefore a high impact is expected. |
| Netherlands      |   |   | • **Domestic WHT exemption**: Since Danish law did not include any anti-abuse provision prior to 26 January 2015 the impact of the introduction of this provision is deemed to be high.  
• **Tax treaty WHT exemption/reduction**: The newly-enacted GAAR will apply also to treaty reductions and exemptions therefore a high impact is expected. |
| Non-EU           |   |   | • There is no information currently available as to whether Denmark will also apply the mandatory GAAR to non-EU countries. **Tax treaty GAAR implemented and applicable to all tax treaty countries.** |

**Expected timing of PSD GAAR adoption**  
• The legislative proposal implementing the mandatory GAAR has been released in January and is effective as of May 2015.
Impact assessment for commonly utilized EU holding jurisdictions

Domestic law

Statutory WHT rate

- 0%

General conditions for WHT exemption

- There are no specific conditions that must be met in order to apply the 0% tax rate.

Substance requirements for WHT exemption

- None

Tax treaty law

WHT relief (exemption/reduced rate)

- Rate is 0% based on domestic rules and cannot be reduced further.

General conditions for WHT relief

- N/A

WHT treaty relief overrules mandatory GAAR

- N/A

Substance requirements to secure WHT relief

- N/A
### Estonia

<table>
<thead>
<tr>
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<th>1</th>
<th>2</th>
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</thead>
</table>
| EU                |   |   | • Domestic WHT exemption: Since Estonia does not apply withholding tax on dividend payments to residents or non-residents, the PSD GAAR should not be applicable.  
|                   |   |   | • Tax treaty WHT exemption/reduction: No impact as the domestic rate is 0%. |
| Non-EU            |   |   | • There is no information currently available as to whether Estonia will also apply the mandatory GAAR to non-EU countries. |
| Expected timing of PSD GAAR adoption |   |   | • There is no information currently available as to when a legislative proposal implementing the mandatory GAAR may be released, if at all. |

1 Domestic WHT exemption
2 Tax treaty WHT exemption/reduction

- High impact
- Medium impact
- Low impact
- Indeterminable
Domestic law

Statutory WHT rate

- 20%

General conditions for WHT exemption

- Withholding relief may be claimed where the recipient entity holds directly at least 10% of the capital of the company paying the dividends and the recipient qualifies under Article 2 of the Directive.

Substance requirements for WHT exemption

- There is no specific anti-avoidance rule in respect to dividend withholding taxation.
- There is a GAAR in Finnish domestic law, however, we are not aware of cases where it would have been applied in respect to withholding taxation.

Tax treaty law

WHT relief (exemption/reduced rate)

- DTC with Luxembourg: 5%/15%
- DTC with Netherlands: 0%/15%
- DTC with Sweden: 0%/15%

General conditions for WHT relief

- DTC with Luxembourg: The recipient is a beneficial owner. 5% if holding directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
- DTC with Netherlands: The recipient is a beneficial owner. 0% if holding directly at least 5% of the capital of the company paying the dividends; 15% in all other cases.
- DTC with Sweden: The recipient is a beneficial owner. 0% if holding directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.

WHT treaty relief overrules mandatory GAAR

- DTC with Luxembourg: No
- DTC with Netherlands: No
- DTC with Sweden: No

Substance requirements to secure WHT relief

- DTC with Luxembourg: No LOB or specific anti-avoidance rules implemented
- DTC with Netherlands: No LOB or specific anti-avoidance rules implemented
- DTC with Sweden: No LOB or specific anti-avoidance rules implemented

Substance requirements for WHT exemption

- There is no specific anti-avoidance rule in respect to dividend withholding taxation.
- There is a GAAR in Finnish domestic law, however, we are not aware of cases where it would have been applied in respect to withholding taxation.
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<tbody>
<tr>
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<tr>
<td><strong>Luxembourg</strong></td>
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<tr>
<td><strong>Domestic WHT exemption</strong>: It is expected that the scope of the mandatory GAAR should be equivalent to the current GAAR included in Finnish tax law therefore the impact is expected to be low.</td>
<td></td>
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</tr>
<tr>
<td><strong>Tax treaty WHT exemption/reduction</strong>: The new mandatory GAAR is expected to be applicable also to treaties like the current domestic GAAR therefore the impact is expected to be low.</td>
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<tr>
<td><strong>Netherlands</strong></td>
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<td><strong>Domestic WHT exemption</strong>: It is expected that the scope of the mandatory GAAR should be equivalent to the current GAAR included in Finnish tax law therefore the impact is expected to be low.</td>
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<tr>
<td><strong>Non-EU</strong></td>
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</tr>
<tr>
<td>There is no information currently available as to whether Finland will also apply the mandatory GAAR to non-EU countries.</td>
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</tbody>
</table>

**Expected timing of PSD GAAR adoption**

The legislative proposal implementing the mandatory GAAR will most likely be released during Q4 of 2015.

1. Domestic WHT exemption
2. Tax treaty WHT exemption/reduction

- High impact
- Medium impact
- Low impact
- Indeterminable
Impact assessment for commonly utilized EU holding jurisdictions

Domestic law

Statutory WHT rate
- 30%

General conditions for WHT exemption
- Under Article 119 ter of the French Tax Code, in order to benefit from the withholding tax exemption on dividends the foreign parent company must:
  - Have its effective place of management in an EU Member State without being regarded under a tax treaty as tax resident of a non-EU country, and be subject in this Member State to corporate income tax, without the possibility of an option of being exempt.
  - Take one of the forms listed in Annex I, Part A of the PSD.
  - Directly hold 10% or more of the financial and voting rights of the distributing company for at least two years without interruption.
  - Be the beneficial owner of the dividends.
- Not be directly, or indirectly, controlled by non-EU legal entities or individuals or, if so, be able to demonstrate that the chain of participation does not principally aim at benefiting from the exemption.
- With regard to the two years requirement, the law has been amended in order to comply with the 1996 ECJ Denkavit decision, and the exemption now applies from the date of acquisition of the minimal participation, if the parent company commits itself to hold this participation for at least two years.
- With regard to the financial and voting rights requirement, it may be regarded as contrary to the PSD since Article 3 only requires a capital holding and allows EU Member States to bilaterally agree by to replace the capital holding by voting rights holding.
- With regard to the beneficial owner and the non-controlled requirements, they are considered by the French tax authorities to be in line with Article 1, paragraph 2 of the PSD.
**France**

### Tax treaty law

#### WHT relief (exemption/reduced rate)
- DTC with Luxembourg: 5%/15%
- DTC with Netherlands: 0%/15%

#### General conditions for WHT relief
- DTC with Luxembourg: 5% if holding directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
- DTC with Netherlands: 5% if holding directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.

#### WHT treaty relief overrules mandatory GAAR
- DTC with Luxembourg: The mandatory GAAR should not overrule the WHT treaty relief.
- DTC with Netherlands: The mandatory GAAR should not overrule the WHT treaty relief.

#### Substance requirements to secure WHT relief
- DTC with Luxembourg: No LOB or specific anti-avoidance rules are in place. However, the WHT relief may be denied on the grounds of the combination of the effective beneficiary requirement set up in the tax treaties and the French general anti-abuse rule.
- DTC with Netherlands: No LOB or specific anti-avoidance rules in place. However, the WHT relief may be denied on the grounds of the combination of the effective beneficiary requirement set up in the tax treaties and the French general anti-abuse rule.

### Impact assessment

<table>
<thead>
<tr>
<th>Country of impact</th>
<th>1</th>
<th>2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Domestic WHT exemption: A dividend-specific anti-avoidance rule is already in place that provides that no exemption is available in case of a pass-through entity between France and non-EU countries. A low to medium impact is thus expected of the new mandatory GAAR in France which would cover situations not already covered.</td>
<td></td>
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</tr>
<tr>
<td>Tax treaty WHT exemption/reduction: Low impact since the mandatory GAAR should not overrule the WHT treaty relief.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Domestic WHT exemption: A dividend-specific anti-avoidance rule is already in place that provides that no exemption is available in case of a pass-through entity between France and non-EU countries. A low to medium impact is thus expected of the new mandatory GAAR in France which would cover situations not already covered.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax treaty WHT exemption/reduction: Low impact, since the mandatory GAAR should not overrule the WHT treaty relief.</td>
<td></td>
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</tr>
<tr>
<td>Non-EU</td>
<td></td>
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</tr>
<tr>
<td>France is not expected to also apply the mandatory GAAR to non-EU countries, since (i) the French tax authority may already challenge non-EU holding structures on the grounds of the combination of the effective beneficiary requirement set up in the tax treaties and the French general anti-abuse rule and (ii) specific anti-abuse provisions are expected to be implemented in tax treaties in the near future.</td>
<td></td>
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</tr>
<tr>
<td>Expected timing of PSD GAAR adoption</td>
<td></td>
<td>The legislative proposal implementing the mandatory GAAR may be released in either July or December 2015.</td>
</tr>
</tbody>
</table>

### 1 Domestic WHT exemption
- High impact
- Medium impact
- Low impact
- Indeterminable
Impact assessment for commonly utilized EU holding jurisdictions

Domestic law

Statutory WHT rate
- Dividends (for holdings of at least 10% or more) are fully tax exempt at the level of the recipient while 5% of the dividend are treated as a non-deductible expense. Other dividends are fully taxable at a CIT rate of 15.825% (including a solidarity surcharge) and trade tax. WHT on dividend distributions amounts to 26.375% (incl. solidarity surcharge). Upon application, WHT rate can be reduced to 15.825% if the recipient is a foreign corporation.

