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European Guide to Tax Regime for Holding Companies

International Tax Service Line

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Introduction

Importance of Holding Companies in Europe

Holding Companies play a vital role in the European business landscape for several reasons:

1. **Strategic Management:** Holding Companies allow for centralized control and strategic decision-making across multiple subsidiaries. This structure facilitates coordination, synergy, and the efficient allocation of resources
2. **Group Financing:** Holding Companies can provide financing options for subsidiaries through loans, capital injections, or guarantee agreements. This enables subsidiaries to access funding at favorable rates and terms
3. **Asset Protection:** Holding Companies can help protect assets by separating them from the operating companies. This separation can shield assets from creditors or legal disputes involving the subsidiaries
4. **Tax Efficiency:** Holding Companies can provide significant tax efficiency by taking advantage of favorable tax regimes and double taxation treaties within the European Union and abroad. They can be used to minimize overall tax liabilities and facilitate intercompany transactions.

Overall, Holding Companies provide a flexible and efficient framework for multinational businesses operating in Europe. The specific tax and legal advantages of Holding Companies may vary depending on the jurisdiction within Europe.

When it comes to setting up a Holding Company in Europe, there are several countries that offer attractive regulations, designed to encourage businesses to establish their Holding Companies in these jurisdictions.

Key Considerations for Choosing a Holding Company Location in Europe

A. Tax efficiency

When choosing a location for a Holding Company in Europe, tax efficiency is an important factor to consider. Different countries in Europe offer various tax incentives and regimes that can help reduce tax liabilities. Some key factors to consider in terms of tax benefits include:

- **Corporate Tax Rates:** Compare the corporate tax rates in different countries to determine which location offers the most favorable tax environment
- **Dividend Exemption:** Look for countries that provide a dividend exemption or lower tax rates on dividends received from subsidiaries
- **Tax Treaty Network:** Consider countries with a strong tax treaty network to benefit from reduced withholding taxes on cross-border transactions
- **Capital Gains Tax:** Examine the capital gains tax regime in each country to understand the tax implications of selling shares or other investments

B. Legal framework and stability

The legal framework and stability of a country are crucial factors to consider when choosing a Holding Company location in Europe. Key aspects to assess include:

- **Company Law:** Look for countries with robust company laws that provide favorable regulations for Holding Companies
- **Political Stability:** Consider countries with a stable political environment and a strong rule of law to minimize potential risks
- **Legal Protection:** Evaluate the level of legal protection and investor rights guaranteed by the country's legal system

C. Access to markets

Another significant factor to consider is access to markets. Look for countries that offer:

- **Market Size:** Consider the size of the domestic market and its potential for growth. A larger market can provide more business opportunities
- **Trade Agreements:** Evaluate countries that have favorable trade agreements with other European Union member states or countries outside Europe to enhance market access
- **Infrastructure:** Assess the quality of transportation, logistics, and communication infrastructure to ensure smooth operations and connectivity

By carefully considering these factors and seeking expert advice, you can establish a Holding Company in Europe with an optimal tax regime that suits your business needs. Andersen tax professionals and legal advisors can ensure compliance with all applicable laws and regulations.

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Belgium

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I. Introduction

Holding companies are commonly used in Belgium to invest in other companies. They are subject to the normal corporate tax rate of 25 percent, but the Belgian tax legislation offers holding companies different tax benefits.

II. The Belgian Tax Regime for Holding Companies

A. Incoming Dividends – Withholding Tax in Foreign Jurisdiction

Belgian tax law allows companies to receive dividends from foreign subsidiaries without being taxed on such dividends or with only limited taxation. With regard to dividend income received from companies located in European Union member states, this follows from the Parent-Subsidiary Directive. Dividends received from companies, located in non-EU countries, this follows from various double taxation treaties.

1. EU – Parent Subsidiary Directive

The Parent Subsidiary Directive aims to eliminate all obstacles to cross-border dividends between parent and subsidiary companies located in different member states of the European Union.

This objective is achieved by providing for a prohibition to levy a withholding tax by the member state of the subsidiary on the one hand, and an obligation for the member state of the parent company to grant either an exception or a tax credit on the other hand.

To fall within the scope of the Directive, both the parent company and the subsidiary must be a corporate body as described in the Directive and a tax resident in a EU Member State. The parent company or holding company must have a minimum shareholding in the subsidiary of 10 percent.

Member states do however have the possibility to derogate from this requirement by imposing a holding requirement for an uninterrupted period of maximum 2 years.
Belgium has transposed the Directive's obligation on member states of the parent by providing a dividends received deduction (DRD). To enjoy this, both a minimum participation and a minimum holding time is required.

If those conditions are not fulfilled, reference may also be to the applicable double taxation treaties to limit the taxation in Foreign Jurisdictions.

2. Non-EU – Double taxation treaties

To avoid double taxation, Belgium has concluded double taxation treaties with a large number of countries. Therefore, in order to determine whether dividends from non-EU subsidiaries will be taxed in Belgium, it is important to ascertain what the relevant double taxation treaty stipulates in this regard.

Under the Belgian Income Tax Code, a company is considered a Belgian resident taxpayer if its registered office, its principal establishment or its seat of management or administration is located in Belgium. Consequently, contrary to the recently amended Belgian corporate law, the place of the company's statutory seat is not decisive for Belgian tax law. In order to resolve conflicts of residence, double taxation treaties generally contain a tiebreaker rule. The general principle is that a company resident of two contracting States under the respective domestic tax laws is considered as resident of the State where it has its “place of effective management” for the application of the taxation treaty.

B. Dividend Income Received in Belgium and Capital Gains on the Sale of Shares – Belgian Taxation

When a company is a shareholder in another company, it can obtain income in the form of dividends. This dividend income is already taxed in respect of the dividend distributing company so that a tax on the same income in respect of the receiving company would result in double taxation. For this reason, the Belgian Income Tax Code provides that this dividend income is deductible from the profit taxable in the hands of the company-shareholder. The latter will thus be taxable on its profits less the income from its shareholdings.

Dividends are eligible for the deduction only to the extent that quantitative and qualitative conditions are met.

The quantitative conditions imply that:
(i). the holding company holds a shareholding of at least 10% of the share capital or with an acquisition value of at least EUR 2,500,000.00 (‘participation condition’)
(ii). the shares have been held for an uninterrupted period of 12 months (‘permanence condition’)

The qualitative condition means that the income must have been effectively taxed at the level of the distributing company (‘taxation condition’). The Belgian Income Tax Code defines when this is not the case. This includes, for example, dividends from companies that are not subject to corporate income tax, or that are located in a tax heaven.

Qualifying income can be deducted at 100 percent.

In case the aforementioned conditions do not apply, the dividend income cannot be deducted, implying that it will be taxed at the overall rate of corporation tax which amounts to 25% for the year 2023.

C. Outgoing Dividends

Income from capital such as dividend income is considered as taxable income in Belgium at the normal corporate rate of 25%. The shareholder is taxed by means of withholding tax, which is retained by the company paying the dividends.

Dividend payments to resident and non-resident shareholders are in principle subject to a standard withholding tax rate of 30%. For non-resident shareholders, an exemption or reduction of withholding tax may be available under applicable double taxation treaties.

Several exceptions are provided for withholding tax on dividends. For example, a full withholding tax exemption is available if the following conditions are met:

a) The dividends are paid to:
i. A Belgian parent company
ii. A parent company established in a Member State of the European Union other than Belgium; or
iii. A parent company established in State with which Belgium has concluded an agreement for the avoidance of double taxation, provided that such agreement or any other treaty provides for the exchange of information necessary to give effect to the provisions of the domestic laws of the Contracting States

b) The parent company holds a shareholding of at least 10% in the capital of the Belgian subsidiary for an uninterrupted period of at least one year when dividends are allocated.

Even if no withholding tax is due, a withholding tax return has to be filed with the Belgian Direct Tax Authorities accompanied by an attestation showing that the conditions for the exemption are met.

D. Additional Tax Considerations of the Belgian Holding Company

1. Withholding tax on interest, liquidation proceeds and royalties

The Belgian Income Tax Code provides for a 30% withholding tax on interests and royalties, but there are several exceptions.

If a company had established a “liquidation reserve” and had paid an anticipative tax of 10 percent on it, this liquidation reserve can be distributed free of withholding tax upon dissolution of the company. If the company distributes the liquidation reserve by means of an ordinary dividend distribution (i.e. outside the context of a dissolution and liquidation), withholding tax will still be due.

The withholding tax rate is 20 percent if the distribution is made within five years of the reservation. If the liquidation reserve is only distributed afterwards - i.e. after the 5-year reservation period has expired - then only 5 percent withholding tax is due.

2. Wealth tax

There is no wealth tax in Belgium.

3. Stamp duty on capital contributions

No stamp duty is applied on any capital contributions, except a fixed registration fee of EUR 200-300 which is payable upon the incorporation or amendments of the articles of association of a Belgian company.

4. Tax losses carried forward

Tax losses can, in principle, be carried forward, subject to certain conditions. No carry back is allowed in Belgium.

5. ATAD implementation
Belgium has implemented the EU Anti-Tax Avoidance Directive as follows:
- Interest limitation rule: exceeding borrowing costs are deductible up to EUR 3 million or 30% of EBITDA
- Exit tax: already existed in Belgium
- General anti-abuse rule: already existed in Belgium
- CFC-rule: non-distributed income of a CFC is to be included into its taxable base provided that the income is derived from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage

III. Conclusion

In summary, Belgium offers an interesting tax regime for holding companies. In this respect, some of the key advantages of Belgium are:
- the ability to receive dividends at low or zero withholding tax rate (Double Taxation Treaties or EU Parent Subsidiary Directive)
- the non-taxation of dividends under the conditions mentioned above
- interesting regime for liquidation proceeds

Cyprus

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I. Introduction

Holding Companies are set up as vehicles to hold investments in subsidiaries or associate companies.

Their primary income derived from their holding activities is dividend income and profits from the disposal of their investments, mainly shares.

II. The Cyprus Tax Regime for Holding Companies

A. Incoming Dividends – Withholding Tax in Foreign Jurisdiction

Cyprus satisfies the ability to extract dividends from its subsidiaries at a zero or low tax rates with:
- The extensive number of Double Tax Treaties that Cyprus has signed. Double Tax Treaties have applicability both to countries outside the European Union or within European Union. In those European Union countries, in which the European Commission Parent-Subsidiary Directive for various reasons is not applicable, then the relevant Double Tax Treaty, if one exists, will apply
- The European Union Parent-Subsidiary Directive within European Union Member States
- The application of the unilateral tax credit relief

1. Double Tax Treaties
Cyprus has signed an extensive number of Double Tax Treaties. With these Treaties double taxation is avoided on the same profits in respect of the same person or entity. Double Tax Treaties give relief only to legal persons or individuals who are tax residents in one or in both contracting states.

According to the Cyprus Income Tax Law legal persons were considered as tax residents of Cyprus if their management and control was exercised in Cyprus. As from 1st January 2023, a Cyprus incorporated company will by default be considered a tax resident of Cyprus unless it can be a tax resident in any other jurisdiction.

The tax residency issue must always be examined from the Law of the other contracting state or according to the Law of the place where the company has its operations.

Double Tax Treaties usually provide that in case of dispute as to the residency of a legal person between contracting states or in case of dual residency where the legal person is considered as resident in both contracting states, then the residency of the legal person is determined to be there where the effective management is exercised.

2. Relief under the European Commission Parent-Subsidiary Directive
The Parent-Subsidiary Directive provides for the abolition of withholding taxes on dividends paid by a subsidiary to a parent company being resident of any Member State.

The main conditions that need to be met for the Directive to apply are: the parent must be tax resident of a Member state and must hold at least 25% of the share capital of the subsidiary.

Some Member States require that the holding of the 25% capital in the subsidiary maintained for a minimum number of years in order for the provisions of the Directive to be applicable. Also a number of Member States have introduced additional anti-avoidance provisions in order to avoid abuse and fraudulent use of the benefits of the directive.

Cyprus has implemented the Parent-Subsidiary Directive through the Special Contribution for the Defence Law. According to this Law, there is no minimum qualifying holding period of years and participation interest.

3. Unilateral Tax Credit Relief
Even if the Double Tax Treaty or the Parent-Subsidiary relief are not providing sufficient protection or if their criteria are not met for their implementation, Cyprus applies unilateral

tax credit relief in the form of tax credit by operation of its local tax Laws.

Tax credit is granted in Cyprus for any withholding tax or other tax paid on the particular income abroad. This credit applies to both, Cyprus Income Tax and Special Defence Contribution.

In substance, any tax paid abroad will be credited against any tax that might be payable for the particular income in Cyprus under any category of taxation.

B. Dividend Income Received in Cyprus – Cyprus Taxation

According to Cyprus Tax legislation foreign dividend income received in Cyprus by a Cyprus tax resident company will not be taxed under the Income Tax Law but under the Special Contribution for the Defence Law.

In effect, the taxation on dividends is as follows:

Income Tax - FULL EXEMPTION
Dividends received from Cyprus companies (either resident or non-resident) or dividends received from overseas companies (foreign) do not bear any corporation tax.

Special Defence Contribution Tax
1. Dividends received from another Cyprus resident company: There is no Special Defence Contribution Tax in this case.
2. Dividends received from a non-resident company. There is no Special Defence Contribution Tax in this case provided that:
    - the company paying the dividend is not engaged directly or indirectly by more than 50% in activities which result in investment income, and
    - the rate of the foreign taxation on the income of the company paying the dividend is substantially lower than the 12.5% payable by the recipient Cyprus resident company i.e. 6.25%.

If both conditions above apply, the dividend income received from the non-resident company is taxed at the rate of 17%. If on any dividend income any foreign tax was paid, then unilateral tax credit is granted in Cyprus.

C. Outgoing Dividends

1. Non-Cyprus Resident Shareholders (holding the shares either directly or through nominees)
Dividends payable by a Cypriot resident company to its foreign shareholders (whether a company or individual) are not subject to any withholding tax in Cyprus.

The non-resident shareholder of a Cyprus company receives the dividends from Cyprus free of any withholding tax. In a nutshell, Cyprus provides full exception on the payment of dividends to its non-resident shareholders.

As from 31 December 2022, the above payments will be subject to withholding tax in Cyprus at the standard rates provided in the Cyprus tax legislation, if they are made to persons which are:
- tax resident in jurisdictions included in the EU list of non-cooperative jurisdictions (‘EU Blacklist’), or
- incorporated/registered in a jurisdiction included in the EU Blacklist and are not tax resident in any other jurisdiction that is not included in the EU Blacklist.

2. Cyprus Resident Shareholders
In case the physical person receiving the dividend is a tax resident of Cyprus then there is a withholding tax payable at the rate of 17% and GESY contribution at the rate of 2.65% capped at €180.000

There is no withholding tax on dividends payable from one Cyprus tax resident company to another Cyprus tax resident company. The Law provides for the deemed distribution of dividends every two years in case of tax resident shareholders.

NON – DOM tax residents are not subject to withholding tax for a period of 17 years, and they are only subject to GESY contribution at the rate of 2.65% capped at €180.000.

D. Capital Gains Tax on the Sale of Shares (Titles)

The word “titles” according to the Law means, shares, bonds, debentures, founders’ shares and other titles of companies or other legal persons incorporated in Cyprus or abroad and rights thereon.

1. Income Tax
There is full exemption from corporation tax on profits from the sale of titles.

2. Capital Gains Tax
There is also full exemption from any capital gains tax from profits realised from the disposal of titles.

If the company, whose shares are sold, is the owner of immovable property situated in Cyprus, then there is Capital Gains Tax at the rate of 20% calculated according to the specific provisions of the relevant Law.

In summary, any profits from the disposal of titles as defined above is free from any taxation in Cyprus unless the company is the owner of an immovable property situated in Cyprus.

It is crucial to note that promissory notes are NOT titles according to Cyprus Tax Law and any profit from the sale of promissory notes increases the taxable income subject to 12.5% corporation tax. Finally, trading in currencies does not fall within the priorities of the definition of trading with titles. It is considered a normal trading activity subject to 12.5% corporation tax.

E. Additional Tax Considerations of the Cyprus Holding Company

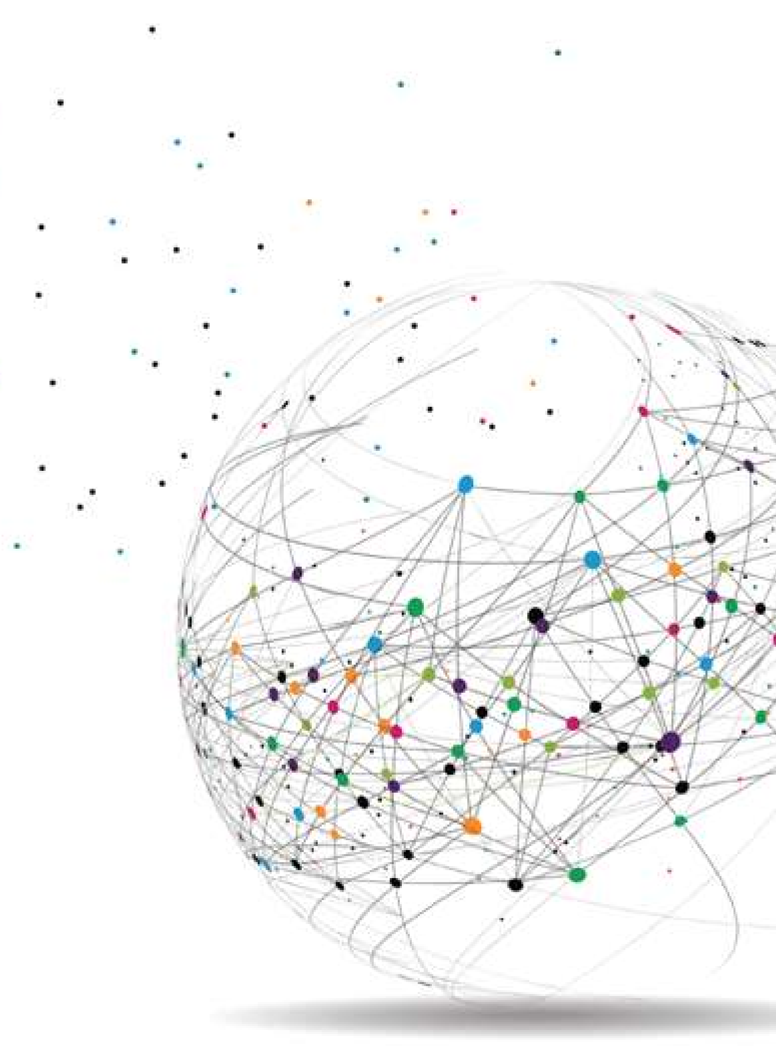
1. Stamp duty on capital contributions
No stamp duty is applied on any capital contributions.

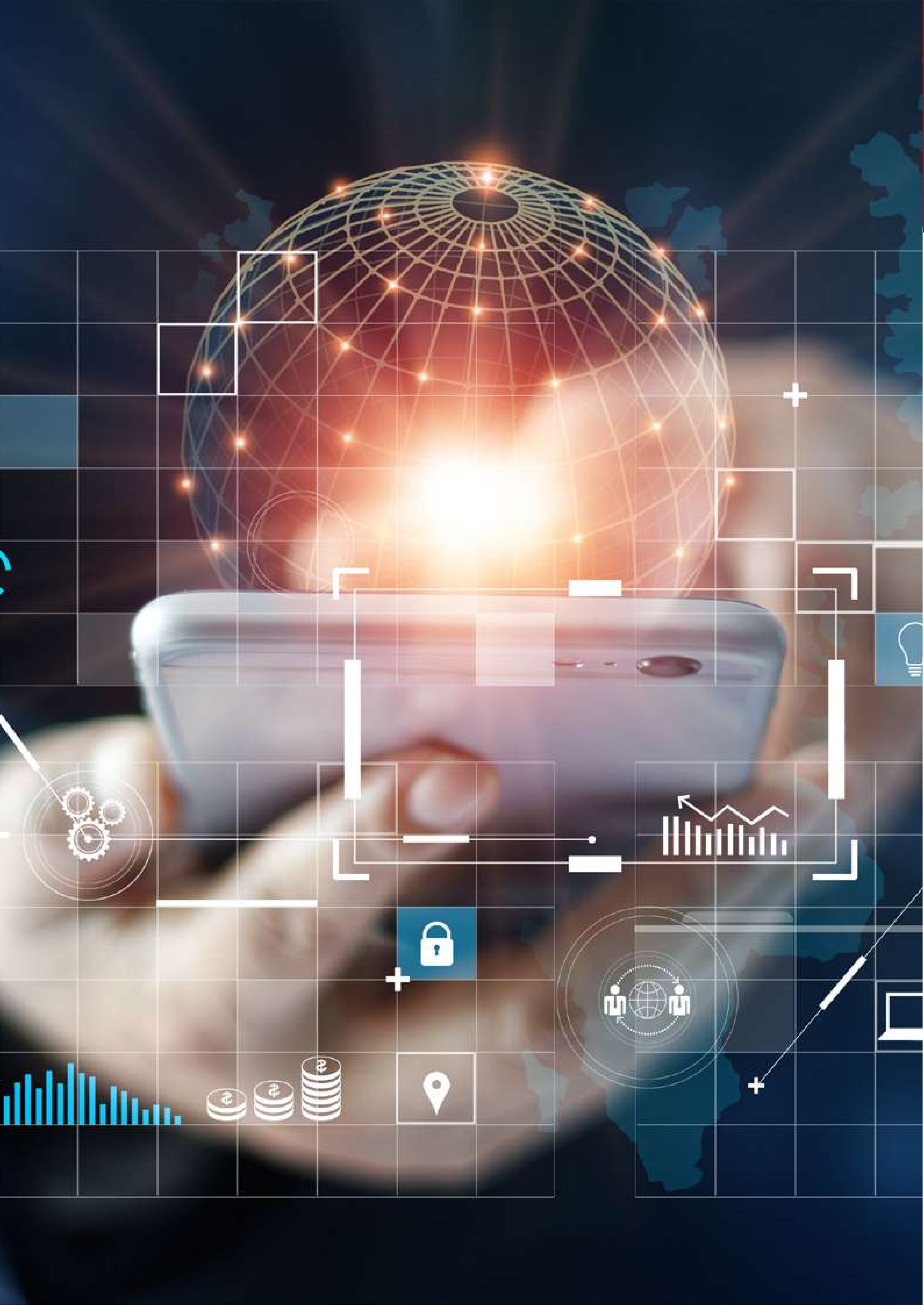
2. ATAD implementation
Cyprus implemented the EU Anti-Tax-Avoidance Directive (ATAD), which basically aims at preventing multinational companies sheltering their profits in low or no tax jurisdictions.

The impact for Cyprus Holding Companies is mainly connected to the definition of Controlled Foreign Corporation (CFC), namely an overseas permanent establishment or company directly or indirectly controlled by a Cyprus tax resident company, the corporate profit tax burden of which is less than half of what it would be under the Cyprus tax system i.e. 6.25%. Cyprus Holding Companies must examine whether any of their subsidiaries are CFCs.

III. Conclusion

The Tax Legislation of Cyprus creates a unique environment for Holding Companies. It has numerous advantages making Cyprus a prime holding location in the international field of holding regimes.
In effect,
- the ability to receive dividends on low or zero withholding tax rate
- the non-taxation of dividends received under the circumstances mentioned above
- the non-taxation of profits from the sale of shares / titles
- the tax-free distribution of dividends to its nonresident shareholders





Denmark

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I. Introduction

Holding Companies are set up as vehicles to hold investments in subsidiaries or associate companies. Their primary income derived from their holding activities is dividend income and profits from the disposal of their investments, mainly shares.

There are a number of advantages in including a Holding Company in your corporate structure - especially in terms of tax and bankruptcy law. If you as a business owner own an operating company through a Holding Company, the advantage will, among other things, be that the profits of the operating company, after payment of corporation tax of 22% (2023), under certain conditions can be distributed tax-free to the Holding Company.

By distributing the profits from the operating company to the Holding Company, it will be possible to protect the profits against the operating company's creditors if the operating company gets into financial difficulties. The advantage of this is that the creditors of the operating company cannot, as a general rule, seek to recover the assets of the Holding Company, e.g. in the event of bankruptcy. However, this memo will only deal with the tax aspects.

II. The Danish Tax Regime for Holding Companies

A. Incoming Dividends – Withholding Tax in Foreign Jurisdiction

Denmark satisfies the ability to extract dividends from its subsidiaries at a zero or low tax rates with:

- The extensive number of Double Tax Treaties that Denmark has signed. Double Tax Treaties have applicability both to countries outside the European Union or within European Union. In those European Union countries, in which the European Commission Parent-Subsidiary Directive for various reasons is not applicable, then the relevant Double Tax Treaty, if one exists, will apply
- The European Union Parent-Subsidiary Directive within European Union Member States
- The application of the unilateral tax credit relief

1. Double Tax Treaties

Denmark has signed an extensive number of Double Tax Treaties. With these Treaties double taxation is avoided on the same profits in respect of the same person or entity. Double Tax Treaties only provide relief for legal persons or individuals that are tax residents in one or in both contracting states. Companies resident in Denmark are fully liable to tax in Denmark. According to the OECD Model Tax Convention, a legal person, such as a company, etc., is resident for tax purposes in a country if it is liable to tax in that country by reason of its place of residence, place of management or a similar criterion.

According to Danish law, all companies and associations are subject to full tax liability if they are either registered or have their place of management in Denmark. The tax residency issue must always be examined from the Law of the other contracting state or according to the law of the place where the company has its operations.

Double Tax Treaties usually provide that in case of dispute as to the residency of a legal person between contracting states or in case of dual residency where the legal person is considered as resident in both contracting states, then the residency of the legal person is determined to be there where the effective management is exercised.

2. Relief under the European Commission Parent-Subsidiary Directive

The Parent-Subsidiary Directive provides for the abolition of withholding taxes on dividends paid by a subsidiary to a parent company being resident of any Member State.

The main conditions that need to be met for the Directive to apply are: the parent must be tax resident of a Member state and must hold at least 25 pct. of the share capital of the subsidiary.

Some Member States require that the holding of the 25 pct. capital in the subsidiary maintained for a minimum number of years in order for the provisions of the Directive to be applicable. Denmark has implemented the Parent-Subsidiary Directive, but according to Danish Law, there is no minimum qualifying holding period of years and participation interest and the minimum of share capital hold in the subsidiary is reduced to 10 pct. according the Act on Taxation of Capital Gains on Sale of Shares article 4 A.

3. Unilateral Tax Credit Relief

Denmark grants unilateral relief for foreign tax paid in the form of an ordinary credit against the Danish tax due. Foreign tax paid on income may thus be credited against Danish tax on the same income, but the credit is limited to the lower of: (1) the foreign tax paid; or (2) the Danish tax payable on the foreign net income. Relief may be restricted to the tax that the foreign country is entitled to levy under an applicable tax treaty. Where a treaty is in effect, alternative relief may be granted pursuant to the methods allowed under that treaty.

No credit is available for foreign tax paid on a dividend that is exempt from Danish taxation.

B. Dividend Income Received in Cyprus – Cyprus Taxation

1. General rule:

Dividends distributed by a foreign subsidiary (on a shareholding of at 10% or more) are generally exempt from Danish corporate income tax provided that:

1. the foreign subsidiary qualifies as a "company" under Danish law,
2. the foreign subsidiary is covered by the EU Parent-Subsidiary Directive or is resident in a country that has concluded a tax treaty with Denmark (under which the withholding taxation of dividends is reduced or waived), or
3. the Danish company and the foreign subsidiary qualify for international joint taxation (i.e., where the Danish company controls more than 50% of the votes in the foreign subsidiary) and the foreign subsidiary cannot deduct the dividend payments.

2. Modification 1

The tax exemption does not apply to dividends where the dividend-paying company resident abroad has a deduction for the dividend distribution.

3. Modification 2

As a general rule, the tax exemption also does not cover dividends to the extent that a subsidiary at a lower ownership level has had a deduction for the dividend distribution without the deduction being offset by taxation of the dividend distribution at an intermediate level.

4. Modification 3

Furthermore, the tax exemption does not cover dividends relating to shares in investment companies. This means that dividends from investment companies are fully taxed.

5. Foreign Tax Credit

As regards double taxation, Danish law does not generally provide for relief. However, an exception is made with regard to a dividend received from a subsidiary (where the shareholding is at least 10%) not covered by the tax exemption described above (i.e., a dividend received from a subsidiary resident in a non-tax treaty country outside the European Union). In such a case, Danish tax law provides for credit relief for any underlying taxes paid on the income out of which the distribution was made. The credit is equal to the Danish tax on the dividend but may not exceed the tax paid by the subsidiary.