General conditions for WHT exemption
- PSD requirements:
  - Minimum holding of 10%
  - Holding period of at least one year
  - Qualified EU/EEA parent company according to Annex 2 of the PSD
- Freedom of movement of capital (Sec 8b (1) Corporate Income Tax Act providing for a tax exemption of dividends only to resident companies (owning at least 10 percent of the share capital) discriminates foreign shareholders)
- Reduction of WHT under the relevant DTT

Substance requirements for WHT exemption
- Sec. 50d of the Income Tax Act (EStG) states that no WHT relief (exemption certificate or refund) shall be granted in cases where investees in a shareholder would have no right for WHT relief and shareholder has no own business activity, i.e., pure “pass-through” entities. In administrative practice, detailed substance requirements are available.
## Tax treaty law

### WHT relief (exemption/reduced rate)

- DTC with Luxembourg: 5%/15%
- DTC with Netherlands: 10%/15%

### General conditions for WHT relief

- **DTC with Luxembourg:** 5% if holding directly at least 10% of the capital of the company paying the dividends; 15% if the distributing company is a real estate investment company which is wholly or partially exempt from tax regarding its profits or which can deduct the distributions in determining its profits; 15% in all other cases.
- **DTC with Netherlands:** The recipient must be a beneficial owner; 10% if holding directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.

### WHT treaty relief overrules mandatory GAAR

- **DTC with Luxembourg:** No
- **DTC with Netherlands:** No

### Substance requirements to secure WHT relief

- **DTC with Luxembourg:** No LOB or specific anti-avoidance rules in place
- **DTC with Netherlands:** No LOB or specific anti-avoidance rules in place

### Country of impact | 1 | 2
| Impact assessment |
|---|---|---|
| Luxembourg | | Domestic WHT exemption: A dividend-specific anti-avoidance rule is already in place, that provides that no exemption is available in case of a pass-through entity. This means that the impact is expected to be low.  
Tax treaty WHT exemption/reduction: A dividend-specific anti-avoidance rule is already in place, that provides that no exemption is available in case of a pass-through entity. This means that the impact is expected to be low. |
| Netherlands | | Domestic WHT exemption: A dividend-specific anti-avoidance rule is already in place that provides that no exemption is available in case of a pass-through entity. This means that the impact is expected to be low.  
Tax treaty WHT exemption/reduction: A dividend-specific anti-avoidance rule is already in place, that provides that no exemption is available in case of a pass-through entity. This means that the impact is expected to be low. |
| Non-EU | | It is unlikely that Germany will apply the mandatory GAAR to non-EU countries. |
| Expected timing of PSD GAAR adoption | | The legislative proposal implementing the mandatory GAAR will be released in 2015. |

1. Domestic WHT exemption  
2. Tax treaty WHT exemption/reduction  
3. High impact  
4. Medium impact  
5. Low impact  
6. Indeterminable
Impact assessment for commonly utilized EU holding jurisdictions

Greece

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EY contact

Cyprus
Luxembourg
Netherlands

Domestic law

Statutory WHT rate
- 10%

General conditions for WHT exemption
- Intra-group dividends paid by a Greek entity to a company located in one of the above EU holding jurisdictions are exempt from corporate income and withholding tax, provided that:
  - The recipient entity is tax resident in the EU, and has one of the legal forms set out in Annex I of the 2011/96/EU Directive defines both the legal forms (part A of said annex) and be subject to the taxes set out in part B of said annex.
  - The recipient of the dividends holds a minimum participation of 10% of the share capital or voting rights of the distributing entity.

Substance requirements for WHT exemption
- There is no specific anti-tax avoidance rule for dividend payments in Greek tax legislation.
- The new Greek Tax Procedure Code (Law 4174/2013) applicable as of 1 January 2014 contains only a general anti-avoidance rule according to which the Greek tax administration may disregard any artificial arrangement or series of arrangements that aim at the evasion of taxation and that lead to a tax advantage.
- Such arrangements are treated, for tax purposes, according to the characteristics of their commercial substance. An arrangement or series of arrangements are considered artificial if they lack commercial substance.
- The goal of an arrangement or series of arrangements are deemed to avoid taxation in the event that, regardless of the subjective intention of the taxpayer, it is contrary to the object, spirit and purpose of the tax provisions that would apply in other cases.
Impact assessment for commonly utilized EU holding jurisdictions

Greece

Tax treaty law

WHT relief (exemption/reduced rate)
- DTC with Cyprus: 25%
- DTC with Luxembourg: 38% if the company making the distribution is a resident of Greece; 7.5% if the company making the distribution is a resident of Luxembourg.
- DTC with Netherlands: i) if the company making the distribution is a resident of the Netherlands 5% in case the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends and 15% in all other cases. (ii) 35% if the company making the distribution is a resident of Greece.

General conditions for WHT relief
- DTC with Cyprus: Not applicable
- DTC with Luxembourg: Not applicable
- DTC with Netherlands: Not applicable

WHT treaty relief overrules mandatory GAAR
- DTC with Cyprus: Yes
- DTC with Luxembourg: Yes
- DTC with Netherlands: Yes

Substance requirements to secure WHT relief
- DTC with Cyprus: Not applicable
- DTC with Luxembourg: Not applicable
- DTC with Netherlands: Not applicable
Greece

Country of impact | 1 | 2 | Impact assessment
--- | --- | --- | ---
Cyprus | | | • Domestic WHT exemption: There is no specific anti-avoidance rule for dividend payments in Greek tax legislation, but the Greek Income Tax Code does contain a general anti-tax avoidance rule. Based on this rule, an artificial arrangement or series of arrangements that aim at the evasion of taxation and which lead to a tax advantage may be disregarded.

• According to the new Greek Income Tax Code (C.4172/2013, applicable as of 1 January 2014) a legal person or other legal entity is considered as tax resident in Greece (and therefore taxable in Greece) if one of the following conditions is met: i). it has been incorporated or established according to Greek legislation; ii). its registered seat is within the Greek territory; or iii). the place of effective management is in Greece during any period within the tax year.

• Furthermore, the place of effective management of a legal entity is considered to be exercised in Greece based on the factual background and circumstances, taking into consideration, especially the following criteria provided by the Greek Income Tax Code: i). the place of exercising the day-to-day management; ii). the place where strategic decisions are taken; iii). the place where the annual general meeting is held; iv). the place where the books and records are kept; v). the place where the meeting of Board of Directors’ or any other executive management board takes place; vi). the place of habitual residence of the Board of Directors’ or any other executive management board is located.

• In this context, the no or low substance will be examined and emphasized by the Greek tax authorities, pursuant the above provisions of the Greek Income Tax Code.

• Tax treaty WHT exemption/reduction: As the WHT relief available under the existing tax treaty with Cyprus overrules the mandatory GAAR, the impact of the mandatory GAAR on tax treaty relief is expected to be low.

1 Domestic WHT exemption  
2 Tax treaty WHT exemption/reduction

- High impact  
- Medium impact  
- Low impact  
- Indeterminable
<table>
<thead>
<tr>
<th>Country of impact</th>
<th>1</th>
<th>2</th>
<th>Impact assessment</th>
</tr>
</thead>
</table>
| **Luxembourg**    |   |   | • Domestic WHT exemption: There is no specific anti-tax avoidance rule for dividend payments in the Greek tax legislation, but the Greek Income Tax Code does contain a general anti-tax avoidance rule. Based on this rule, an artificial arrangement or series of arrangements that have the objective of evasion of taxation and lead to a tax advantage may be disregarded. According to The New Greek Income Tax Code (L.4172/2013 applicable as of 1 January 2014) a legal person or other legal entity is considered as tax resident in Greece (and therefore is taxed in Greece) if one of the following conditions is met:  
  ▶ It has been incorporated or established according to Greek legislation  
  ▶ Its registered seat is within the Greek territory  
  ▶ The place of effective management is in Greece during any period within the tax year  
  ▶ Furthermore, the place of effective management of a legal entity is considered to be exercised in Greece based on the factual background and circumstances, taking into consideration, among others, the following criteria provided by the New Greek Income Tax Code:  
    ▶ The place of exercising the day-to-day management  
    ▶ The place where strategic decisions are taken  
    ▶ The place where the annual general assembly is held  
    ▶ The place where the books and records are kept  
    ▶ The place where the meeting of Board of Directors’ or any other executive management board takes place  
    ▶ The place of habitual residence of the Board of Directors’ or any other executive management board is located  
    ▶ In this context, the existence of no or low substance will be examined and emphasized by the Greek tax authorities pursuant to the above provisions of the Greek Income Tax Code.  
  • Tax treaty WHT exemption/reduction: As the WHT relief available under the existing Tax treaty with Luxembourg overrules the mandatory GAAR, the impact of the mandatory GAAR on Tax treaty relief is expected to be low. |
| **Non-EU**        |   |   | • There is no information currently available as to whether Greece will also apply the mandatory GAAR to non-EU countries. |
| **Expected timing of PSD GAAR adoption** |   |   | • There is no information currently available as to when a legislative proposal implementing the mandatory GAAR may be released. |

1. Domestic WHT exemption
2. Tax treaty WHT exemption/reduction

- High impact
- Medium impact
- Low impact
- Indeterminable
Impact assessment for commonly utilized EU holding jurisdictions

**Domestic law**

<table>
<thead>
<tr>
<th>Statutory WHT rate</th>
<th>General conditions for WHT exemption</th>
<th>Substance requirements for WHT exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td>0%</td>
<td>Hungary has no withholding tax.</td>
<td>N/A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Country of impact</th>
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<tbody>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td>Domestic WHT exemption: Based on the fact that dividends are not subject to tax in Hungary, the PSD GAAR should not be applied on the dividend payments between Hungary and other jurisdictions within EU.</td>
</tr>
<tr>
<td></td>
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<td></td>
<td>Tax treaty WHT exemption/reduction: N/A</td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
<td></td>
<td>Domestic WHT exemption: Based on the fact that dividends are not subject to tax in Hungary, the PSD GAAR should not be applied on the dividend payments between Hungary and other jurisdictions within EU.</td>
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<td></td>
<td>Tax treaty WHT exemption/reduction: N/A</td>
</tr>
<tr>
<td>Non-EU</td>
<td></td>
<td></td>
<td>There is no information currently available as to whether Hungary will also apply the mandatory GAAR to non-EU countries.</td>
</tr>
</tbody>
</table>

**Expected timing of PSD GAAR adoption**

- There is no information currently available as to when a legislative proposal implementing the mandatory GAAR may be released.

1. Domestic WHT exemption
2. Tax treaty WHT exemption/reduction

<table>
<thead>
<tr>
<th>1 Domestic WHT exemption</th>
<th>2 Tax treaty WHT exemption/reduction</th>
</tr>
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<tbody>
<tr>
<td>High impact</td>
<td>Medium impact</td>
</tr>
<tr>
<td>Low impact</td>
<td>Indeterminable</td>
</tr>
</tbody>
</table>
Domestic law

Statutory WHT rate
- 20%

General conditions for WHT exemption
- Intra-group dividends paid by an Irish entity to a company located in one of the above EU holding jurisdictions are exempt from corporate income and withholding tax under one of the following situations:
  - Dividends paid to residents of “relevant territories” (which would include all EEA countries except Liechtenstein) are exempt from Dividend Withholding Tax (DWT), subject to complying with administrative requirements and having no ultimate Irish control.
  - Companies where the principal class of shares is substantially and regularly traded on a stock exchange in Ireland or a relevant territory (extends to 75% subsidiaries of such companies).

Or

Substance requirements for WHT exemption
- Other than the beneficial ownership requirement there is no specific anti-avoidance although Ireland already has a general anti-avoidance rule (GAAR).
Ireland

Tax treaty law

**WHT relief (exemption/reduced rate)**
- DTC with Luxembourg: 20% (no relief available)
- DTC with Netherlands: 0%
- DTC with the United Kingdom: 5%

**General conditions for WHT relief**
- DTC with Luxembourg: N/A (no relief available)
- DTC with Netherlands: 25% plus voting power
- DTC with the United Kingdom: 25% plus voting power held by beneficial owner

**WHT treaty relief overrules mandatory GAAR**
- DTC with Luxembourg: N/A
- DTC with the Netherlands: Yes
- DTC with the United Kingdom: Yes

**Substance requirements to secure WHT relief**
- DTC with Luxembourg: No LOB or specific anti-avoidance rules implemented
- DTC with Netherlands: No LOB or specific anti-avoidance rules implemented
<table>
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</table>
| Luxembourg       |   |   | • Domestic WHT exemption: In practice, the WHT exemption may almost always be based on the domestic non-Irish control test or stock exchange test. The PSD, as implemented in the Irish tax code, is not relied upon in practice. The domestic WHT exemptions are also not based on the EU PSD. Therefore, the mandatory GAAR would not impact the existing Irish WHT exemptions. There is no specific anti-avoidance rule in place, other than the beneficial ownership requirement.  
  • Tax treaty WHT exemption/reduction: As there is no WHT relief available under the existing tax treaty with Luxembourg, the impact of the mandatory GAAR on tax treaty relief is expected to be low. |
| Netherlands      |   |   | • Domestic WHT exemption: In practice, the WHT exemption may almost always be based on the domestic non-Irish control test or stock exchange test. The PSD, as implemented in the Irish tax code, is not relied upon in practice. The domestic WHT exemptions are also not based on the EU PSD. Therefore, the mandatory GAAR would not impact the existing Irish WHT exemptions. There is no specific anti-avoidance rule in place, other than the beneficial ownership requirement.  
  • Tax treaty WHT exemption/reduction: As the WHT relief available under the existing tax treaty with Netherlands would overrule any mandatory GAAR introduced in domestic law, the impact of the mandatory GAAR on any tax treaty relief (if required) is expected to be low.  
  • The treaty with the Netherlands is under renegotiation for unrelated reasons as it was signed in 1969 and requires updating. |
| United Kingdom   |   |   | • Domestic WHT exemption: In practice, the WHT exemption is often based on the domestic non-Irish control test or stock exchange test. The PSD, as implemented in the Irish tax code, is not relied upon in practice. The domestic WHT exemptions are also not based on the EU PSD. Therefore, the mandatory GAAR will likely not impact the existing Irish WHT exemptions. There is no specific anti-avoidance rule in place, other than the beneficial ownership requirement.  
  • Tax treaty WHT exemption/reduction: As the WHT relief available under the existing tax treaty with the United Kingdom overrules the mandatory GAAR, and as the current Tax treaty does not include targeted rules to combat Tax treaty shopping, the impact of the mandatory GAAR on tax treaty relief (if required) is low. |
| Non-EU           |   |   | • There is no information currently available as to whether Ireland will also apply the mandatory GAAR to non-EU countries. |
| Expected timing of PSD GAAR adoption |   |   | • Any changes are likely to featured in the Finance Act 2015, which is expected to be published in October 2015. This annual Finance Act will be enacted by 31 December 2015. |

1 Domestic WHT exemption  
2 Tax treaty WHT exemption/reduction  
- High impact  
- Medium impact  
- Low impact  
- Indeterminable
Impact assessment for commonly utilized EU holding jurisdictions

### Domestic law

**Statutory WHT rate**
- 27.5% on 5% of the dividends received (cash principle). Overall tax burden of 1.375%

**General conditions for WHT exemption**
- Intra-group dividends paid by an Italian entity to a company located in one of the above EU holding jurisdictions are exempt from corporate income and withholding tax under the following conditions:
  - Holding period 12 months
  - Shareholding of at least 10%
  - The company shall have a form of those indicated in the Directive

**Substance requirements for WHT exemption**
- For the application of the WHT exemption, the Italian company shall gather the documentation before the payment (Certificate of the foreign state where it is indicated that the (EU foreign) company meets the requirements of the “form” of the tax residence and of being subject to tax; declaration of the Italian company that the holding period is verified).

**Tax treaty law**

**WHT relief (exemption/reduced rate)**
- DTC with Luxembourg: 15%.
- DTC with Netherlands: 5% (shareholding must be > 50% for 12 months), 10% (shareholding must be > 10% for 12 months), 15% other.
- DTC with the United Kingdom: 5% (shareholding must be > 10% for 12 months), 15%.

**General conditions for WHT relief**
- DTC with Luxembourg: Beneficial ownership
- DTC with Netherlands: Beneficial ownership
- DTC with the United Kingdom: Beneficial ownership (shareholding should be held uninterrupted; profits shall not refer to profits realized in the 12 months preceding the date in which the shareholder reached the 10% shareholding threshold)

**WHT treaty relief overrules mandatory GAAR**
- DTC with Luxembourg: Generally yes, but Italian tax authorities may try to tackle the structure on the basis of the beneficial ownership requirement and/or the domestic abuse of law concept.
- DTC with the United Kingdom: Generally yes, but the Italian tax authorities may try to tackle the structure on the basis of the beneficial ownership requirement and/or the domestic abuse of law concept.

**Substance requirements to secure WHT relief**
- DTC with Luxembourg: No LOB or specific anti-avoidance rules implemented.
- DTC with Netherlands: No LOB or specific anti-avoidance rules implemented.
- DTC with the United Kingdom: No LOB or specific anti-avoidance rules implemented.
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<td>✪ However, the Italian Supreme Court introduced a concept of abuse of law under reference to the CJ principles of abuse of law (generally not often applied in this context). Please note that the Italian GAAR will continue to apply even after the introduction of the PSD GAAR. Nevertheless please note the Italian tax authorities challenge the exemption/reduction of the WHT at source with the BO requirement. It is not possible to define in an objective way the substance for the purpose of the exemption. In any case, with reference to mere holding companies we observe that such holding companies should effectively carry out the activities typical of such kind of companies and bear the relating risks (i.e., not Post Office Box or conduit companies).</td>
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<tr>
<td>✪ Tax treaty WHT exemption/reduction: As the WHT relief available under the existing tax treaty with the United Kingdom generally overrules the mandatory GAAR, and as the current tax treaty does not include targeted rules to combat Tax treaty shopping, the impact of the mandatory GAAR on tax treaty relief would in first instance be low. However, the Italian tax authorities may try to tackle the holding structure on the basis of the beneficial ownership requirement and/or the domestic abuse of law concept, resulting in a medium impact.</td>
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<tr>
<td><strong>Non-EU</strong></td>
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<tr>
<td>✪ There is no information currently available as to whether Italy will also apply the mandatory GAAR to non-EU countries.</td>
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<tr>
<td><strong>Expected timing of PSD GAAR adoption</strong></td>
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<td></td>
</tr>
<tr>
<td>✪ There is no information currently available as to when a legislative proposal implementing the mandatory GAAR may be released.</td>
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</tbody>
</table>
Domestic law

Statutory WHT rate

- 0%, except dividends paid to residents in nil or low tax countries. EU countries are not treated as nil or low tax countries.