C. Outgoing Dividends

1. Non - Danish Resident Shareholders

(holding the shares either directly or through nominees)

1.1 General rule

Foreign companies and associations etc. that receive dividend income from companies resident in Denmark are subject to limited tax liability in Denmark.

Dividends may be in the form of e.g. the following:

- The annual dividend distributed
- Liquidation distributions not made in the year of liquidation
- Reduction of the share capital

Grants to group companies are also treated as dividends if the recipient of the grant, if it were the parent company of the grantor, would be liable to tax on dividends under this provision.

Companies or associations etc. must withhold tax of 27 pct. of the total dividend in connection with any adoption or decision to pay or credit dividends on shares.

1.2 Exemption for withholding tax

According to the Corporation Tax Act, dividends received from subsidiaries are not taxable when the taxation of dividends from the subsidiary is to be waived or reduced under:

- the provisions of Directive 2011/96/EU (the Parent-Subsidiary Directive); or
- a double tax treaty with the Faroe Islands, Greenland or the State of residence of the parent company.

Exempted are further dividends on group company shares that are not subsidiary shares, where the recipient group company is resident in a State that is a member of the EU/EEA and the taxation of the dividends would have been cancelled or reduced under the provisions of Directive 2011/96/EU (the Parent-Subsidiary Directive) or the double tax treaty with that State if they had been subsidiary shares.

Exempted are final dividends received by shareholders of parent companies included in the list of companies referred to in Article 2(1)(a) of Directive 2011/96/EU (the Parent-Subsidiary Directive), but which are considered transparent entities for the purposes of taxation in this country. It is a condition that the shareholder is not resident in Denmark.

1.3 Partial exemption from withholding tax - Double Taxation Treaties

If the above conditions for full tax exemption are not met, a withholding tax of 27 pct. must generally be withheld from dividends paid by Danish companies etc. to shareholders resident abroad. These are persons and companies etc. resident abroad who own less than 10 pct. of the shares in the company.

However, the double taxation treaties that Denmark has signed with foreign states normally provide for a lower tax rate. Therefore, under the agreements following the OECD Model Tax Convention, Denmark is only entitled to impose a final withholding tax of 15 pct.

<u>Conditions for the lower rate:</u>

It is a condition for applying the lower rate that the foreign recipient of the dividends is the beneficial owner of the dividends, i.e. the recipient must be resident and fully taxable in the treaty state.

To ensure that this condition is met, a withholding tax of 27 pct. will normally be withheld on the distribution of the dividends. The recipient of the dividend must then request a refund of the difference between the treaty rate and the 27 pct. tax withheld.

1.4 Partial exemption from withholding tax - redistribution

A limitation of the existing tax exemption applies to a foreign (parent) company receiving dividends from a Danish (subsidiary) company. The tax exemption does not apply if the Danish subsidiary distributes dividends to its parent company, which is resident in a foreign country, and it is a redistribution of dividends that the Danish company itself has received from its (subsidiary) company, which is resident in another foreign country, and the Danish company cannot be considered the beneficial owner of the dividends received.

The beneficial ownership condition is described in more detail in the commentary to the OECD Model Tax Convention.

This means that the foreign parent company receiving dividends from the Danish (flow-through) company is subject to limited tax liability on the dividends received, and the Danish company must therefore withhold withholding tax.

As mentioned, the dividend tax is 27 pct., but the tax is reduced to the percentage agreed in the double taxation agreement with the country where the company receiving dividends from the Danish company is resident, provided that the foreign company receiving the dividends is the beneficial owner of the dividends.

However, the restriction does not apply in cases where the redistribution of dividends is covered by Directive 2011/96/EU (the Parent-Subsidiary Directive).

1.5 General anti-avoidance clause

In Danish law, an anti-avoidance clause has been introduced which states that taxpayers must disregard arrangements or series of arrangements which are organised with the main purpose, or which have as one of their main purposes, to obtain a tax advantage which is contrary to the object and purpose of tax law and which is not genuine taking into account all relevant facts and circumstances.

This also applies to the advantages resulting from Directive 2011/96/EU (the Parent-Subsidiary Directive).

It is also provided that taxpayers do not have the benefit of a double taxation convention if it is reasonable to conclude, having regard to all relevant facts and circumstances, that the obtaining of the benefit is one of the main purposes of any arrangement or transaction which directly or indirectly gives rise to the benefit, unless it is established that the granting of the benefit would, in those circumstances, be consistent with the substance and purpose of the relevant provision of the convention.

2. Danish Resident Shareholders

2.1. Individuals
For individuals resident in Denmark, received dividends are included in a special share income that is taxed at 27% of the first DKK 58,900 (2023) of share income and at 42% for the rest. Interest and royalties are included in the person's taxable income and are taxed in line with other taxable income.

2.2. Legal persons
Danish law distinguishes between a) Portfolio shares, and b) subsidiary shares and group of company shares.

Portfolio shares (ownership share is less than 10 pct. of the total share capital): Denmark taxes dividends from portfolio shares paid by Danish companies at a rate of 15.4% when the capital owner is a company resident in Denmark.

Subsidiary shares (ownership share is at least 10 pct. of the total share capital) and Group company shares (ownership share is more than 50 pct. of the total share capital):

Dividends from subsidiary and group company shares paid by Danish companies are exempt from tax when the shareholder is a company resident in Denmark.

D. Capital Gains Tax on the Sale of Shares

1. Income tax
There is full exemption from corporation tax on profits from the sale of shares performed by Holding Companies.

However, if the nature of the Holding Company changes and the company's purpose becomes trading in shares and similar securities, the company will be liable to income tax.

In this case it is a condition that the shares are acquired for the purpose of resale with profit, which is not the purpose of a Holding Company.

2. Capital Gains Tax
Gains and losses on group and subsidiary shares are tax-free and losses cannot be deducted. When selling portfolio shares, a distinction must be made between tax-exempt and taxable portfolio shares.

Tax-exempt portfolio shares are shares that are not admitted to trading on a regulated market or a multilateral trading facility and are held by a company etc. that owns less than 10 pct. of the share capital of the portfolio company.

If the portfolio shares do not fulfil the above conditions, gains are taxed and losses can be deducted. The deductibility of losses depends on whether the shareholder applies the stock or realisation principle to portfolio shares.

E. Additional Tax Considerations of the Danish Holding Company

1. Stamp duty on capital contributions
No stamp duty is applied on any capital contributions.

2. ATAD implementation
Denmark has implemented the EU Anti-Tax-Avoidance Directive (ATAD), which basically aims at preventing multinational companies sheltering their profits in low or no tax jurisdictions.

The ATAD impact for Danish Holding Companies is mainly connected to the rules of Controlled Foreign Corporation (CFC). The Controlled Financial Company (CFC) rules require parent companies to be subject to CFC taxation on the income of certain subsidiaries and permanent establishments with mobile income.

Parent companies are subject to CFC taxation on the income of certain subsidiaries with mobile income, regardless of where the subsidiaries are resident and regardless of the level of taxation of the subsidiaries.

The CFC rules also apply to permanent establishments abroad, except for those parts of the CFC rules that by their nature are not applicable to permanent establishments. A parent company etc. covered by the provision must therefore include the permanent establishment's positive CFC income in its income statement, provided that the permanent establishment fulfils the conditions in section 32 of the Danish Corporation Tax Act.

The parent company etc. is taxed on positive income that would be subject to CFC taxation if the permanent establishment had been a subsidiary.

Therefore, Danish Holding Companies must examine whether any of their subsidiaries are CFCs.

III. Conclusion

The Tax Legislation of Denmark creates a favorable environment for Holding Companies. In effect,

- the ability to receive dividends on low or zero withholding tax rate
- the non-taxation of dividends received under the circumstances mentioned above
- the non-taxation of profits from the sale of shares

Germany

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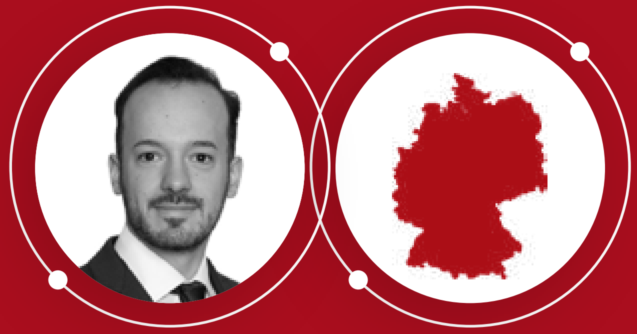

I. Introduction

Holding Companies are generally set up for two purposes:

- Management Holding Companies are set up to actively provide and invoice management services to all directly or indirectly held subsidiaries. Their scope of business in hence marked by an active business carried out at Holding Company-level.
- Financial Holding Companies are set up as a vehicle to hold investments directly or indirectly in subsidiaries or associated companies. Their primary income derived from their holding activities are divided income and profits from the disposal of their investments, mainly shares. They typically do not carry out any business activities to avoid operational risks which would affect the directly or indirectly held shares.

This difference between Financial and Management Holding can be critical for non-resident corporations applying for a Withholding Tax (WHT) relief at source or refund after deduction. The following sections solely focus on corporations under german law or foreign law being classified as corporation from a German tax perspective serving as Holding Companies.

II. The German Tax Regime for Holding Companies

A. Incoming Dividends – Withholding Tax in Foreign Jurisdiction

Germany satisfies the ability to extract dividends from its subsidiaries at zero or low tax rates with:

- The European Union Parent-Subsidiary Directive within European Union Member States.
- The extensive number of Double Tax Treaties that Germany has signed. Double Tax Treaties have applicability both to countries outside the European Union and within European Union. In those European Union countries, in which the European Commission Parent-Subsidiary Directive for various reasons is not applicable, then the relevant Double Tax Treaty, if one exists, will apply.
- In case neither the European Union Parent-Subsidiary Directive (respectively its implementation in domestic law) nor Double Tax Treaties do apply, German domestic law provides a unilateral tax credit or tax deduction for minimizing double taxation.

1. Double Tax Treaties

Germany has signed an extensive number of Double Tax Treaties. With these treaties, double taxation is avoided or at least minimized on the same profits in respect of the same entity. Double Tax Treaties only give relief to corporations being tax residents in one or both contracting states.

According to the German Corporate Income Tax Act ("abbreviated as KStG") corporations are classified as tax resident if they meet at least one of the following two criteria:

- Place of management (which is defined as the place from where the material decisions on the ongoing business are made) on German soil or
- Statutory seat on German soil

In case a corporation has been incorporated under a law other than German, a comparison of legal forms are required to be carried out for tax purposes.

Against this background, legal entities regarded as corporations under a law other than Germany can be regarded as partnerships or sole proprietorships for German tax purposes. Double Tax Treaties usually provide that in case of dispute as to the residency of a corporation between contracting states or in case of dual residency where the corporation is considered a resident in both contracting states, then the residency of the legal person is determined to be there where effective management is exercised.

As opposed, the OECD Model Tax Convention 2017 foresees the contracting states to settle the issue of tax residency during the course of a Mutual Agreement Procedure (MAP). This latter solution has not yet been implemented in most of the DTTs being concluded by Germany.

2. Relief at source under the European Commission Parent-Subsidiary Directive

The Parent-Subsidiary Directive provides for relief of withholding taxes at source on dividends paid by a subsidiary to a parent company being resident of any Member State.

The main conditions that need to be met for the Directive to apply are:

- The parent entity must be a tax resident of a member state and hold at least 10% of the share capital of the subsidiary.
- In addition, some Member States require a least amount of participation of the 10% capital in the subsidiary maintaining for a minimum number of years for the provisions of the Directive to be applicable. Moreover, serveral Member States have introduced additional anti-avoidance provisions in order to avoid abuse and fraudulent use of the benefits of the directive (so does Germany as set out in Sec. C Outgoing Dividends - Non-Resident taxation).

3. Unilateral Tax Credit Relief

In all cases of DTTs concluded by Germany foreseeing the tax credit method for avoiding or minimizing double taxation, the procedure follows the provisions of German domestic law.

Moreover, the two applicable procedures in the form of the tax credit method and tax deduction method also cover cases with a Double Tax Treaty and the Parent-Subsidiary Directive not providing sufficient protection or if their criteria are not met.

The following aspects are to be considered as the tax credit method regularly leads to a reduction but not an avoidance of double taxation:

- The foreign WHT is required to be comparable to domestic German taxes.
- Per country limitation: WHT being deducted from foreign income can only be credited against income sourced in the same country.
- The income is required to fulfill the criteria of foreign income within the definition of German domestic law. In particular, the subsidiary's place of management or statutory seat is required to be located in a foreign country.
- The amount of WHT creditable in Germany is limited by the following three caps:
    1. The most important cap foresees the calculation of foreign net income applying German domestic tax law. The CIT rate of 15% is thereafter applied to this amount for calculating the first of the three caps. Since most countries calculate their WHT based on gross income, this first cap regularly leads to a crediting surplus.
    2. Only the amount of foreign taxes actually paid in a foreign country can be credited.
    3. Moreover, the amount of tax credit cannot exceed the German tax base including the worldwide income.

As the credit method might not be applicable or not favorable due to high amounts of credit surpluses, German domestic tax law alternatively offers a tax deduction meaning the foreign WHT is deducted from the German tax base, comparable to the deduction of business expenses.

This method is also required if a foreign state deducts WHT comparable to German TT as the above set out credit method is only applicable to CIT.

B. Dividend Income Received in Germany – Resident taxation

German tax resident corporations are subject to CIT and TT. In the area of CIT, based on the minimum amount of participation foreseen by the Parent-Subsidiary Directive, the tax burden is depending on the Holding Company fulfilling an amount of proportion of 10% in the subsidiary's share capital.

Depending on whether this criterion is met or not, the effective tax burden is as follows:

- Participation 10%-100%: 5% of the received dividend, no matter if received from a German tax resident or non-resident subsidiary (which is required to be comparable with a German corporation for tax purposes) are included in the Holding Company's tax base to which the CIT rate of 15% applies leading to an effective CIT burden of 5% (tax base) × 15% (tax rate) = 0.75%.
- Participation below 10%: The CIT rate applies to the dividend leading to an effective tax burden of 15%.

Given the first constellation, a relief provided by a DTT is usually less of a factor since the main part of the tax burden has already been eliminated by German domestic law.