General conditions for WHT exemption

- There are no further conditions set under which the 0% tax rate is applied.

Substance requirements for WHT exemption

- Except for “black-listed” countries (as defined under Latvian law), there are no specific local anti tax avoidance rules. Moreover, there are no specific rules to determine the beneficial owner of dividends (i.e., whether recipient is resident of EU holding jurisdiction or black-listed country).
Impact assessment for commonly utilized EU holding jurisdictions

Latvia

Tax treaty law

WHT relief (exemption/reduced rate)

- As the domestic law provides more beneficial regime, i.e., no WHT applies to dividends paid to EU holding jurisdictions, domestic law will apply.

<table>
<thead>
<tr>
<th>Country of impact</th>
<th>1</th>
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<th>Impact assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-EU</td>
<td></td>
<td></td>
<td>• Domestic WHT exemption: The WHT exemption is based on the domestic rule that generally applies, safe for situations involving black-listed jurisdictions. It is therefore questionable whether the domestic WHT exemption can be considered to be based on the EU PSD. If not, the mandatory GAAR would not impact the existing Latvian WHT exemption. If yes, there may be an impact as there is currently no specific anti-avoidance rule in place under Latvian tax law.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Tax treaty WHT exemption/reduction: As the domestic law provides more beneficial regime, i.e., no WHT applies to dividends paid to EU Holding Jurisdictions, domestic law will apply.</td>
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<td></td>
<td>• There is no information currently available as to whether Latvia will also apply the mandatory GAAR to non-EU countries.</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>• There is no information currently available as to when a legislative proposal implementing the mandatory GAAR will be released, if at all.</td>
</tr>
</tbody>
</table>

1 Domestic WHT exemption
2 Tax treaty WHT exemption/reduction

- High impact
- Medium impact
- Low impact
- Indeterminable
Lithuania

Impact assessment for commonly utilized EU holding jurisdictions

- Cyprus
- Netherlands

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Domestic law

Statutory WHT rate
- 15%

General conditions for WHT exemption
- Intra-group dividends paid by a Lithuania entity to a company located in one of the above EU holding jurisdictions are exempt from corporate income and withholding tax, provided that the foreign entity controls for an uninterrupted period of at least 12 months, including the moment of distribution of dividends, at least 10% of voting shares (interests, member shares) in the Lithuanian entity.

Substance requirements for WHT exemption
- The domestic tax anti-avoidance rules in Lithuania are:
  - Use of a substance-over-form principle; in this case, the substance of a transaction (and of the holding) maybe tested; the scope of the substance-over-form principle is wide and it is not specific with respect to the application of WHT
  - Black-listing

Tax treaty law

WHT relief (exemption/reduced rate)
- DTC with Cyprus: 0% – 10%
- DTC with Netherlands: 0% – 10%

General conditions for WHT relief
- DTC with Cyprus: The exemption/reduced rate is applicable if beneficial owner of the dividend(s) is a resident of the contracting state
- DTC with the Netherlands: The exemption/reduced rate is applicable if the beneficial owner of the dividend(s) is a resident of the contracting state

WHT treaty relief overrules mandatory GAAR
- DTC with Cyprus: Yes
- DTC with the Netherlands: Yes

Substance requirements to secure WHT relief
- DTC with Cyprus: The concept of beneficial ownership is applicable
- DTC with the Netherlands: The concept of beneficial ownership is applicable
### Lithuania

<table>
<thead>
<tr>
<th>Country of impact</th>
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<th>2</th>
<th>Impact assessment</th>
</tr>
</thead>
</table>
| Cyprus            |   |   | • Domestic WHT exemption: The WHT exemption is based on the domestic rule that generally applies upon satisfying a minimum holding requirement, except for situations involving blacklisted jurisdictions. The scope of the substance-over-form principle is wide and it is not specific to the application of WHT. The mandatory PSD GAAR is therefore expected to have a medium impact on domestic WHT exemption.  
• Tax treaty WHT exemption/reduction: As the WHT relief available under the existing tax treaty with Cyprus overrules the mandatory GAAR, and as the current tax treaty does not include targeted rules to combat tax treaty shopping, the impact of the mandatory GAAR on tax treaty relief is low. |
| Netherlands       |   |   | • Domestic WHT exemption: The WHT exemption is based on the domestic rule that generally applies upon satisfying a minimum holding requirement, except for situations involving blacklisted jurisdictions. The scope of the substance-over-form principle is wide and it is not specific with respect to the application of WHT. The mandatory PSD GAAR is therefore expected to have a medium impact on domestic WHT exemption.  
• Tax treaty WHT exemption/reduction: As the WHT relief available under the existing tax treaty with the Netherlands overrules the mandatory GAAR, and as the current tax treaty does not include targeted rules to combat tax treaty shopping, the probable impact of the mandatory GAAR on tax treaty relief is low. |
| Non-EU            |   |   | • There is no information currently available as to whether Lithuania will apply the mandatory GAAR to non-EU countries as well. |
| Expected timing of PSD GAAR adoption |   |   | • Amendments expected to be released by the end of 2015. |

1. Domestic WHT exemption
2. Tax treaty WHT exemption/reduction

- High impact
- Medium impact
- Low impact
- Indeterminable

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Luxembourg

Impact assessment for commonly utilized EU holding jurisdictions

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Domestic law

Statutory WHT rate
- 15%

General conditions for WHT exemption
- Dividends paid by:
  - A qualifying Luxembourg entity (i.e., a fully taxable collective undertaking as listed in the appendix of the relevant tax provision (which is based on the appendix of the PSD Directive) or a resident fully taxable company limited by shares not listed in this Appendix
  - To a qualifying EU company (i.e., a collective undertaking listed in article 2 of the PSD)
  - Are tax exempt if at the date the income is made available, the beneficiary holds or commits to hold directly during an uninterrupted period of 12 months a participation of at least 10% or of an acquisition price of at least €1.2 million in the capital of the paying entity.

Substance requirements for WHT exemption
- The holding of a participation through a tax transparent entity is considered as a direct holding in proportion of the part held in the transparent entity.

Substance requirements to secure WHT relief
- There are no specific anti-abuse rules in relation to the PSD. Tax authorities may deny the application of the withholding tax exemption based on a general rule on the abuse of law.

Tax treaty law

WHT relief (exemption/reduced rate)
- Reduced rates generally are between 0% and 10%.

WHT treaty relief overrules mandatory GAAR
- Not really relevant for Luxembourg purposes, since most common structures involve dividend payments to non-EU jurisdictions.

Substance requirements to secure WHT relief
- The DTT with Poland contains a general anti-abuse clause.

Country of impact  | 1  | 2  | Impact assessment
--- | --- | --- | ---
N/A |  |  | It is not expected that the structures most commonly used today will change after the implementation of the mandatory GAAR provision, since Luxembourg is a preferred EU holding jurisdiction for non-EU shareholders.
Non-EU |  |  | There is no information currently available as to whether Luxembourg will also apply the mandatory GAAR to non-EU countries.
Expected timing of PSD GAAR adoption |  |  | Since the mandatory GAAR must be introduced by 31 December 2015, it is expected that the domestic legislative process for implementing this provision will be launched within the next months.

Expected timing of PSD GAAR adoption
- Since the mandatory GAAR must be introduced by 31 December 2015, it is expected that the domestic legislative process for implementing this provision will be launched within the next months.

Impact assessment
- High impact
- Medium impact
- Low impact
- Indeterminable
Malta

Impact assessment for commonly-utilized EU holding jurisdictions

▪ Malta does not attract significant foreign direct investment and does not levy outbound withholding taxes on dividend and interest payments.

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Domestic law

<table>
<thead>
<tr>
<th>Statutory WHT rate</th>
<th>General conditions for WHT exemption</th>
<th>Substance requirements for WHT exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td>• 0%</td>
<td>▪ There are no further conditions that must be met in order to apply the 0% tax rate.</td>
<td>▪ N/A</td>
</tr>
<tr>
<td></td>
<td>▪ Are tax exempt if at the date the income is made available, the beneficiary holds.</td>
<td></td>
</tr>
</tbody>
</table>

Tax treaty law

<table>
<thead>
<tr>
<th>WHT relief (exemption/reduced rate)</th>
<th>General conditions for WHT relief</th>
<th>Substance requirements to secure WHT relief</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Rate is already 0% and cannot be reduced further.</td>
<td>▪ N/A</td>
<td>▪ N/A</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>WHT treaty relief overrules mandatory GAAR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• N/A</td>
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</tbody>
</table>

Country of impact  | 1  | 2  | Impact assessment |
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>EU3</td>
<td></td>
<td></td>
<td>▪ <strong>Domestic WHT exemption</strong>: Based on the fact that dividends are not subject to tax in Malta, the PSD GAAR should not be applied on the dividend payments between Malta and other jurisdictions within EU.</td>
</tr>
<tr>
<td></td>
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<td></td>
<td>▪ <strong>Tax treaty WHT exemption/reduction</strong>: There is no impact as the domestic and treaty rates are 0%.</td>
</tr>
<tr>
<td>Non-EU</td>
<td></td>
<td></td>
<td>▪ There is no information currently available as to whether Malta will also apply, if at all, the mandatory GAAR to non-EU countries.</td>
</tr>
<tr>
<td>Expected timing of PSD GAAR adoption</td>
<td></td>
<td></td>
<td>▪ There is no information currently available as to when a legislative proposal implementing the mandatory GAAR will be released, if at all.</td>
</tr>
</tbody>
</table>

1 Domestic WHT exemption  
2 Tax treaty WHT exemption/reduction  

High impact  
Medium impact  
Low impact  
Indeterminable
Impact assessment for commonly utilized EU holding jurisdictions

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Cyprus
Luxembourg
Malta

Domestic law

Statutory WHT rate
- 15% (under certain circumstances, 25% rate may apply in cases of foreign low or no substance entities)

General conditions for WHT exemption
- Corporate income tax liability (25%) exists in case of a 5%+ shareholding in a Dutch entity where such shareholding can not be attributed to an enterprise carried on by the non-resident shareholder, unless it can be demonstrated that the shareholding was not held with the principal purposes, or one of the principal purposes of avoiding personal income tax or dividend tax otherwise due by another person.
- The above substance requirement is deemed to be met in cases where the foreign holding company forms part of a multinational group where the foreign holding company constitutes a corporate “link” between its parent company and its (active) direct and/or indirect subsidiaries.
- A targeted anti-dividend stripping rule is in place.
- Finally, under the judicial doctrine of fraus legis (abuse of law), transactions may be recharacterized or substituted for tax purposes to reflect their true substance. However, this doctrine cannot overrule reduced WHT rates granted under tax treaties that do not contain a specific anti-avoidance clause.

Substance requirements for WHT exemption
- The recipient entity is tax resident in the EU or EEA
- The recipient of the dividends holds a minimum participation of 5% of the share capital or voting rights of the distributing entity

Tax treaty law

WHT relief (exemption/reduced rate)
- DTC with Cyprus: There is currently no tax treaty in force with Cyprus
- DTC with Luxembourg: 2.5%
- DTC with Malta: 5%

General conditions for WHT relief
- Corporate income tax liability (25%) applies in cases of 25%+ shareholdings. In all other cases, the rate is 15%.
- DTC with Malta: A reduced rate of 5% applies in cases of 25%+ shareholdings. In all other cases, the rate is 15%.

Substance requirements to secure WHT relief
- DTC with Cyprus: N/A
- DTC with Luxembourg: No
- DTC with Malta: No reduction to 5% rate if the relationship between the Dutch and Maltese company has been arranged or is maintained primarily with the intention of securing this reduction.

WHT treaty relief overrules mandatory GAAR
- DTC with Cyprus: N/A
- DTC with Luxembourg: Yes
- DTC with Malta: Yes
<table>
<thead>
<tr>
<th>Country of impact</th>
<th>1</th>
<th>2</th>
<th>Impact assessment</th>
</tr>
</thead>
</table>
| **Cyprus**        |   |   | • Domestic WHT exemption: The Netherlands applies a substance test and anti-abuse concept according to which the dividend exemption under the PSD may not be granted. Hence, the new PSD GAAR will have a low impact on the Netherlands.  
  • However, for foreign holdings that form part of a multinational group, there may be an impact since in such cases the safe harbor of a linking function can apply also if the foreign holding lacks economic substance. This safe harbor may be overruled by the mandatory GAAR.  
  • Tax treaty WHT exemption/reduction: N/A |
| **Luxembourg**    |   |   | • Domestic WHT exemption: The Netherlands applies a substance test and anti-abuse concept according to which the dividend exemption under the PSD is not granted. Hence, the new PSD GAAR will have a low impact on the Netherlands.  
  • However, for foreign holdings that form part of a multinational group, there may be an impact since in such cases the safe harbor of a linking function can apply also if the foreign holding lacks economic substance. This safe harbor may be overruled by the mandatory GAAR.  
  • Tax treaty WHT exemption/reduction: As the WHT relief available under the existing tax treaty with Luxembourg overrules the mandatory GAAR, the expected impact of the mandatory GAAR on tax treaty relief is low. |
| **Netherlands**   |   |   | • Domestic WHT exemption: The Netherlands applies a substance test and anti-abuse concept according to which the dividend exemption under the PSD is not granted. Hence, the new PSD GAAR will have a low impact on the Netherlands.  
  • However, for foreign holdings that form part of a multinational group, there may be an impact since in such cases the safe harbor of a linking function can apply also if the foreign holding lacks economic substance. This safe harbor may be overruled by the mandatory GAAR.  
  • Tax treaty WHT exemption/reduction: The tax treaty already denies treaty relief in cases where the relationship between the Dutch and Maltese company has been arranged or is maintained primarily with the intention of securing this reduction. Hence, the new PSD GAAR is expected to have a low impact on the tax treaty. |
| **Non-EU**        |   |   | • There is no information currently available as to whether the Netherlands will also apply the mandatory GAAR to non-EU countries. |

**Expected timing of PSD GAAR adoption**  
• A legislative proposal implementing the mandatory GAAR will probably be released no later than in the second half of September 2015, when the Dutch budgetary Act of 2016 is launched.

1 Domestic WHT exemption  
2 Tax treaty WHT exemption/reduction

<table>
<thead>
<tr>
<th>Impact</th>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>High impact</td>
<td>Red</td>
<td>High impact</td>
</tr>
<tr>
<td>Medium impact</td>
<td>Yellow</td>
<td>Medium impact</td>
</tr>
<tr>
<td>Low impact</td>
<td>Green</td>
<td>Low impact</td>
</tr>
<tr>
<td>Indeterminable</td>
<td>Grey</td>
<td>Indeterminable</td>
</tr>
</tbody>
</table>
**Poland**

**Impact assessment for commonly utilized EU holding jurisdictions**

**EY contact**

- **Andrzej Broda**
  - +48 2 2557 7290
  - andrzej.broda@pl.ey.com

### Domestic law

**Statutory WHT rate**
- 19%

**General conditions for WHT exemption**
- Dividend income may be exempt from withholding tax in Poland if all of the following conditions are met:
  - The dividend payer is a company that is a corporate income taxpayer having its establishment or management in the territory of the Republic of Poland.
  - The entity earning income (revenue) from a dividend is a company liable to income tax in Poland or another Member State of the European Union or in the European Economic Area on the total amount of its total income regardless of where it is generated.
- The dividend recipient does not benefit from an income tax exemption for its total income regardless of the source of such income (based on the taxpayer’s statement).
- The dividend recipient holds directly no less than 10% of the shares (stock) in the dividend payer’s capital.
- The dividend recipient has held the above shares (stock) in the dividend payer’s capital for an uninterrupted period of 2 years (this condition can be met earlier unless the dividend recipient dispose shares before the necessary holding period).
- The beneficiary documents his residence for tax purposes using a certificate of tax residence issued by the relevant Member States’ tax authorities.

**Substance requirements for WHT exemption**
- In general, Polish tax law does not include specific substance requirements. However, the tax exemption applies if the shareholding is based on a title of ownership.

### Tax treaty law

**WHT relief (exemption/reduced rate)**
- DTC with Cyprus: 0%/5%
- DTC with Luxembourg: 0%/15%
- DTC with Malta: 0%/10%
- DTC with Netherlands: 5%/15%

**General conditions for WHT relief**
- DTC with Cyprus: 0% if holding directly at least 10% of the capital of the company paying the dividends for a continuous period of 24 months; 5% in all other cases.
- DTC with Luxembourg: 0% if holding directly at least 10% of the capital of the company paying the dividends for a continuous period of 24 months; 15% in all other cases.
- DTC with Malta: 0% if holding directly at least 10% of the capital of the company paying the dividends for a continuous period of 24 months; 10% in all other cases.
- DTC with Netherlands: 5% if holding directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.

**WHT treaty relief overrules mandatory GAAR**
- As DTCs are independent from PSD provisions (implemented in Polish domestic law), it is a taxpayer’s choice which to apply. In this sense if a taxpayer decides to apply DTC, such choice should overrule domestic provisions (please note, that there is typically limited practice in this regard).
- DTC with Cyprus: Yes. However, due to the implementation of Polish domestic GAAR, this approach may change with effect from 1 January 2016.
DTC with Luxembourg: Yes. However, due to the implementation of Polish domestic GAAR, this approach may change with effect from 1 January 2016.

DTC with Malta: Yes. However, due to the implementation of Polish domestic GAAR, this approach may change with effect from 1 January 2016.

DTC with Netherlands: Yes. However, due to the implementation of Polish domestic GAAR, this approach may change with effect from 1 January 2016.