With the second case applying, the tax burden may be further reduced by the provisions of a DTT or the above mentioned tax credit or tax deduction.

In the area of TT, the same amount of 5% of the gross dividend is included in the tax base if the least participation of 15% (NOT 10%) has been held since the beginning of the fiscal year. Otherwise, if the participation falls below 15% or has not been held since the beginning of the fiscal year, the whole divident will be included in the tax base.

The tax rate is dependent on the individual collection rate applied by the respective Municipality leading to a wide range of tax rates between appr. 7%-28%. Applying an average TT rate of 15%, the TT burden is also amounting to effectively 0.75% and the total tax burden to 1.5%.

C. Outgoing Dividends - Non-Resident taxation

Dividends payable by a German CIT resident company to its foreign shareholders (whether a company or individual) are generally subject to a WHT rate of 25%. Most DTTs foresee this WHT to be applicable irrespective of divergent tax rates or a full exemption provided by the respective DTT.

In order to achieve a relief at source, the non-resident Holding Company can apply for a reduction or full relief of WHT, based on either the Parent-Subsidiary Directive being implemented in the Income Tax Act or on a DTT.

To apply the more favorable provisions under the Parent-Subsidiary Directive or the DTT, a German treaty override also referred to as the anti-treaty-shopping-rule prescribes the following requirements to be fulfilled: in general, a corporation receiving dividends has to fulfill either the shareholder-related or substance-related requirements, successfully pass a principal purpose test, or to be a stock-listed entity for achieving a relief at source from German WHT:

Shareholder-related requirements:
The Holding Company is entitled to relief from withholding tax insofar as shareholders have an interest in it who would also be entitled to this relief in the case of direct receipt ("look-through approach").

Moreover, all shareholders directly or indirectly holding an interest in the Holding Company are required to have a claim for relief on the same legal basis as the Holding Company itself, i.e. based on the same DTT as the Holding Company itself. A claim identical in amount but based on a different legal basis (i.e. a different DTT) is not sufficient.

Substance-related requirements:
The fulfillment of all substance-related conditions requires a material link between the source of income and the business being conducted at the Holding Company level. Materiality regarding the aforementioned relation is to be declined, for example, if the economic activity at the Holding Company level solely consists of providing supporting services (i.e. accounting) to one or more subsidiaries. Receiving and forwarding of income is not considered to be a business activity.

Insofar the Holding Company provides management services to its own subsidiaries (Management Holding) and the structure has been set up with the Management Holding fulfilling this function since the incorporation or at least over a significant period of time, a business activity within the definition of the provision is regularly accepted at Holding-level.

Against the background of this and the following criterion, non-resident Financial Holdings lacking German-based substance, like employees, rented or owned premises and local-based management have few chances to achieve relief at source under German law.

Principle purpose test:
If neither the requirements of shareholder-related nor substance related entitlement to relief is fulfilled, the withholding tax exemption can still be achieved by successfully passing the principle purpose test.

The subject of the principle purpose test is to provide evidence that none of the main purposes of installing the Holding Company on top of the structure is to obtain a tax advantage under German law and international tax law.

Throughout this procedure, all non-tax-driven reasons must be considered, including those arising from a group relationship.

Listed Company Clause:
Finally, the anti-treaty-shopping rule foresees an escape clause for stock-listed Holding Companies. The clause only applies to dividends received from subsidiaries in which the Holding Company directly holds interest in.

Alternatively, the Holding Company can also accept the WHT deduction and thereafter apply for a refund at the Federal Tax Office, also based on either a DTT or the Parent-Subsidiary Directive (pay and refund).

Against the background of the favorable taxation of dividends under national CIT in case the corporation is entitled to file a CIT return in Germany, a more effective way of achieving a refund is filing a CIT return offering the effective tax rate of 0.75%. The requirement for non-resident recipients of dividends to file a CIT return in Germany is a functional allocation of their participation in the subsidiary to a Permanent Establishment on German soil. This requirement moreover illustrates why Managing Holding Companies have higher prospects of a reduction in their German tax burden than Financial Holding Companies.

D. Capital Gains Tax on the Sale of Shares

1. Resident taxation
Given the case a German resident corporation sells shares held in another corporation incorporated under German or any other foreign law, the capital gains are generally not subject to CIT and TT. However, irrespective of the amount of participation, 5% of the capital gains are included in the tax base to which a CIT of 15% applies leading to an effective CIT burden of 0.75%.

Applying an average TT rate of 15%, the TT burden is also amounting to effectively 0.75% and the total tax burden to 1.5%. Against this background, share deals with a Holding Company selling shares in a corporation at a subsidiary level are the favorable structure in the area of transactions from a seller's perspective.

2. Non-resident taxation
In the absence of a Permanent Establishment on German soil, non-resident sellers are often subject to CIT but not to TT. Given the least amount of participation of 1%, no WHT applies and the Holding Company is obliged to file a CIT return for non-residents.

Regulary, a DTT applies and foresees the right of taxation on the side of the state of residency. In these cases, the German tax base is amounting to EUR 0.

The exemption with Germany being granted with the right to taxation are transactions of shares held in corporations with their assets mostly consisting of Real Estate located on German soil since a significant amount of DTT concluded by Germany foresees so-called "Real-Estate-Clauses" providing not the state of residency by the state where the properties are located with the right to taxation.

The favorable regime of an effective CIT tax rate of 0.75% also applies to non-residents.

III. Conclusion

The Tax Legislation of Germany creates an attractive environment for resident Holding Companies irrespective of their income being generated by dividends or capital gains.
In the field of non-resident taxation, the bureaucratic burden of the anti-treaty-shopping rule and both the relief-at-source or pay-and-refund procedure to be applied for at the Federal Tax Office lead to the recommendation to ensure the Holding Company fulfills all requirements of an active Managing Holding Company.

Non-resident Financial Holding Companies, shell companies in particular, have been facing considerable difficulties to achieve a WHT relief due to their lack of substance.

Greece

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I. Introduction

Holding Companies are set up as a vehicle to hold investments in subsidiaries or associate companies. Their primary income derived from their holding activities is dividend income and profits from the disposal of their investments, mainly shares.

II. The Greek Tax Regime for Holding Companies

A. Incoming Dividends – Withholding Tax in Foreign Jurisdiction

Greece satisfies the ability to extract dividends from its subsidiaries at a zero or low tax rates with:

- The extensive number of Double Tax Treaties that Greece has signed. Double Tax Treaties have applicability both to countries outside the European Union or within European Union. In those European Union countries, in which the European Commission Parent-Subsidiary Directive for various reasons is not applicable, then the relevant Double Tax Treaty, if one exists, will apply
- The European Union Parent-Subsidiary Directive within European Union Member States
- The application of the unilateral tax credit relief

1. Double Tax Treaties

Greece has signed an extensive number of Double Tax Treaties. With these Treaties double taxation is avoided on the same profits in respect of the same person or entity. Double Tax Treaties give relief only to legal persons or individuals who are tax residents in one or in both contracting states.

According to the Greek Income Tax Law legal persons are considered as tax residents of Greece if they have presence in Greece through the establishment of a Greek entity or legal form (branch) and the management and control are exercised in Greece.

The tax residency issue must always be examined from the Law of the other contracting state or according to the Law of the place where the company has its operations.

Double Tax Treaties usually provide that in case of dispute as to the residency of a legal person between contracting states or in case of dual residency where the legal person is considered as resident in both contracting states, then the residency of the legal person is determined to be there where the effective management is exercised.

2. Relief at source under the European Commission Parent-Subsidiary Directive

The Parent-Subsidiary Directive provides for the abolition of withholding taxes on dividends paid by a subsidiary to a parent company being resident of any Member State.

The main conditions that need to be met for the Directive to apply are:

- The distributing company is a tax resident of an EU Member State and is included in Annex I of Directive 2011/96/EU.
- The receiving resident company holds at least 10 percent of the share capital or voting rights of the distributing company.
- The shares should be held for a minimum period of at least 24 months (specific provisions apply).
- Taxation requirement: subject-to-tax requirement pursuant to Annex I of Directive 2011/96/EU.

Greece has implemented the Parent-Subsidiary Directive through incorporation to National Law with the above conditions.If the above conditions do not apply, dividends received from resident/non-resident subsidiaries cannot benefit from the tax exemption.

3. Unilateral Tax Credit Relief

Even if the Double Tax Treaty or the Parent-Subsidiary relief are not providing sufficient protection or if their criteria are not met for their implementation, Greece applies unilateral tax credit relief in the form of tax credit by operation of its local tax Laws. Tax credit is granted in Greece for any withholding tax or other tax paid on the particular income abroad. In substance, any tax paid abroad will be credited against any tax that might be payable for the particular income in Greece under any category of taxation.

B. Dividend Income Received in Germany – Resident taxation

According to Greek Tax legislation dividend income is generally subject to taxation, foreign dividend income received in Greece by a Greek tax resident company will not be taxed according to the participation exemption which also have been introduced in Greek law for local entities as well.
In effect, the taxation on dividends is as follows:

Income Tax - FULL EXEMPTION

Dividends received from Greek companies (either resident or non-resident) or dividends received from overseas companies (foreign) do not bear any corporation tax provided that the provisions of the Parent-Subsidiary Directive apply.

Otherwise, for subsidiaries established in third countries, any dividend withholding should be credited against the Greek CIT payable.

C. Outgoing Dividends

1. Non-Greek Resident Shareholders

Dividends payable by a Greek resident company to its foreign shareholders (whether a company or individual) are subject to 5% withholding tax in Greece. The non-resident shareholder of a Greek company receives the dividends from Greece free of any withholding tax, if the Parent-Subsidiary Directive applies.

2. Greek Resident Shareholders

In case the physical person receiving the dividend is a tax resident of Greece, then there is a withholding tax payable at the rate of 5%. There is no withholding tax on dividends payable from one Greek tax resident company to another Greek tax resident company.

D. Capital Gains Tax on the Sale of Shares (Titles)

The word “titles” according to the Law means, shares, bonds, debentures, founders’ shares and other titles of companies or other legal persons incorporated in Greece or abroad and rights thereon.

1. Income Tax

Capital gains occurring from the sale of listed and non listed shares are added to the regular business income and taxed at the CIT of 22% (currently).

2. Capital Gains Tax

Capital gains derived from the sale of listed and non-listed shares by individuals are subject ot 15% tax.

Capital gains derived from the sale of listed and non-listed shares by foreign legal entities that are tax resident abroad shall be taxable in Greece only if they maintain a PE in Greece. The sale of listed shares is also subject to a transaction duty at a rate of 0.2%.

E. Additional Tax Considerations of the Greek Holding Company

1. Stamp duty on capital contributions

No stamp duty applies on any capital contributions. Capital concentration tax is imposed on any increase in capital at the rate of 0.5%.

2. ATAD implementation

Greece implemented the EU Anti-Tax-Avoidance Directive (ATAD), which basically aims at preventing multinational companies sheltering their profits in low or no tax jurisdictions.

The impact for Greek Holding Companies is mainly connected to the definition of Controlled Foreign Corporation (CFC), namely an overseas permanent establishment or company directly or indirectly controlled by a Greek tax resident company, the corporate profit tax burden of which is less than half of what it would be under the Greek system. Greek Holding Companies must examine whether any of their subsidiaries are CFCs.

III. Conclusion

The Tax Legislation of Greece creates a favorable environment for Holding Companies. It has numerous advantages making Greece a prime holding location in the international field of holding regimes.

In effect,

- the ability to receive dividends on low or zero withholding tax rate
- the non-taxation of dividends received under the circumstances mentioned above
- the non-taxation of profits from the sale of shares / titles
- the tax-free distribution of dividends to its nonresident shareholders

Hungary

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I. Introduction

Holding Companies are set up as vehicles to hold investments in subsidiaries or associate companies. Their primary income derived from their holding activities is dividend income and profits from the disposal of their investments, mainly shares.

II. The Hungarian Tax Regime for Holding Companies

A. Incoming Dividends – Withholding Tax in Foreign Jurisdiction

1. Double Tax Treaties (DTTs)
Hungary has an extensive treaty network, it has signed Double Tax Treaties with more than 80 countries including all EU countries, Australia, Brazil, Bahrain and Canada. Many DTTs apply with zero withholding tax on interest and royalties.
According to the notification of USA issued to Hungary on 8 July 2022 the effective DTT has been terminated with effect from 8 January 2023. The provisions of the DTT will cease to apply from 1 January 2024.

2. Relief under the European Commission Parent-Subsidiary Directive (PSD)
As an EU Member State, Hungary had to adopt the PSD which provides for the abolition of withholding taxes on dividends paid by a subsidiary to a parent company being resident of any Member State. The Directive also aims to eliminate the double taxation of such income at the level of the parent company.

3. Double taxation relief
In the case of foreign source income derived from a non-treaty country tax credit is granted by the Hungarian legislation. The maximum degree of tax credit granted amounts to 90% of the tax paid abroad but up to the tax calculated based on the average domestic tax rate.

B. Dividend Income Received in Hungary – Hungarian Taxation

Dividends received by a Hungarian company are exempt from corporate income tax, except for dividends paid by a controlled foreign company (CFC).

C. Outgoing Dividends

1. Non-Hungarian Resident Shareholders (holding the shares either directly or through nominees)
Hungary provides full exception on the payment of dividends to its non-resident shareholder companies.

This means that dividends payable by a Hungarian resident company to its foreign shareholder companies are not subject to any withholding tax in Hungary. The exemption from withholding tax does not depend on the country of residence of the shareholder, the size of the shares or how long the shareholder has held it.

Dividends received by non-resident private individuals are subject to a final withholding tax at a flat rate of 15%, unless it is reduced by a tax treaty.

2. Hungarian Resident Shareholders
Based on domestic rules, no withholding tax is imposed on dividends paid to a legal entity, such as a Holding Company.

In case the dividend is paid to an individual who is a tax resident of Hungary, the dividend is subject to personal income tax at a rate of 15%. Further to that, social contribution tax at a rate of 13 % shall be payable with an upper annual limit of approx. 1925 EUR in 2023.

D. Capital Gains Tax on the Sale of Shares

Capital gains derived by Hungarian companies are included in taxable income and taxed at the standard 9% corporate income tax rate. However, no tax is due in case the participation exemption applies. Participation exemption rule applies to capital gains derived from the sale of an investment if the acquisition of the investment was reported to the Hungarian State Tax Authority within 75 days, but the taxpayer must hold the shares in the subsidiary (which cannot be a CFC) for at least one year.

Provided there is no tax treaty with the shareholder company's jurisdiction, or the treaty allows the taxation, gains derived by a nonresident from the alienation of shares in a Hungarian real estate Holding Company are subject to corporate income tax at a rate of 9% (only a limited number of treaties enables such taxation).

A Hungarian company is deemed to be a Hungarian real estate Holding Company if either of the following requirements exists:

- More than 75% of its book value is derived from real estate located in Hungary.
- More than 75% of the total book value of the group, comprised of the company and its related companies that are engaged in business in Hungary (whether as resident entities or through permanent establishments), is derived from real estate located in Hungary.

E. Additional Tax Considerations of the Hungarian Holding Company

1. Corporate Group Taxation (CIT Group)
Forming CIT group may be selected by domestic related companies which apply the same accounting principles and balance sheet date, if there is at least 75% majority control between them. Approval of the State Tax Authority is needed to establish the corporate tax group. The tax liability of the group is fulfilled by a designated group member as a group representative.

As a general rule, transactions between group members are out of the scope of the transfer pricing regulations which means tax base modification and documentation requirements are not applicable.

The tax base of a CIT group shall be calculated on a consolidated basis. This means that the tax base of loss-making group members can be deducted from the tax base of profit-making group members, however, this deduction might not exceed 50% of the calculated positive tax base of the profit-making group members.

2. Transfer pricing requirements
Hungary is an OECD member and as such its legislation is in line with the OECD Transfer Pricing Guidelines. Hungary has also introduced the Country-by-Country regulation and the Master file - Local file transfer pricing documentation rule. Where the consideration applied in related party transactions is not at arm's length, the transfer pricing rules require an adjustment to the tax base.

According to the recent legislative changes in the Hungarian TP rules, the CIT returns include a reporting obligation regarding intercompany transactions for financial years starting from 2022. Transaction amounts, direction of the related party transactions, benchmark results, as well as the transfer pricing method applied should be recorded.

3. Real Estate Transfer Tax (RETT)
Pursuant to the Hungarian legislation, transfer of immovable property and participation in domestic real estate companies are subject to RETT, which is payable by the acquirer of the mentioned assets.
Obtaining shares in domestic real estate companies by way of in-kind contribution qualify as "transfer of shares" under the relevant Act, thus based on the general rules, it is subject to the RETT provisions.

The RETT rate is 4% up to HUF 1 billion and 2% on the excess amount, capped at HUF 200 million per real estate (i.e. per plot number).

Regardless the above, the transfer of shareholdings in domestic real estate companies may be RETT exempt, if the transfer is made between related parties as defined by the respective points of the Act on CIT.

4. ATAD implementation
Hungary implemented the EU Anti-Tax-Avoidance Directive (ATAD), which basically aims at preventing multinational companies sheltering their profits in low or no tax jurisdictions.

5. Interest limitation rules
Exceeding borrowing costs can be deducted in the tax period in which they are incurred up to 30 % of the taxpayer's EBITDA or HUF 939 810 000; when applying the two caps the higher one should be considered.

Unused interest capacities carried forward from previous tax years can be utilized in the respective tax year, upon the decision of the taxpayer, to decrease the amount of non-deductible exceeding borrowing costs.

6. DAC 6 requirements
Hungary has implemented mandatory disclosure rules based on the EU mandatory disclosure directive (DAC 6). The Hungarian reporting deadlines are consistent with those in DAC 6.

III. Conclusion

As presented in the above sections, it can be stated that the Hungarian tax environment provides numerous advantages regarding Holding Companies for the investors willing to save their profits made in other country by their subsidiaries.

Italy

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I. Introduction

The Holding Company is an interesting vehicle, useful for pursuing a number of interests including, but not limited to: efficient group management, generational turnover, conflict avoidance between shareholders, asset protection and favourable tax regimes for direct and indirect tax purposes.

Article 162-bis of the Italian Income Tax Code ("ITC") outlines two different definitions of a Holding Company valid for tax purposes. The difference is essentially based on the nature of the participations held by the Holding Company:

- Financial Holding: companies who engage exclusively or predominantly in the business of taking participations in financial intermediaries
- Industrial Holding: companies are deemed to be industrial Holding Companies if they:
  - engage exclusively or predominantly in the business of acquiring Holdings in entities other than financial intermediaries;
  - are entities which do not carry out activities vis-à-vis the public.

With reference to the types of contribution used to create a Holding Company, the followings are the cases contained within the ITC:

- general contribution rule pursuant to Article 9 ITC
- contribution of controlling participations held under the business regime pursuant to Article 175 ITC - applicable between individuals resident in Italy conducting commercial business
- Holding Company creation through contribution of a business pursuant to Article 176 ITC - applicable also if the transferor or transferee is a non-resident individual, if the transfer concerns companies located in Italy
- creation of Holding Company by way of exchange of shares pursuant to Article 177(1) ITC
- contribution of participations with "realizzo controllato" pursuant to Article 177 (2)(2bis) ITC
- intra-UE contribution of participations pursuant to Articles 178-179

II. The Italian Tax Regime for Holding Companies

A. Incoming Dividends – Withholding Tax in Foreign Jurisdiction

Italian resident companies are taxed on their worldwide income: when foreign sourced dividends are taxed in the source country as a consequence of the local legal provisions, Italy regulates certain measures in order to avoid double taxation:

- double Tax Treaties
- European Union Parent-Subsidiary Directive
- unilateral foreign tax credit relief

1. Double Tax Treaties

Italy has signed an extensive number of Tax Treaties aiming at avoiding double taxation on the same income with regards of the same individual or entity.

Article 10 of the Double Tax Treaties entered into by Italy provides for a mitigation of withholding tax on dividends paid by a resident of a contracting State and received by a resident of the other State who is the beneficial owner.

The applicable rates normally range from 10% to 15%.

2. Relief under the European Commission Parent-Subsidiary Directive

The Parent-Subsidiary Directive has been implemented by Italy through Article 27-bis of the Presidential Decree No. 600/1973.

More precisely, Article 27-bis provides for an exemption from Italian withholding tax on dividends to the extent that the parent company and the subsidiary:

- are incorporated under the law of an EU Member State having one of the legal forms listed in the Annex of the Parent-Subsidiary Directive
- are resident for tax purposes in an EU Member State

- are subject in their State of residence to one of the taxes listed in Annex B of the same Directive, without benefiting from option or exemption regimes
- the parent company has been holding a participation equal at least to 10% of the capital of the subsidiary continuously for at least one year (the Italian legislation provides for a shorter holding period compared to the Parent-Subsidiary Directive, which provides for a 2-year holding period)

3. Unilateral Tax Credit Relief

The unilateral tax credit relief for taxes paid abroad provided for in Article 165 ITC allows for the deduction from the Italian tax, in whole or in part, of the foreign tax paid by Italian residents, in order to avoid double taxation on the same income.

The credit is deducted from the net tax, before any payments on account and withholding taxes. All resident entities, regardless of their legal form, are eligible for the credit.

It should be noted that, pursuant to Article 165(10) ITC, if the foreign source income contributes only partially to the formation of the Italian tax base, the foreign tax on which the deduction is to be calculated must also be reduced accordingly.

The principle applies, for instance, to dividends which contribute to the formation of the overall income within the limit of 5% if received by companies.

B. Dividend Income Received in Italy – Italian Taxation

Italian resident companies are subject to corporate income tax (imposta sul reddito delle società “IRES”) on their worldwide income.

A company is considered resident if, for the majority of the tax year, has in Italy:

- its registered office;
- its administrative office;
- its principal activity.

Unless proven otherwise, foreign entities controlling an Italian company are deemed to be resident in Italy for tax purposes (so-called “esterovestizione”) if either of the following conditions is satisfied:

- the foreign entity is directly or indirectly controlled by the Italian resident entity
- the majority of members of the board of directors managing the foreign entity are resident in Italy

Dividends received by Italian resident companies from foreign entities are ordinarily subject to IRES and to the regional tax on productive activities (imposta regionale sulle attività produttive “IRAP”) if the recipient carries out some specific kind of activities.

The 2023 IRES tax rate is 24%. However, pursuant to Article 89(3) ITC, if the relevant dividend distribution is not deductible from the taxable base of the distributing company in its country of establishment, then such dividend is subject to tax in Italy only with respect to 5% of its amount (at a IRES tax rate currently equal to 24%, this will result in an overall taxation of 1.20%).

Special rules are set forth for dividends received by Italian residents with respect to participations held in entities located in black-listed jurisdictions.

The main consequence of a foreign distributing entity to be considered located in a black-list jurisdiction is that dividends received by Italian tax residents are fully taxable in their hands, unless:

- such dividends have already been attributed to the shareholder in accordance with the provisions of controlled foreign companies, or
- since the beginning of the holding period, it has been shown that the participation has not had the effect to localise the income in States or territories subject to preferential tax regimes.

C. Outgoing Dividends

In Italy there are four main tax regimes that may apply with respect to outgoing dividends.

First of all, according to Article 23 ITC, dividends are considered to be sourced from Italy to the extent that they are paid by entities resident in Italy or by PE of non-resident entities that are located in Italy.Dividends which are considered to have their source in Italy may be subject to tax therein.

1. Non – Italian Resident Shareholders (Holding the shares either directly or through nominees)

As far as EU companies are concerned, Article 27-bis of the Presidential Decree No. 600/1973, which has implemented the Parent-Subsidiary Directive, provides for an exemption from Italian withholding tax on dividends to the extent that the foreign parent entity holds a participation equal at least to 10% of the capital in the Italian subsidiary and all the following requirements are met:

- the non-resident shareholder is a company incorporated under the law of an EU Member State having one of the legal forms listed in the Annex of the Parent-Subsidiary Directive
- the non-resident shareholder is resident for tax purposes in an EU Member State
- the non-resident shareholder is subject to tax in its country of residence without benefitting from specific exemption regimes that are not limited from a temporal or territorial standpoint
- the non-resident shareholder has maintained the participation for an uninterrupted period of at least 1 year (holding period)

The benefits of Article 27-bis may alternatively be granted through a refund request or directly by the Italian withholding agent.

In addition, Article 27 of the Presidential Decree No. 600/1973 provides for a final 1.20% withholding tax to be applied with respect to infra-EU dividends distributions, regardless of any minimum participation threshold.
This regime applies where the relevant dividends are paid by an Italian company to companies that are:

- tax resident in white-listed EU or EEA countries;
- liable to tax therein.

As far as non-EU companies and individuals are concerned, reference shall be made to the withholding tax provided for in the Tax Treaty.

The Tax Treaties Italy has entered into usually provide for a reduction of the domestic withholding tax, usually to 10% or 15%, sometimes with reduced rates if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends.

When none of the regimes described above apply, Article 27 of the Presidential Decree No. 600/1973 provides for the application of a final 26% withholding tax rate on outgoing dividend payments.

The same provision also grants to the shareholder the right to a reimburse equal to 11/26 of the withholding suffered to the extent that they are able to prove that the dividends received have been subject to tax in their country of residence.

2. Italian Resident Shareholders

With reference to dividends received by Italian resident companies from participations held in Italian resident companies, Article 89(2) ITC provides that such income contributes to taxable income only to the extent of 5% of its amount, since the legislation explicitly provides for an exclusion equal to 95% of its amount. At a IRES tax rate currently equal to 24%, this will result in an overall taxation of 1.20%.

On the other hand, dividends received by Italian resident individuals are subject to a withholding tax equal to 26%.

D. Capital Gains Tax on the Sale of Shares

Capital gains derived by resident companies or non-resident companies with a PE in Italy are subject to IRES and IRAP.

Italian companies may benefit from a 95% participation exemption regime (only 5% is taxable) for capital gains derived from disposal of Italian or foreign shareholdings that satisfy all of the following conditions:

- the participation has been classified in the first financial statements closed during the holding period as long-term financial investment
- the Italian parent company has held the participation for an uninterrupted period of at least 12 months before the disposal
- the subsidiary has been carrying out uninterruptedly through the last 3 financial years prior to the year of the disposal an active business activity
- the subsidiary must have not been resident in a low-tax jurisdiction uninterruptedly as of the beginning of the holding period or, under certain circumstances, through the last five years, unless the taxpayer can prove that the subsidiary was actually subject to a congruous level of taxation

In general, capital losses on participations are deductible. An exception exists for capital losses on participation that would benefit from the PEX regime: these losses are 100% non-deductible.

As far as non-resident companies without a PE in Italy are concerned, most Tax Treaties prevent Italy from levying tax on non-residents deriving capital gains from the sale of Italian participations. In the absence of a Tax Treaty, capital gains derived by a non-resident entity from the transfer of any participations in Italian companies and entities are subject to a 26% substitute tax.

E. Additional Tax Consideration of the Italian Holding Company

1. Stamp duty on capital contributions
Capital contributions are subject to stamp duty.

2. VAT regime
The determination of the VAT regime applicable to Holding Companies depends on the activity exercised:

- if the Holding Company limits its activity to the ownership of participations (so-called static Holding Companies), it is not considered a VAT taxable entity
- if, on the other hand, the Holding participates in the management of its subsidiaries (e.g. by rendering administrative or financial services), the VAT regime will apply

3. ATAD implementation
Law Decree No. 142/2018 implemented the EU ATAD into domestic law. Italian anti-hybrid rules apply as of 2020. Rules applying to Italian reverse hybrids apply as of 2022.

The Italian ATAD Decree applies to corporate tax and income tax, but it does not apply to IRAP.

With reference to foreign jurisdictions, the Italian anti-hybrid rules take into consideration any tax covered by a Tax Treaty in place with the relevant State. However, if the applicable Tax Treaty also includes local taxes, the anti-hybrid rules will only consider taxes applied at the highest governmental level (for example, at the federal level). In the absence of Tax Treaty, reference is made to taxes with the same or equivalent nature of the Italian taxes applied.

III. Conclusion

Italian legislation has created a favourable regime for Holding Companies. In particular, the establishment of a Holding Company can result in the achievement of management advantages, financial advantages and tax advantages.

The latter include the participation exemption regime governed by Article 87 ITC whereby, under certain conditions, the capital gain generated by the sale of participations contributes only 5% of its amount to the determination of income tax.

In addition, dividends received by Holding Companies and distributed by their subsidiaries, under certain conditions, contribute to the formation of taxable income to the extent of 5%: therefore, pursuant to Article 89 ITC, dividends are taxed at a rate of 1.20%.