Due to the implementation of Polish DTC with Netherlands: Yes. However, due to the implementation of Polish domestic GAAR, this approach may change with effect from 1 January 2016.

Due to the implementation of Polish DTC with Malta: Yes. However, due to the implementation of Polish domestic GAAR, this approach may change with effect from 1 January 2016.

Due to the implementation of Polish DTC with Luxembourg: Yes. However, due to the implementation of Polish domestic GAAR, this approach may change with effect from 1 January 2016.

Substance requirements to secure WHT relief
- DTC with Cyprus: No LOB or specific anti-avoidance rules implemented.
- DTC with Luxembourg: The benefits resulting from the DTC should not apply to income received or earned due to artificial structure.
- DTC with Malta: The benefits resulting from the DTC (with respect to dividends) should not apply if it was the main purpose or one of the main purposes of any person concerned to take advantage of the DTC provisions by means of creation or assignment of shares or other rights.
- DTC with Netherlands: No LOB or specific anti-avoidance rules implemented.

<table>
<thead>
<tr>
<th>Country of impact</th>
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</thead>
<tbody>
<tr>
<td>Cyprus</td>
<td></td>
<td></td>
<td>Domestic WHT exemption: In the context of the dividend tax exemption transposed in the national law, Poland does not impose an economic substance test. This means that adoption of the mandatory GAAR under the PSD may have a high impact on existing structures that may not have appropriate levels of substance.</td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
<td>Domestic WHT exemption: In the context of the dividend tax exemption transposed in the national law, Poland does not impose an economic substance test. This means that adoption of the mandatory GAAR under the PSD may have a high impact on existing structures that may not have appropriate levels of substance.</td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td>Domestic WHT exemption: In the context of the dividend tax exemption transposed in the national law, Poland does not impose an economic substance test. This means that adoption of the mandatory GAAR under the PSD may have a high impact on existing structures that may not have appropriate levels of substance.</td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
<td></td>
<td>Domestic WHT exemption: In the context of the dividend tax exemption transposed in the national law, Poland does not impose an economic substance test. This means that adoption of the mandatory GAAR under the PSD may have a high impact on existing structures that may not have appropriate levels of substance.</td>
</tr>
<tr>
<td>Non-EU</td>
<td></td>
<td></td>
<td>There is no information currently available as to whether Poland will apply the mandatory PSD's GAAR to non-EU countries. Moreover the scope of Polish domestic GAAR regulations is also still unknown. Therefore, the impact of their introduction is at the very moment Indeterminable.</td>
</tr>
</tbody>
</table>

Expected timing of PSD GAAR adoption
- There is no information currently available as to when a legislative proposal implementing the mandatory PSD's GAAR will be released.
- Please note that Polish domestic GAAR regulations are expected to be effective as of 1 January 2016.
Domestic law

Statutory WHT rate
- 25% (or 35% in cases where the beneficial owner of the bank account where the income is paid is not disclosed or when the beneficiary is resident in a tax haven).

General conditions for WHT exemption
- In order to apply the WHT exemption available under the PSD, following conditions must be met:
  - Dividends must be distributed by a Portuguese company subject to and not exempt from CIT and not covered by the Portuguese tax transparency regime;
  - Dividends should be distributed to corporate shareholders in EU Member States subject to and not exempt from the taxes foreseen in Article 2 of the PSD
  - The parent company should hold directly or indirectly a participation of at least 5% of the share capital or of the voting rights of the Portuguese subsidiary for an uninterrupted period of at least 24 months at the time dividends are made available

Substance requirements for WHT exemption
- No specific anti avoidance rule applicable to dividends.
- The general anti-abuse rule (GAAR) allows the Portuguese tax authorities to disregard any transaction that has been undertaken by artificial, fraudulent or abusive form with the primary purpose of avoiding tax (including its mitigation or deferral) and instead, tax the transaction in accordance with its substance, rather than its form. The tax authorities have, nevertheless, the burden of proving that the transaction has been implemented or concluded with primary intention of avoiding taxes.
Tax treaty law

WHT relief (exemption/reduced rate)
- DTC with Luxembourg: 15%
- DTC with Netherlands: 10%

General conditions for WHT relief
- DTC with Luxembourg: Beneficial owner requirement
- DTC with Netherlands: Beneficial owner requirement

WHT treaty relief overrules mandatory GAAR
- DTC with Luxembourg: Yes
- DTC with Netherlands: Yes

Substance requirements to secure WHT relief
- DTC with Luxembourg: No LOB or specific anti-avoidance rules implemented
- DTC with Netherlands: No LOB or specific anti-avoidance rules implemented

<table>
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<tr>
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<th>2</th>
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</table>
| Luxembourg        |   |   | • Domestic WHT exemption: There is no specific anti-avoidance rule for dividend distributions, but the Portuguese general anti-avoidance rule allows the tax authorities to deny a certain tax treatment/benefit in cases where there are deemed to be insufficient business reasons. Consequently, the new PSD GAAR is expected to have a low impact on Portuguese structures as Portugal's general anti-avoidance rule already requires a form of substance for the exemption to apply.  
• Tax treaty WHT exemption/reduction: There are no LOB or specific anti-avoidance rules implemented in the treaty and the GAAR under the PSD will not, in principle, override the treaty. It is further not likely that Portugal would renegotiate existing tax treaties but would likely include a clause in new treaties yet to be concluded. |
| Netherlands       |   |   | • Domestic WHT exemption: There is no specific anti-avoidance rule for dividend distributions, but the Portuguese general anti-avoidance rule allows the tax authorities to deny a certain tax treatment/benefit in case there are deemed to be insufficient business reasons. Consequently, the new PSD GAAR is expected to have a low impact on Portuguese structures as Portugal's general anti-avoidance rule already requires a form of substance for the exemption to apply.  
• Tax treaty WHT exemption/reduction: There is no LOB or specific anti-avoidance rules implemented in the treaty and the GAAR under the PSD will not, in principle, override the treaty. It is further not likely that Portugal would renegotiate existing tax treaties but would likely include a clause in new treaties yet to be concluded. |
| Non-EU            |   |   | • There is no information currently available as to whether Portugal will apply, if at all, the mandatory GAAR to non-EU countries as well. |

Expected timing of PSD GAAR adoption
• The legislative proposal implementing the mandatory GAAR is most likely to be released in the second semester of 2015 as part of the State Budget proposal.
Impact assessment for commonly utilized EU holding jurisdictions

Domestic law

Statutory WHT rate

- 16%
- 50% may apply in case of foreign entities deriving income from transactions qualified as “artificial” by the Romanian tax authorities and paid to a jurisdiction with which Romania does not have in place an exchange of information legal instrument (currently, Romania has exchange of information with all EU Member States, therefore this does not apply to EU Member States).

General conditions for WHT exemption

- Intra-group dividends paid by a Romanian entity to a company located in one the above EU holding jurisdictions are exempt from corporate income and withholding tax under the conditions of the PSD:
  - Holding of at least 10% of the Romanian company for an uninterrupted period of at least one year
  - Fulfillment of the other conditions of the EU PSD (e.g., EU residency, legal forms, corporate income taxpayer, etc.)
  - Beneficial ownership

Substance requirements for WHT exemption

- Romanian legislation includes general anti-abuse provisions whereby the Romanian tax authorities may disregard a transaction that does not have economic purpose or may reclassify a transaction in order to reflect its economic substance.
- Artificial transactions are defined as a transaction or set of transactions devoid of economic content and which may not normally be used within the framework of regular economic practices, their fundamental purpose being to avoid taxation or to obtain tax benefits that would not otherwise be granted.
- A transaction classified as artificial may not benefit from the application of the double tax treaties’ provisions.
- The Romanian tax authorities may reclassify a transaction in order to reflect its economic substance, based on the above-mentioned general anti-abuse provision.
Romania

Tax treaty law

WHT relief (exemption/reduced rate)
- DTC with Cyprus: 10%
- DTC with Luxembourg: 5% to 15%
- DTC with Netherlands: 0% to 15%

General conditions for WHT relief
- DTC with Cyprus: No specific conditions required.
- DTC with Luxembourg: 5% in cases of at least 25% direct ownership and 15% in all other cases.
- DTC with Netherlands: 0% in cases of at least 25% direct ownership; 5% in cases of at least 10% direct ownership and 15% in all other cases.

WHT treaty relief overrules mandatory GAAR
- DTC with Cyprus: Yes
- DTC with Luxembourg: Yes
- DTC with Netherlands: Yes

Substance requirements to secure WHT relief
- DTC with Cyprus: A transaction classified as artificial may not benefit from the application of the double tax treaties’ provisions.
- DTC with Luxembourg: A transaction classified as artificial may not benefit from the application of the double tax treaties’ provisions.
- DTC with Netherlands: A transaction classified as artificial may not benefit from the application of the double tax treaties’ provisions.