In addition, when the Italian Holding Company has subsidiaries in EU countries, dividends and any interest distributed by the foreign subsidiaries may be fully taxed, in compliance with the Parent-Subsidiary Directive.

Moreover, Article 177 ITC, regulating the tax consolidation regime, allows one to opt for group taxation, calculating IRES on a unitary basis, with a single tax base, thus exploiting any tax losses of group companies to reduce the taxable income of the remaining companies.

Finally, Article 73 of the Presidential Decree No. 633/1972 allows the group to operate under a single VAT number and as a single entity for VAT purposes. In such a case, transactions between the companies belonging to the group will not be considered relevant for VAT purposes; transactions to and from external parties will instead be considered relevant for VAT purposes for the group and not for the individual company that performed them.

Luxembourg

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I. Introduction

Holding Companies are set up as vehicles to hold investments in subsidiaries or associate companies.

Their primary income derived from their holding activities is dividend income and profits from the disposal of their investments, mainly shares.

II. The Luxembourg Tax Regime for Holding Companies

A. Incoming Dividends – Withholding Tax in Foreign Jurisdiction

Luxembourg has a favorable tax regime for Holding Companies that allows them to extract dividends from their subsidiaries at a zero or low tax rates due to:

- The European Union Parent-Subsidiary Directive that applies to European Union Member States
- The extensive number of Double Tax Treaties that Luxembourg has signed, in case the European Parent-Subsidiary Directive is not applicable
- The application of the unilateral tax credit relief

1. Double Tax Treaties
Luxembourg has an extensive Double Tax Treaties network. It has entered into double taxation treaties relating to income tax with over 80 countries.

These treaties aim at eliminating or reducing double taxation on the same income/gains with regard to an individual or legal entity that is a tax resident of the contracting States.

According to the Luxembourg Income Tax Law (LITL) ("loi concernant l'impôt sur le revenu"), a legal entity is considered as a resident taxpayer if its registered office or its central administration is located in Luxembourg.

A Luxembourg-incorporated company is considered as a tax resident of Luxembourg by default, unless it can demonstrate tax residency elsewhere.

The lex fori for tax residency issues relating to a legal entity is the law of the country where the legal entity is incorporated or has its statutory seat. However, the lex fori may also consider any applicable tax treaties between the country of incorporation or statutory seat and the country where the legal entity has activities or operations.

In order to resolve conflicts of residence, Double Tax Treaties generally contain a tiebreaker rule. The general principle is that a company resident of two contracting States under the respective domestic tax laws is considered as resident of the State where it has its "place of effective management" for the application of the tax treaty.

2. Relief under the European Parent-Subsidiary Directive
The Parent-Subsidiary Directive provides for a withholding tax exemption of the dividends and other profit distributions paid by a subsidiary to a parent company, subject to compliance with some requirements.

The main conditions that need to be met for the Directive to apply are: the parent company and the subsidiary must be tax resident of EU Member States and must be subject to tax, without the possibility of an option or of being exempt. The parent must hold at least 10% of the share capital of the subsidiary.

Some Member States require that the holding of the 10% capital in the subsidiary has to be maintained for a minimum number of years in order to apply the Directive. Also, a number of Member States have introduced additional anti-avoidance provisions in order to avoid abuse and fraudulent use of the benefits of the Directive.

Luxembourg has implemented the Parent-Subsidiary Directive (including the 2015 amendments in relation to the general anti-abuse rule) through the Income Tax Law. According to this Law, there is a minimum qualifying holding period of 1 year and, a minimum participation interest of 10% or an acquisition price of the subsidiary shares of at least EUR 1.2 million.

The withholding tax exemption shall not apply if the transaction is characterised as "abuse of law" within the meaning of the Parent-Subsidiary Directive.

3. Unilateral Tax Credit Relief

Even if the criteria of the Double Tax Treaty or the Parent-Subsidiary relief are not met for their implementation, Luxembourg applies unilateral tax credit relief in the form of a local tax credit.

Unilateral tax credit relief is granted to taxpayers by a credit of the foreign taxes paid. The credit is i) limited to the foreign taxes actually paid and ii) cannot exceed the Luxembourg income tax attributable to the foreign income.

In substance, tax credit is granted in Luxembourg for any foreign income received by a Luxembourg taxpayer that is subject to a tax equivalent to Luxembourg income tax and is not exempted by a Double Tax Treaty.

Any non-imputable tax in excess is deductible as a tax-deductible expense.

B. Dividend Income Received in Luxembourg and Capital Gains on the Sale of Shares – Luxembourg Taxation

Luxembourg has implemented the Parent-Subsidiary Directive in its national law (LITL) and incomes deriving from participations received by a Luxembourg fully taxable Holding Company are fully exempt if the following cumulative conditions are met:

1. a direct participation of at least 10% in the share capital of the subsidiary or an acquisition price of at least EUR 1.2 million (in case of dividends and liquidation proceeds) or EUR 6 million (in case of capital gains); and
2. at the time the income is made available, the beneficiary has been holding or commits to hold the participation, for an uninterrupted period of at least twelve months.

The distributing company needs to be either i) an entity falling within the scope of Article 2 of the EU Parent-Subsidiary Directive; ii) a Luxembourg joint-stock company, which is tax resident and fully taxable in Luxembourg; or iii) a non-resident joint-stock company that is fully liable (in its State of residence) to a tax corresponding to the Luxembourg corporate income tax.

However, expenses economically linked to the exempt dividends or capital gains are only tax deductible to the extent that they exceed the exempt income (recapture rule). If the twelve months holding period or the threshold requirements are not met for the dividends, those dividends may nevertheless be tax exempt at 50%.

In case the subsidiary does not qualify for the participation exemption regime, the distributed income will be taxed at the overall combined rate of corporation taxes (including Corporate Income Tax, Municipal Business Tax and the solidarity surcharge) which amounts to 24.94% in Luxembourg-City for the year 2023.

C. Outgoing Dividends

1. Non-Luxembourg and Luxembourg Resident Shareholders

Dividend payments to resident and non-resident shareholders are in principle subject to a standard withholding tax rate of 15%. For non-resident shareholders, an exemption or reduction of withholding tax may also be available under applicable double tax treaties.

A full withholding tax exemption is also available if the following conditions are met:

a) The dividends are paid to:
    - A fully taxable Luxembourg resident corporation; or
    - An entity within the scope of Article 2 of the EU Parent-Subsidiary Directive; or
    - A corporation resident in a treaty country that is subject to a tax comparable to the Luxembourg corporate income tax.
b) The shareholder holds directly or indirectly a participation of at least 10% of the share capital of the Luxembourg holding or the acquisition price amounts to at least EUR 1.2 million.
c) On the date of the distribution of the dividend, the shareholder holds or commits to hold a direct or indirect participation in the share capital of the holding for an uninterrupted period of at least 12 months.

Even if no withholding tax is due, a withholding tax return has to be prepared and sent to the Luxembourg Direct Tax Authorities within eight days starting from the date the income is made available.

D. Additional Tax Considerations of the Luxembourg Holding Company

1. Withholding tax on interest, liquidation proceeds and royalties

There is no withholding tax on arm's length interest paid by a Luxembourg company, regardless the interest is paid to a related or unrelated, domestic or foreign company, except for profit-sharing interest which can be subject to 15% withholding tax under some conditions.
In addition, no withholding tax applies to the payment of liquidation proceeds or on royalty payments, regardless of the tax status or residency of the recipient.

2. Net wealth tax

The Luxembourg Holding Company is subject to the annual net wealth tax (NWT) which is levied on the net assets of the company as per January 1 of each year. The first EUR 500 million of taxable net wealth is taxed at a rate of 0.5% and a reduced rate of 0.05% applies to any excess.

Participations that qualify for the participation exemption regime are exempt from net wealth tax. The applicable conditions remain the same (see section B.), except for the 12-month holding period requirement which is not necessary. A minimum NWT will be due where the amount of NWT (by application of the rates on the total net assets) is lower than the minimum NWT. This minimum NWT is due for each company in existence on 1st January of the calendar year.

A Luxembourg holding is subject to a minimum NWT of EUR 4,815 on an annual basis if the sum of financial assets, amounts owed by affiliated undertakings and companies with participating interest, transferable securities and cash at bank exceed both 90% of its total balance sheet and EUR 350,000. The other Luxembourg holding are subject to a progressive minimum NWT depending on the amount of their total assets. This minimum amount ranges from EUR 535 to EUR 32,100.

3. Stamp duty on capital contributions

No stamp duty is applied on any capital contributions, except a fixed registration fee of EUR 75 imposed on incorporations or amendments of the by-laws of a Luxembourg company.

4. Tax losses carried forward

The tax losses generated during and after the fiscal year 2017 can be carried forward for a maximum period of 17 years. The tax losses that arose before 2017 may be carried forward indefinitely. No tax loss carry-back is allowed in Luxembourg

5. ATAD implementation

Luxembourg implemented the EU Anti-Tax Avoidance Directive (ATAD I & II) in the local law.

The impact for Luxembourg Holding Companies is mainly related to the definition of Controlled Foreign Corporation (CFC), namely a foreign permanent establishment or company directly or indirectly controlled by a Luxembourg tax resident company, the corporate profit tax burden of which is less than half of what it would be under the Luxembourg tax system, i.e. 8.5%.

Luxembourg Holding Companies must examine whether any of their subsidiaries are CFCs.

III. Conclusion

In a nutshell, Luxembourg is a major location for Holding Companies used by international investors for structuring their investments, due to its favorable tax environment.

In addition, the country has a stable political and economic climate and is known for its advanced legal framework and pro-business attitude. In this respect, some of the key advantages of Luxembourg are:

- the ability to receive dividends at low or zero withholding tax rate (Double Tax Treaties or EU Parent-Subsidiary Directive)
- the non-taxation of dividends and capital gains under the conditions mentioned above
- no withholding tax on some distributions is some conditions are met.

Malta

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I. Introduction

Holding Companies are set up as vehicles to hold investments in subsidiaries or associate companies. Their primary income derived from their holding activities is dividend income and profits from the disposal of their investments, mainly shares.

II. The Maltese Tax Regime for Holding Companies

A. Incoming Dividends – Withholding Tax in Foreign Jurisdiction

1. Double Tax Treaties

Maltese income tax laws provide relief, usually on a credit basis, in terms of Double Tax Treaties signed with other jurisdictions. In order to encourage the growth of international trade, Malta has signed over 78 Double Tax Treaties to date.

2. Relief under the European Commission Parent-Subsidiary Directive

EU Parent-Subsidiary Directive exempts from withholding taxes dividends and other profit distributions paid by subsidiary companies to their parent company and prevents their double taxation within the EU.

Maltese “participation exemption” grants Maltese parent companies an income tax exemption similar in nature to the one provided under the Parent-Subsidiary Directive. Maltese participation exemption is broader in scope, as it also applies to capital gains derived from sale by a parent company of shares in its subsidiaries. Moreover, owing to its full imputation mechanism of dividend taxation, Malta does not charge any withholding taxes on distributions of profits to non-resident shareholders, whether parent companies, or individual shareholders. No minimum participation threshold in a Malta subsidiary must be met to avail of zero withholding rates on outbound dividends.

3. Unilateral Tax Credit Relief

Malta allows relief from double taxation on a unilateral basis where treaty relief is not available. The income subjected to overseas income tax (or a tax similar in nature) must be arising outside of Malta. Proof that overseas tax was actually paid is also required.

If treaty or unilateral tax relief are not available, the taxpayer may apply Flat Rate Foreign Tax Credit (FRFTC). FRFTC is granted as a notional tax credit of 25% of the income or gains received by the company, after deducting any foreign tax.

B. Dividend Income Received in Malta – Maltese Taxation

A dividend received by a Malta company from a “Participating Holding” (PH), may avail of an exemption from Maltese income tax in terms of the participation exemption.

A PH means a holding of shares by a Malta company in another entity which holding:

- represents 5% or more of the equity shares of the other entity; or
- gives the Malta company the right to call for and acquire the entire balance of the equity shares in the other entity; or
- gives the Malta company the right of first refusal in the event of the proposed disposal, redemption or cancellation of all the equity shares in the other entity; or
- entitles the Malta company to sit or appoint a person to sit on the Board of Directors of the foreign entity; or
- represents an investment of a minimum of €1,164,000 (or an equivalent in another currency) which is held for an uninterrupted period of not less than 183 days; or
- has been acquired to further the Malta company’s own business and but is not held as trading stock for the purpose of trade.

Capital gains derived from the disposal of a PH may, at the option of the company, be exempt from tax in Malta. Income or gains received from a PH, may, at the election of the Malta company, be eligible for an exemption from Malta tax in terms of the participation exemption or, upon the distribution of dividends, for claim a full refund of such tax to the company’s shareholders, provided however that the company in which the PH investment is held falls within one of the following safe harbors:

- it is resident or incorporated in the EU
- it is subject to any foreign tax at a rate of at least 15%; or
- less than 50% of its income is derived from passive interest or royalties

However, if the PH is held in a corporate body resident for tax purposes in a jurisdiction that is included in the EU list of non-cooperative jurisdictions for a minimum period of three months during the year immediately preceding the year of assessment, then the participation exemption shall be available only if the PH meets certain minimum substance criteria. Where income or gains derived by a Malta company from an investment cannot benefit from the participation exemption, the company’s shareholders would still be eligible to claim, upon the distribution of dividends, a refund of part of the tax paid by the Malta company on the profits from foreign investments.

The amount of the refund would depend on particulars of the case.

C. Outgoing Dividends

1. Non - Malta Resident Shareholders (holding the shares either directly or through nominees)

Under the Maltese full imputation system of taxation, a non-resident shareholder in receipt of a dividend paid out of the taxed income of a Malta company receives a tax credit for the tax at source paid by the company distributing the dividends. As a result, no Malta withholding tax is payable on distribution of dividends to non- resident shareholders.

2. Malta Resident Shareholders

Generally, under the Maltese full imputation system of taxation, no further Malta tax is paid at the level of the Malta resident shareholder on receipt of dividends from a Malta company. However, in certain scenarios provisions on taxation of investment income received by Malta resident individuals may apply.

D. Capital Gains Tax on the Sale of Shares

Gains or profits arising from the transfers of securities are subject to Maltese capital gains tax. Under applicable Malta tax laws ‘securities’ are defined as (i) shares and stock and such like instrument that participate in any way in the profits of the company and whose return is not limited to a fixed rate of return, (ii) units in a collective investment scheme or (iii) units and such like instruments relating to linked long term business of insurance.

1. Income Tax

Gains or profits arising from the transfers of securities are subject to Maltese capital gains tax (see below).

2. Capital Gains Tax

Capital gains derived by Malta resident taxpayers are aggregated with their other chargeable income or gains derived in the same year of assessment and taxed at a rate of 35% for corporate entities, and at progressive rates up to 35% for individuals.

Capital gains derived by a person, whether an individual or a body corporate, not resident in Malta from transfer of shares in a company resident Malta are exempt from taxation, provided that such person is the beneficial owner thereof and the company is not a property company, i.e. it does not hold, directly or indirectly, immovable property in Malta (or any real rights thereon).

The same exemption granted to non-residents applies also to transfers of:

- units in a CIS,
- units and such like instruments relating to investment-linked long term business of insurance,
- an interest in a partnership which is not a property partnership.

E. Additional Tax Considerations of the Malta Holding Company

1. Stamp duty on capital contributions

Malta stamp duty will be levied only on capital contributions that involve transfers of assets independently chargeable to stamp duty (e.g., an in-kind capital contribution of marketable securities or immovable property). In such case the stamp duty would need to be paid by the transferee.

Maltese laws allow taxpayers to seek an exemption from stamp duty where the Malta company whose share are transferred is beneficially owned in over 50% by non-residents and the company has the majority of its business interests outside of Malta.

2. ATAD implementation

Malta timely transposed the UE anti-avoidance directives:

- Directive (EU) 2016/1164 of 12 July 2016 stipulating rules on interest limitation, exit taxation, general anti-abu-

se clause and CFC rules (ATAD), and
- Directive (EU) 2017/952 of 29 May 2017 targeting hybrid mismatches (ATAD II).

Generally, Maltese transposition does not apply more stringent provisions than the minimum standard required under the EU law. The scope and the application of ATAD-based anti-avoidance mechanisms was further explained in local Guidelines issued by the Commissioner for Revenue.

III. Conclusion

Malta offers foreign investors a corporate income tax environment that is perfectly suited to setting up Holding Companies with international footprint due to:
- its extensive network of double tax treaties
- a 5% threshold participation exemption at the level of the Holding Company applicable to capital gains and dividends from qualifying foreign investments
- no further taxation of upstream distribution of dividends to resident or non-resident shareholders
- exemption from Malta tax on sale of shares in qualifying Malta companies by non-resident shareholders

Netherlands

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I. Introduction

The Netherlands is widely used as a holding or joint venture jurisdiction for its stable investment climate due to political stability and its participation exemption regime.

Holding Companies are set up as vehicles to hold investments in subsidiaries or associate companies. Their primary income derived from their holding activities is dividend income and profits from the disposal of their investments, mainly shares.

II. The Dutch Tax Regime for Holding Companies

A. Incoming Dividends – Withholding Tax in Foreign Jurisdiction

The Netherlands satisfies the ability to extract dividends from its subsidiaries at an effective zero or low tax rates with:
- The extensive number of Double Tax Treaties that the Netherlands has signed. Double Tax Treaties have applicability both to countries outside the European Union or within European Union. In those European Union countries, in which the European Commission Parent-Subsidiary Directive for various reasons is not applicable, then the relevant Double Tax Treaty, if one exists, will apply;
- The European Union Parent-Subsidiary Directive within European Union Member States;
- The application of the unilateral tax credit relief.

1. Double Tax Treaties

The Netherlands has signed an extensive number of Double Tax Treaties. With these Treaties double taxation is avoided on the same profits in respect of the same person or entity.

Double Tax Treaties give relief only to legal persons or individuals who are tax residents in one or in both contracting states.

The place of tax residency of a company for Dutch corporate income tax (CIT) and Dutch dividend withholding tax (DWT) purposes is determined on the basis of the facts and circumstances. The place of effective management of a company is the most important criterion in deciding where a company resides based on facts and circumstances.

Where the actual management decisions related to the company are all taken, is the relevant factor to determine effective management and therefore the residency of a (Dutch) company. Irrespective of the place of tax residency of a company, a company incorporated in accordance with the laws of the Netherlands is deemed to be resident of the Netherlands for Dutch CIT and Dutch DWT purposes. The tax residency issue should always also be examined from the Law of the other contracting state or according to the Law of the place where the company has its operations.

Double Tax Treaties usually provide that in case of dispute as to the residency of a legal person between contracting states or in case of dual residency where the legal person is considered a resident in both contracting states, then the residency of the legal person should be determined by mutual agreement by the contracting states whereby the place of effective management and the place where it is incorporated or otherwise constituted could be relevant factors.

2. Relief under the European Commission Parent-Subsidiary Directive

The Parent-Subsidiary Directive provides for the abolition of withholding taxes on dividends paid by a subsidiary to a parent company being resident of any Member State.

The main conditions that need to be met for the Directive to apply are: the parent must be tax resident of a Member state and must hold at least 25% of the share capital of the subsidiary.

Some Member States require that the holding of the 25% capital in the subsidiary maintained for a minimum number of years in order for the provisions of the Directive to be applicable. Also a number of Member States have introduced additional anti-avoidance provisions in order to avoid abuse and fraudulent use of the benefits of the directive.

The Netherlands has implemented the Parent-Subsidiary in two ways. Both in the participation exemption and in the dividend withholding exemption. For both implementations, no minimum qualifying holding period applies and a reduced participation interest of 5% applies. For the participation exemption, we refer to section B. For the DWT exemption, we refer to section C.

3. Unilateral Tax Credit Relief

Even if the Double Tax Treaty or the Parent-Subsidiary relief are not providing sufficient protection or if their criteria are not met for their implementation, the Netherlands applies unilateral tax credit relief in the form of tax credit by operation of its local tax Laws.

Tax credit is granted in the Netherlands for any dividends, interest and royalties on the particular income from a developing country. Subject to requirements, the tax paid in the developing country will be credited against the corporate income tax due in the Netherland. For incoming dividends, the tax credit should be limited to 15% of the dividends received. The tax credit should be limited to the amount that would have been due according to the Dutch CIT. Therefore, should the participation exemption apply in the Dutch CIT on the income, no tax credit should be granted.

As a last resort, the foreign tax paid could be deducted from the Dutch taxable base subject to requirements.

B. Dividend Income Received in the Netherlands – Dutch Taxation

In general, CIT is due on dividends income received. However, based on the Dutch participation exemption regime, under certain conditions, all income derived from a subsidiary (both dividends and capital gains) is exempt from Dutch corporate income tax. In order to qualify for the participation exemption a company should:

- hold an interest of at least 5% in a subsidiary; and
- meet (at least) one of the following tests:
    - Motive test: The subsidiary should not be held as a portfolio
    - Subject to tax test: The subsidiary should, based on Dutch tax principles, be subject to an tax-rate of at least 10%, calculated on the basis of Dutch tax principles
    - Asset test: The subsidiary's (direct and indirect) assets should not consist for more than 50% of low taxed portfolio investments

C. Outgoing Dividends

In general, 15% Dutch DWT is due on outgoing dividends. Distributions made by a Dutch company to its qualifying parent company may benefit from an exemption from Dutch DWT.

1. Dutch resident shareholders

A qualifying parent company in the Netherlands should:

- be the beneficial owner of the dividends received
- hold at least 5% of the shares of the distributing entity; and
- be entitled to claim the participation exemption in the Dutch CIT on the dividends received

2. Non- Dutch resident shareholders

A qualifying parent company outside the Netherlands should:

1. be the beneficial owner of the dividends received
2. be situated in the European Union (EU) or European Economic Area (EEA) or any country of which the Netherlands has concluded a tax treaty in which there is an arrangement for the taxation of dividends
3. hold at least 5% of the shares of the distributing entity; and
4. be entitled to claim the participation exemption in the Dutch CIT on the dividends received should it have been a Dutch entity

For the DWT exemption to apply, the shares in the Dutch company should not be held with the main purpose (or one of the main purposes) to avoid Dutch DWT or the structure should not be artificial but based on sound business reasons ("objective test").

D. Capital Gains Tax on the Sale of Shares

In general, Dutch CIT is due on the capital gains on the sale of shares. However, based on the Dutch participation exemption regime, under certain conditions, all income derived from a subsidiary (both dividends and capital gains) is exempt from Dutch corporate income tax. In order to qualify for the participation exemption a company should:

- hold an interest of at least 5% in a subsidiary; and
- meet (at least) one of the following tests:
    - Motive test: The subsidiary should not be held as a portfolio
    - Subject to tax test: The subsidiary should, based on Dutch tax principles, be subject to an tax-rate of at least 10%, calculated on the basis of Dutch tax principles
    - Asset test: The subsidiary's (direct and indirect) assets should not consist for more than 50% of low taxed portfolio investments

E. Additional Tax Considerations of the Dutch Holding Company

1. ATAD I implementation

As a result of the Anti-Tax Avoidance Directive (hereinafter: "ATAD") as agreed upon by the EU in 2016, the Netherlands has implemented so-called controlled foreign company (hereinafter: "CFC") rules as of 1 January 2019.

Based on the Dutch CFC legislation, undistributed "tainted" (passive) income (including but not limited to dividend, interest and royalty income) derived from CFC subsidiaries that are tax resident in certain low-tax jurisdictions, should annually be included in the taxable basis of the Dutch taxpayer.

A foreign company will, in general, qualify as a CFC if:

- A Dutch taxpayer has an interest (direct or indirect) of more than 50% in the foreign company; and
- The foreign company is located in a designated jurisdiction with a statutory tax rate of less than 9%, or in a designated jurisdiction mentioned on the EU blacklist. The Dutch State Secretary of Finance has recently issued a list of jurisdictions that have a statutory tax rate of less than 9%. The Dutch as well as the EU blacklist are updated annually.

2. ATAD 3

ATAD 3 aims to combat the abuse of investment structures that do not carry out actual economic activities, known as shell companies.

The Proposed Directive introduces in short reporting obligations for EU tax resident entities having mainly passive income and outsourcing certain operations functions, establishes minimum substance requirements for these entities, and imposes sanctions, in particular denial of tax benefits under tax treaties and EU Tax Directives, on entities not meeting these requirements.

The European Parliament approved the ATAD 3 directive for preventing the misuse of shell entities (the "Unshell Directive") on 17 January 2023. ATAD 3 is now proposed to be in power as of 1 January 2024 but with retroactive power to 1 January 2022.

The ATAD 3 reporting obligations may only allow tax advantages to EU entities with substance. A qualification of no or minimum substance may lead to the rejection of Tax Treaty benefits, removing access to EU directives, and re-allocating taxing rights.

Should your entity meet the following cumulative "gateways" in the preceding two tax years, it will be considered an at-risk undertaking and subject to reporting obligations.

- 65% of the revenues should be relevant income (such as dividends, rents, royalties, and interest).
- The entity is engaged in cross-border activity on any of the following grounds.
    - More than 55 % of the entity's relevant income is earned or paid out via cross-border transactions; or
    - More than 55 % of the book value of the entity's relevant assets was located outside the Member State of the undertaking.
    - The entity outsourced the administration of day-to-day operations and the decision-making on significant functions to a third party.

If your entity is at risk, you can request an exemption from the reporting obligation if you can prove that it does not reduce the tax liability of its beneficial owner(s) or its group.

Entities crossing all gateways will have to report information in their annual tax return concerning "substance indicators," namely, whether an undertaking has:

1. Its premises are for its exclusive use or shared with group entities in the relevant Member State.
2. An active bank account or e-money account in the EU.
3. One or more of the entity's directors must be locally resident and authorized to take decisions concerning the activities that generate relevant income for the entity, and/or a majority of the entity's full-time equivalent employees must be residents and qualified to carry out the activities that generate relevant income for the entity. For ATAD 3, a resident means a resident for tax purposes in the Member State of the entity or at no greater distance from that Member State insofar as such a distance is compatible with the proper performance of the director's/employee's duties.

In the case of an at-risk entity, and if it fails at least one of the above substance indicators, it must supply specific documentary evidence with its tax returns. This includes, for example, the type of business activities performed to generate the relevant income and details of the outsourced business activities.

Also, it's required to provide an overview of the entity's structure (including associated enterprises) and any significant outsourcing arrangements, including the rationale behind the structure.

A summary report of the documentary evidence submitted, containing a brief description of the nature of the entity's activities, the number of employees on a full-time equivalent basis and the amount of profit or loss before and after taxes.

III. Conclusion

The Tax Legislation of the Netherlands creates a unique environment for Holding Companies. It has numerous advantages making the Netherlands a prime holding location in the international field of holding regimes. In effect,

- the ability to receive dividends on low or zero withholding tax rate;
- the non-taxation of dividends received under the circumstances mentioned above;
- the non-taxation of profits from the sale of shares / titles;
- the tax-free distribution of dividends to its qualifying shareholders.

Poland

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I. Introduction

Holding Companies are set up as vehicles to hold investments in subsidiaries or associate companies. Their primary income derived from their holding activities is dividend income and profits from the disposal of their investments, mainly shares.

II. The Polish Tax Regime for Holding Companies

In general, Polish corporate entities are subject to 19% income tax, while in certain cases a reduced 9% rate can be applied (in the case of smaller enterprises).

Specific regulations provide for a number of extraordinary regimes (such as IP box regime, where application of 5% income tax is possible) or various reliefs, although there are few of such special regimes or reliefs that may be applied to holding activities specifically.

All revenue and related expenses generated by Polish corporate entities are allocated into one of two baskets: 'income from primary operations' and 'capital profits'.

Any income (or loss) from each of these baskets is disclosed separately. This means especially that any loss allocated to one basket (e.g., capital gains) must not be used to reduce taxable income allocated to the other.

A. Taxation of Holding Companies in Poland

1. Incoming Dividends

In general, all incoming dividends paid to Polish Holding Companies are subject to Polish 19% income tax – the reduced 9% rate never applies to capital profits. However, Polish tax regulations provide for a possibility to exempt dividends paid to Polish Holding Companies from tax or to apply a reduced income tax rate through the application of the European Union Parent-Subsidiary Directive, as regards subsidiaries from other European Union or European Economic Area Member States, and Switzerland.

According to Polish regulations, the main conditions that must be complied with in order to apply the exemption on incoming dividends are that the subsidiary must be a tax resident of a European Union or European Economic Area Member State or Switzerland, and the parent Holding Company's shareholding must amount to at least 10% (25% in case of a Swiss subsidiary).