Impact assessment

<table>
<thead>
<tr>
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<tbody>
<tr>
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<td></td>
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<tr>
<td>Domestic WHT exemption: Romania already denies domestic WHT exemption in cases where a transaction is classified as artificial. Hence, the new PSD GAAR is expected to have a low impact on the tax treaty.</td>
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<td>Tax treaty WHT exemption/reduction: Romania already denies tax treaty relief in cases where a transaction is classified as artificial. Hence, the new PSD GAAR is expected to have a low impact on the tax treaty.</td>
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<td>Luxembourg</td>
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<tr>
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<tr>
<td>Domestic WHT exemption: Romania already denies domestic WHT exemption in cases where a transaction is classified as artificial. Hence, the new PSD GAAR is expected to have a low impact on the tax treaty.</td>
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<tr>
<td>Non-EU</td>
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<tr>
<td>According to a recent draft proposal for amending the Romanian Tax Code issued by the Romanian authorities, one of the recommended measures concerns the elimination of the withholding tax on dividend payments, which may come into effect starting 1 January 2016. Please note that this is only a draft proposal, and has not yet been implemented in the Romanian legislation.</td>
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<tr>
<td>Expected timing of PSD GAAR adoption</td>
<td></td>
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<tr>
<td>There is no information as to when Romania will release a legislative proposal to implement the PSD GAAR.</td>
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</tr>
</tbody>
</table>

1 Domestic WHT exemption
2 Tax treaty WHT exemption/reduction

- High impact
- Medium impact
- Low impact
- Indeterminable
Impact assessment for commonly utilized EU holding jurisdictions

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richard.panek@sk.ey.com

• Cyprus
• Luxembourg
• Netherlands

Domestic law

Statutory WHT rate
› 0%

General conditions for WHT exemption
› In accordance with Slovak tax law, profits distributed by companies are not subject to tax. Special rules apply to dividends distributed out of profits realized before 2004.

Substance requirements for WHT exemption
› N/A

Tax treaty law

WHT relief (exemption/reduced rate)
› DTC with Cyprus: N/A
› DTC with Luxembourg: N/A
› DTC with Netherlands: N/A

General conditions for WHT relief
› DTC with Cyprus: N/A – Based on the fact that dividends are not subject to tax in Slovakia, WHT should not be applied to dividend payments.
› DTC with Luxembourg: N/A – Based on the fact that dividends are not subject to tax in Slovakia, WHT should not be applied to dividend payments.
› DTC with Netherlands: N/A – Based on the fact that dividends are not subject to tax in Slovakia, WHT should not be applied to the dividend payments.

WHT treaty relief overrules mandatory GAAR
› DTC with Cyprus: Yes
› DTC with Luxembourg: Yes
› DTC with Netherlands: Yes

Substance requirements to secure WHT relief
› DTC with Cyprus: N/A
› DTC with Luxembourg: N/A
› DTC with Netherlands: N/A

Slovakia

Statutory WHT rate
• 0%

General conditions for WHT exemption
• In accordance with Slovak tax law, profits distributed by companies are not subject to tax. Special rules apply to dividends distributed out of profits realized before 2004.

Substance requirements for WHT exemption
• N/A

WHT relief (exemption/reduced rate)
• DTC with Cyprus: N/A
• DTC with Luxembourg: N/A
• DTC with Netherlands: N/A

General conditions for WHT relief
• DTC with Cyprus: N/A – Based on the fact that dividends are not subject to tax in Slovakia, WHT should not be applied to dividend payments.
• DTC with Luxembourg: N/A – Based on the fact that dividends are not subject to tax in Slovakia, WHT should not be applied to dividend payments.
• DTC with Netherlands: N/A – Based on the fact that dividends are not subject to tax in Slovakia, WHT should not be applied to the dividend payments.

WHT treaty relief overrules mandatory GAAR
• DTC with Cyprus: Yes
• DTC with Luxembourg: Yes
• DTC with Netherlands: Yes

Substance requirements to secure WHT relief
• DTC with Cyprus: N/A
• DTC with Luxembourg: N/A
• DTC with Netherlands: N/A
<table>
<thead>
<tr>
<th>Country of impact</th>
<th>1</th>
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<th>Impact assessment</th>
</tr>
</thead>
</table>
| Cyprus            |   |   | *Domestic WHT exemption*: Based on the fact that dividends are not subject to tax in Slovakia, the PSD GAAR should not be applied on dividend payments between Slovakia and other EU Member States.  
*Tax treaty WHT exemption/reduction*: Even if the PSD GAAR were to be introduced, it should not override the existing provisions of the respective tax treaty. |
| Luxembourg        |   |   | *Domestic WHT exemption*: Based on the fact that dividends are not subject to tax in Slovakia, the PSD GAAR should not be applied on dividend payments between Slovakia and other EU Member States.  
*Tax treaty WHT exemption/reduction*: Even if the PSD GAAR were to be introduced, it should not override the existing provisions of the respective tax treaty. |
| Netherlands       |   |   | *Domestic WHT exemption*: Based on the fact that dividends are not subject to tax in Slovakia, the PSD GAAR should not be applied on dividend payments between Slovakia and other EU Member States.  
*Tax treaty WHT exemption/reduction*: Even if the PSD GAAR were to be introduced, such should not override the existing provisions of respective tax treaty. |
| Non-EU            |   |   | N/A |
| Expected timing of PSD GAAR adoption |   |   | N/A |

1. Domestic WHT exemption  
2. Tax treaty WHT exemption/reduction

- High impact
- Medium impact
- Low impact
- Indeterminable
Impact assessment for commonly utilized EU holding jurisdictions

Statutory WHT rate
- 15%

General conditions for WHT exemption
- WHT exemption based on the PSD is available if:
  - 10% holding requirement is met for at least 2 years;
  - The WHT exemption may be available before the 2-year period is over, if the payer of the income (i.e. Slovenian company) provides an appropriate bank guarantee to the Slovenian Tax Authorities.
  - The parent company is considered as a resident for tax purposes in its country of establishment;
  - It is incorporated in one of the legal forms as prescribed in the PSD; and
  - It is subject to one of the taxes listed in the PSD.

- Alternatively, payment of dividends may also be exempt of WHT provided the recipient of the income is established within the EU or EEA (with the exception of Lichtenstein), where tax credit of dividend withholding tax is not available (e.g. in a country where dividend income is exempt).

Substance requirements for WHT exemption
- A substance over form principle applies in Slovenia.
- Therefore, the actual circumstances, functions and tasks of parties involved should be considered when determining whether the arrangement should be considered as not being genuine.
- If it can be established that the arrangement is not being put in place for valid commercial reasons, the Tax Authorities may deny the rights to the taxpayer.

- However, there is very limited experience in Slovenia in this respect and there is no detailed guidance on how this may be applied.
- The Tax Authorities may - in case of any doubt - rely on guidance in available international tax practice and try to apply the substantially similar “tests” (or at least principles) in order to assess whether the arrangement is put in place for valid commercial reasons.

Domestic law
**Tax treaty law**

**WHT relief (exemption/reduced rate)**

- 5% for all assessed EU holding jurisdictions (except for France, where a 0% rate applies)

**General conditions for WHT relief**

- DTC with Austria: Minimum shareholding of 25%+
- DTC with Cyprus: No minimum shareholding requirement
- DTC with Germany: Minimum shareholding of 25%+
- DTC with France: Minimum shareholding of 20%+
- DTC with Italy: Minimum shareholding of 25%+
- DTC with Luxembourg: Minimum shareholding of 25%+
- DTC with Netherlands: Minimum shareholding of 10%+

**WHT treaty relief overrules mandatory GAAR**

- DTC with all assessed EU holding jurisdictions: this is unclear.

**Substance requirements to secure WHT relief**

- DTC with Austria: No LOB or specific anti-avoidance rules
- DTC with Cyprus: No LOB or specific anti-avoidance rules
- DTC with Germany: No LOB or specific anti-avoidance rules
- DTC with France: The provisions of the Convention shall not apply if the main purpose of the holding in respect of which the dividends are paid is to take advantage of the DTC provisions.
- DTC with Italy: No LOB or specific anti-avoidance rules
- DTC with Luxembourg: No LOB or specific anti-avoidance rules
- DTC with Netherlands: No LOB or specific anti-avoidance rules

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<td>Austria</td>
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<td><strong>High impact</strong></td>
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<td>Cyprus</td>
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<td>Germany</td>
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<td>France</td>
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**Domestic WHT exemption**: A substance over form principle already applies in Slovenia, but its scope is unclear. The mandatory PSD GAAR is therefore expected to have a medium impact on domestic WHT exemption.

**Tax treaty WHT exemption/reduction**: It is unclear whether the WHT relief available under existing tax treaties overrules the mandatory GAAR. Given the high degree of uncertainty, the impact of the PSD GAAR on tax treaties relief is Indeterminable.
Spain

Impact assessment for commonly utilized EU holding jurisdictions

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Luxembourg
Netherlands
Cyprus
Malta

Domestic law

Statutory WHT rate
- 2015: 20%
- 2016: 19%

General conditions for WHT exemption
- Both companies must have corporate forms as set out in the PSD.
- A minimum shareholding of at least 5% is required (alternatively, as of 1 January 2015, an acquisition value over EUR20 million).
- Minimum holding period of one year (it may be completed afterwards).
- The recipient of the dividend must be a legal person, resident for tax purposes in another EU Member State/EEA Member State.
- The distribution of profits must not result from the liquidation of the company.

Substance requirements for WHT exemption
- The Spanish rules applicable until 1 January 2015 set forth an anti-abuse provision according to which, where the majority of the voting rights of the EU parent entity are directly or indirectly held by non-EU residents, the 0% withholding tax is subject to the compliance by the EU holding company with any of the following three safe harbors:
  1. The parent entity carries on a business activity directly related to the business activity of the subsidiary. The business activity of the parent company does not have to be identical, but it must be in the same business sector and performing similar activities to the Spanish entity.
  2. The business purpose of the parent entity is the management of the subsidiary with the necessary organization of human and material means. The Spanish tax authorities have tended to request an involvement in the management of the Spanish subsidiary which goes beyond the mere management of the position as a shareholder.
  3. The parent entity proves that it has been set up with a sound business purpose and not to unfairly benefit from the dividend withholding tax exemption.

- As of 1 January 2015, the domestic anti-abuse rule has been simplified and merely requires that, where the majority of the voting rights of the EU parent entity are directly or indirectly held by non-EU residents, “the incorporation and operative of the EU holding responds to sound economic motives and substantive business reasons.”
- There is no guidance on how the Spanish authorities must interpret this anti-abuse clause and whether they will continue to be as strict as they were with the previous clause.
- It is possible that the Spanish tax authorities will consider that this clause is wide enough to be the implementation of the PSD GAAR and that decide not to amend it.
- Notwithstanding its existence, this anti-abuse clause could be deemed as non-compliant with the PSD GAAR since it does not require an actual tax advantage, and the abuse is presumed to exist whenever the majority of the shareholders are non-EU tax residents.
Spain

Tax treaty law

WHT relief (exemption/reduced rate)

- DTC with Luxembourg: 15%/10%
- DTC with Netherlands: 5%/10%/15%
- DTC with Cyprus: 0%/5%
- DTC with Malta: 0%/5%

General conditions for WHT relief

- DTC with Luxembourg: 10% rate applies where a minimum shareholding of 25% has been owned for at least one year and the recipient is a corporation.
- DTC with Netherlands: 10% rate applies where a minimum shareholding of 50% is owned, or where a minimum 25% is owned if another group entity owns another 25%, and the recipient is a corporation; 5% applies where the recipient is an entity which can benefit from participation exemption in The Netherlands.
- DTC with Cyprus: 0% rate applies where a minimum shareholding of 10% is owned and the recipient is a corporation.
- DTC with Malta: 0% rate applies where a minimum shareholding of 25% is owned and the recipient is a corporation.

WHT treaty relief overrules mandatory GAAR

- DTC with Luxembourg: No
- DTC with Netherlands: No
- DTC with Cyprus: No
- DTC with Malta: No

Substance requirements to secure WHT relief

- DTC with Luxembourg: Beneficial ownership
- DTC with Netherlands: None, besides tax residence and application of participation exemption regime for 5%
- DTC with Cyprus: Beneficial ownership
- DTC with Malta: Beneficial ownership

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| Luxembourg        |   |   | Domestic WHT exemption: Spain already applies an anti-abuse clause, according to which the dividend exemption under the PSD is not granted where insufficient economic substance is deemed to be in existence. Hence, the new PSD GAAR is expected to have a low impact on Spain.  
Tax treaty WHT exemption/reduction: The DTC would prevail over a specific anti-abuse clause; therefore, the impact would be low. |
| Netherlands       |   |   | Domestic WHT exemption: Spain already applies an anti-abuse clause, according to which the dividend exemption under the PSD is not granted where insufficient economic substance is deemed to be in existence. Hence, the new PSD GAAR is expected to have a low impact on Spain.  
Tax treaty WHT exemption/reduction: The DTC would prevail over a specific anti-abuse clause; therefore, the impact would be low. |
| Cyprus            |   |   | Domestic WHT exemption: Spain already applies an anti-abuse clause, according to which the dividend exemption under the PSD is not granted where insufficient economic substance is deemed to be in existence. Hence, the new PSD GAAR is expected to have a low impact on Spain.  
Tax treaty WHT exemption/reduction: the DTC would prevail over a specific anti-abuse clause; therefore, the impact would be low. |
| Malta             |   |   | Domestic WHT exemption: Spain already applies an anti-abuse clause, according to which the dividend exemption under the PSD is not granted where insufficient economic substance is deemed to be in existence. Hence, the new PSD GAAR is expected to have a low impact on Spain.  
Tax treaty WHT exemption/reduction: The DTC would prevail over a specific anti-abuse clause; therefore, the impact would be low. |
| Non-EU            |   |   | There is no information currently available as to whether Spain will also apply the mandatory GAAR to non-EU countries. It is unlikely, given that no beneficial rate is foreseen for non-EU/EEA countries. |

Expected timing of PSD GAAR adoption

There is no information currently available as to when a legislative proposal implementing the mandatory GAAR will be released.

1. Domestic WHT exemption
2. Tax treaty WHT exemption/reduction

- High impact
- Medium impact
- Low impact
- Indeterminable
Sweden

Impact assessment for commonly utilized EU holding jurisdictions

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• Luxembourg
• Netherlands

Domestic law

Statutory WHT rate
• 30% (subject to a number of exceptions)

General conditions for WHT exemption
• Intra-group dividends paid by a Swedish entity to a company located in one of the above EU holding jurisdictions are exempt from corporate income and withholding tax, provided that:
  • The shares on which the dividends are paid are held for business purposes. Unlisted shares in Swedish companies are normally considered to be held for business purposes unless they are regarded as inventory.
  • If the shares are listed, they must also be held for at least 12 months and the holding must amount to at least 10% of the voting rights.
  • A special exemption also applies if the recipient fulfills the conditions in Article 2 of the PSD and if the holding represents at least 10% of the share capital.

Substance requirements for WHT exemption
• A specific anti-avoidance rule provides that no exemption is available in cases where the recipient of a dividend holds shares, under such circumstances that another person illegitimately obtains a benefit. The rule is not aimed at substance but has been applied to abusive securities lending transactions. To date, it has not been applied to holding structures.
Sweden

Tax treaty law

WHT relief (exemption/reduced rate)
- DTC with Luxembourg: 0%/15%
- DTC with Netherlands: 0%/15%

General conditions for WHT relief
- DTC with Luxembourg: 0% in case of 10%+ shareholding for a duration of at least 12 months prior to the payment date; 15% in other cases.
- DTC with Netherlands: 0% in case of 25%+ shareholding; 15% in other cases.

WHT treaty relief overrules mandatory GAAR
- DTC with Luxembourg: To our understanding, the PSD GAAR and tax treaties (which are incorporated into domestic law) should not be in conflict. Thus, the reduced treaty rates should apply regardless of the PSD GAAR.
- DTC with Netherlands: To our understanding, the PSD GAAR and tax treaties (which are incorporated into domestic law) should not be in conflict. Thus, the reduced treaty rates should apply regardless of the PSD GAAR.

Substance requirements WHT relief
- DTC with Luxembourg: No LOB or specific anti-avoidance rules have been implemented. Treaty relief requires that the recipient is the beneficial owner.
- DTC with Netherlands: No LOB or specific anti-avoidance rules have been implemented. Treaty relief requires that the recipient is the beneficial owner.

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| Luxembourg        |   |   | - **Domestic WHT exemption**: Considering that there are other domestic exemptions which are not based on the EU PSD, the PSD GAAR is expected to have a low impact on the Swedish WHT exemptions.  
- **Tax treaty WHT exemption/reduction**: To our understanding, the PSD GAAR and tax treaties (which are incorporated into domestic law) should not be in conflict. Thus, the reduced treaty rates should apply regardless of the PSD GAAR. |
| Netherlands       |   |   | - **Domestic WHT exemption**: Considering that there are other domestic exemptions which are not based on the EU PSD, the PSD GAAR is expected to have a low impact on the Swedish WHT exemption.  
- **Tax treaty WHT exemption/reduction**: To our understanding, the PSD GAAR and tax treaties (which are incorporated into domestic law) should not be in conflict. Thus, the reduced treaty rates should apply regardless of the PSD GAAR. |
| Non-EU            |   |   | - There is no information currently available as to whether Sweden will also apply a mandatory GAAR to non-EU countries. |
| Expected timing of PSD GAAR adoption |   |   | - There is no information currently available as to when a legislative proposal implementing the mandatory GAAR will be released. |

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</table>
United Kingdom

Impact assessment for commonly utilized EU holding jurisdictions

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• Luxembourg
• Netherlands

Domestic law

Statutory WHT rate
• 0%

General conditions for WHT exemption
• The UK has no withholding tax.

Substance requirements for WHT exemption
• N/A

Country of impact | 1 | 2 | Impact assessment
--- | --- | --- | ---
Luxembourg | | | • Domestic WHT exemption: Based on the fact that dividends are not subject to tax in the United Kingdom, the PSD GAAR should not be applied on the dividend payments between the United Kingdom and other EU Member States.
| | | • Tax treaty WHT exemption/reduction: N/A

Netherlands | | | • Domestic WHT exemption: Based on the fact that dividends are not subject to tax in the United Kingdom, the PSD GAAR should not be applied on the dividend payments between the United Kingdom and other EU Member States.
| | | • Tax treaty WHT exemption/reduction: N/A

Non-EU | | | • N/A

Expected timing of PSD GAAR adoption | | | • N/A

1 Domestic WHT exemption 2 Tax treaty WHT exemption/reduction

Red High impact
Yellow Medium impact
Green Low impact
Gray Indeterminable

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