The shareholding must be held for at least two years (or there must be an intention to hold the shares for at least two years). Importantly, Poland has introduced additional anti-avoidance provisions to prevent the abuse and fraudulent use of the benefits of the directive, which means that in each case where the exemption is intended to by applied those anti-avoidance provisions must be considered.

2. Tax Credit Scheme

Any foreign income tax levied on dividends incoming to Polish share Holding Companies from foreign subsidiaries may be credited against local income tax. This means that a Polish Holding Company may deduct from its dividend income tax a portion of tax withheld on such dividend in the country of the subsidiary's seat. The tax may be deducted in a proportion relative to the parent's foreign income.

In addition, if a Polish Holding Company has at least a 75% shareholding in a non-EU/EEA/Swiss subsidiary, in addition to the 'standard' tax credit, the Holding Company may also apply the underlying tax credit scheme, which means that corporate income tax paid by the subsidiary on its taxable income in the country of its seat may be deducted from the parent's income tax on incoming dividends.

Underlying credit scheme can be applied only where there is a tax treaty in place between Poland and the country of the subsidiary's seat. In this case, a certificate of the subsidiary's tax residence must be obtained.

3. Outgoing Dividends

Similarly, as in the case of incoming dividends, outgoing dividends from Polish subsidiaries to foreign parents are generally subject to 19% income tax (taxation at source).

However, Polish tax regulations provide for a number of mechanisms that effectively enable a significant tax rate reduction or total exemption of such dividends from withholding tax in Poland. These mechanisms include:

- the application of the European Union Parent-Subsidiary Directive with regard to parents from other European Union and European Economic Area Member States and Switzerland;
- an extensive number of Double Tax Treaties that provide for tax exemption or for significantly reduced income tax rates applicable to outgoing dividends.

3.1 Relief under the European Commission Parent-Subsidiary Directive

The Parent-Subsidiary Directive provides for the abolition of withholding taxes on dividends paid by a subsidiary to a parent company that is a resident of any European Union Member State.

According to Polish regulations, the main conditions that must be complied with for the Directive to apply, similarly as in the case of incoming dividends, are that the parent must be a tax resident of a European Union or European Economic Area Member State or Switzerland, and must have a shareholding of at least 10% (25% in case of a Swiss parent) in the subsidiary for at least two years (or must intend to hold the shares for at least two years). As in the case of incoming dividends, the anti-abuse regulations must be considered.

3.2 Double Tax Treaties

By default, any dividends paid by Polish subsidiaries to foreign parent companies are subject to 19% withholding tax in Poland. However, aside from the above-mentioned Parent-Subsidiary Directive exemption, Double Tax Treaties signed by Poland enable full exemption from tax or application of a reduced income tax rate.

If a relevant Double Tax Treaty provides so, dividends are exempt from income tax in Poland, or – depending on the wording of the relevant treaty – a reduced income tax rate can be applied, which in any case may not be larger than 15%, compared to the default local 19%.

Application of withholding tax treaty exemption or treaty income tax rate in each case requires the Polish subsidiary to obtain a certificate of tax residence of the dividend beneficiary (foreign Holding Company).

4. Capital Gains Tax on the Sale of Shares

Polish tax regulations do not provide for a specific capital gains tax, although as mentioned before all corporate revenue and costs are allocated into one of two baskets, where one of those baskets is called ‘capital profits’ (the other basket is ‘income from primary operations). All income from sale of shares is allocated into the capital profits basket, and such income is subject to 19% Polish income tax.

By default, any sale of shares by Polish Holding Companies is subject to local 19% income tax in Poland, although this may be modified by applicable Double Tax Treaties or other special tax regimes, such as the Polish Holding Company regime (discussed below).

5. Special Tax Regimes – Polish Holding Company

Polish Holding Company Regime is a relatively new regime which – under the below mentioned conditions – enables Holding Companies to have its dividend income exempt from income tax. Additionally, income from sales of shareholdings to unrelated parties may enjoy full tax exemption as well.

Importantly, the exemptions may be applied not only to dividends or income from sales of shareholdings in Polish or EU/EEA subsidiaries – they may also apply in the case of third-country subsidiaries. The conditions for the regime to apply are that the parent’s shareholding must be of at least 10%, the parent must not enjoy general tax exemptions, and that it must carry out substantive economic activity.

Additionally, shares in the parent must not be owned by entities seated in tax havens. The same conditions apply to subsidiaries, while in the case of foreign subsidiaries they must not be seated, nor their management exercised, in tax havens or in countries that have not signed Double Tax Treaties with Poland. These conditions must be complied with for a minimum of two years as of the day before the day on which the dividends are received or the shareholding is sold.

6. Additional Tax Considerations

6.1 Capital duty

Capital contributions to subsidiaries are subject to capital duty (0.5% of the contribution), although provided that such contributions increase the amount of subsidiary’s share capital. Share premium is not subject to capital duty.

6.2 ATAD implementation

Poland has implemented the EU Anti-Tax-Avoidance Directive (ATAD) which basically aims at preventing multinational companies sheltering their profits in low or no tax jurisdictions. The impact of the implementation of the Directive for Polish Holding Companies is mainly associated with the notion of a Controlled Foreign Corporation (CFC), which is an overseas permanent establishment or a company that is either directly or indirectly controlled by a Polish tax resident company, and the corporate income tax burden of which is less than 75% of what it would be under the Polish tax system i.e., less than 14.25%.

Polish Holding Companies must examine whether any of their subsidiaries are CFCs and – if so – comply with the relevant tax obligations.

III. Conclusion

Polish tax legislation, although generally rather strict in terms of taxation of Holding Companies, does provide for a number of measures that enable a more convenient taxation of Holding Companies, or in some cases even full tax exemption. In recent years there has been a trending move of the legislator to make the Polish tax landscape more friendly to Holding Companies. However, despite these efforts, the complexity of conditions that must be complied with in order to apply the implemented preferences may often prove troublesome.

In effect, Poland offers the following, provided that relevant conditions are complied with:

- a possibility to receive dividends at zero local tax rate;
- a possibility to pay dividends at low, or zero withholding tax rate;
- full exemption of dividends and income from sales of shareholding in subsidiaries under the Polish Holding Company regime.

Portugal

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I. Introduction

Portuguese Holding Companies traditionally are set up as vehicles to hold investments in subsidiaries or associate companies. Their primary income derived from their holding activities is dividend income and profits from the disposal of their investments, mainly shares.

II. The Portuguese Tax Regime for Holding Companies

A. Incoming Dividends – Withholding Tax in Foreign Jurisdiction

Resident companies in Portugal are taxed on their worldwide income, so in case that foreign-source dividends or capital gains derived from abroad are taxed in the source country as a consequence of local jurisdiction legal provisions, Portugal regulates certain measures in order to avoid the international double taxation, as follows:

- Double Tax Treaties (DTTs). Portugal has an extensive network of DTT signed both with countries outside the European Union or within European Union
- European Union Parent-Subsidiary Directive within European Union Member States
- Double tax relief

1. Double Tax Treaties

Portugal has signed an extensive number of DTT. With these Treaties double taxation is avoided on the same profits in respect of the same person or entity. DTT give relief only to legal persons or individuals who are tax residents in one or in both contracting states.

According to the Portugal Corporate Income Tax (CIT) Law, a company is considered to be a tax resident in Portugal when:

- It has a fixed place of business in Portugal through which the company carries out all or part of its activity
- It has a dependent agent in Portugal which acts on its behalf
- It has a building site or construction, installation or assembly lasting for more than 12 months

The tax residency issue must always be examined from the Law of the other contracting state or according to the Law of the place where the company has its operations.

DTTs usually provide that in case of dispute as to the residency of a legal person between contracting states or in case of dual residency where the legal person is considered as resident in both contracting states, then the residency of the legal person is determined to be there where the effective management is exercised.

2. Relief under the European Commission Parent-Subsidiary Directive

The Parent-Subsidiary Directive provides for the abolition of withholding taxes on dividends paid by a subsidiary to a parent company being resident of any Member State.

The main conditions that need to be met for the Directive to apply are:

- The entity paying the dividends is resident in Portuguese territory, subject and not exempt from CIT and is not covered by the tax transparency regime
- The entity receiving the income:
  - Is resident in another Member State of the European Union, a Member State of the European Economic Area (EEA) which is bound to administrative cooperation in the area of taxation equivalent to that established within the European Union or a State with which a DTT providing for the exchange of information has been concluded and is in force
  - Is subject and not exempt from a tax referred to in article 2 of Directive no. 2011/96/EU, of the Council, of 30 November, or from a tax of identical or similar nature to CIT
  - Holds, directly or indirectly, a holding of not less than 10% of the share capital or voting rights of the entity distributing the profits or reserves, in an uninterrupted manner, during the year prior to the disposal

3. Unilateral Tax Credit Relief

Even if the DTT or the Parent-Subsidiary relief are not providing sufficient protection or if their criteria are not met for their implementation, if a Portuguese entity is subject to taxation in a foreign jurisdiction, Portuguese CIT foresees the possibility to apply a foreign tax credit if certain conditions are met:

- The Portuguese entity holds, directly or indirectly, a holding of not less than 10% of the share capital or voting rights
- Provided that such holding has remained in its ownership, uninterruptedly, during the year prior to the distribution or is maintained for the time necessary to complete that period

The tax credit is limited to the lower of two values:

- CIT paid abroad by the entity resident outside Portuguese territory and by entities directly and indirectly held by it, corresponding to the profits and reserves distributed to the Portuguese entity
- CIT that would be due in Portugal according to the Portuguese CIT Code

B. Dividend Income Received in Portugal – Portuguese Taxation

According to Portuguese Tax legislation resident entities are subject to CIT on worldwide profits.

Nonresident entities that operate in Portugal through a Permanent Establishment (PE) are subject to CIT on the profits attributable to the PE and nonresident entities without a PE in Portugal are subject to CIT on income deemed to be obtained in Portugal.

As per Portuguese rules, dividends paid by companies to residents and nonresidents are generally subject to withholding tax at a rate of 25% but may benefit from the participation exemption regime if applicable.

Accordingly, a resident company subject to CIT may deduct 100% of dividends received from another resident company if all of the following conditions apply:

- The entity receiving the income owns directly or directly and indirectly at least 10% of the capital or voting rights of the payer
- The entity receiving the income holds the interest described above for an uninterrupted period of at least one year that includes the date of distribution of the dividends, or it makes a commitment to hold the interest until the one-year holding period is complete
- The entity paying the dividends is a Portuguese resident company that is also subject to, and not exempt from, CIT or Game Tax (tax imposed on income from gambling derived by entities such as casinos)

A 100% dividends-received deduction is granted for dividends paid by entities from EU member countries to Portuguese entities (or Portuguese PEs of EU entities) if the above conditions are satisfied and if both the payer and recipient of the dividends qualify under the EU Parent-Subsidiary Directive. The same regime is also available for dividends received from EEA subsidiaries. The participation exemption regime also applies to dividends from subsidiaries in other countries, except tax havens, if the subsidiary is subject to CIT at a rate not lower than 60% of the standard CIT rate (this requirement can be waived in certain situations).

C. Outgoing Dividends

1. Non-Portuguese Resident Shareholders (holding the shares either directly or through nominees)

Dividends payable by a Portuguese resident company to its foreign shareholders (whether a company or individual) is generally subject to a final withholding tax levied on the gross amount.

Non-residents are subject to a 25% withholding tax, unless a lower rate applies under a tax treaty, or the dividends qualify for an exemption under the EU Parent-Subsidiary Directive.

2. Portuguese Resident Shareholders

In case of Portuguese individuals obtaining dividends from a Portuguese entity a final withholding tax of 28% will apply.

With regards to Portuguese entities, no withholding tax would apply on the payment of the dividends, as long as the entity receiving the dividends meets all the requirements foreseen in Portuguese CIT Law for the application of the participation exemption regime.

D. Capital Gains Tax on the Sale of Shares (Titles)

A full participation exemption regime is available for capital gains and losses on shareholdings held for at least 12 months if the remaining conditions for the dividends participation exemption regime are met.

The regime does not apply if the main assets of the company that issued the shares being transferred are composed, directly or indirectly, of Portuguese real estate (except real estate allocated to an agricultural, industrial or commercial activity [other than real estate trading activities]). This applies to gains and losses from onerous transfers of shares and other equity instruments (namely, supplementary contributions), capital reductions, restructuring transactions and liquidations.

Losses from the onerous transfer of shareholdings in tax-haven entities are not allowed as deductions.

Losses resulting from shares and equity instruments are not deductible in the portion corresponding to the amount of dividends and capital gains that were excluded from tax during the previous four years under the participation regime or the underlying foreign tax credit relief.

The proceeds of liquidation are treated as capital gains or losses. The losses from the liquidation of subsidiaries are deductible only if the shares have been held for at least four years.

If within the four-year period after the liquidation of the subsidiary, its activity is transferred so that it is carried out by a shareholder or a related party, 115% of any loss deducted by the shareholder on liquidation of the subsidiary is added back.

Nonresident companies that do not have a head office, effective management control or a PE in Portugal are subject to CIT on capital gains derived from sales of corporate participations, securities and financial instruments if any of the following apply:

- More than 25% of the nonresident entities is held, directly or indirectly, by resident entities (unless the seller is resident in an EU, EEA or double tax treaty jurisdiction and certain requirements are met)
- The nonresident entities are resident in territories listed on a prohibited list contained in a Ministerial Order issued by the Finance Minister
- The capital gains arise from the transfer of shares held in a Portuguese property company in which more than 50% of the assets comprise Portuguese real estate or in a Holding Company that controls such a company

Nonresident entities are also subject to CIT on capital gains derived from the transfer of shares and other rights in a foreign entity if, at any moment during the previous 365 days, more than 50% of the respective value of the shares derived, directly or indirectly, from Portuguese real estate (except real estate allocated to an agricultural, industrial or commercial activity [other than real estate trading activities]).

Nonresident companies that do not have a head office, effective management control or a PE in Portugal are taxed at a 25% rate on taxable capital gains derived from disposals of real estate, shares and other securities. For this purpose, nonresident entities must file a tax return. A tax treaty may override this taxation.

E. Additional Tax Considerations of the Portuguese Holding Company

1. Stamp duty and Real Estate Transfer Tax (RETT) on capital contributions

Portuguese stamp duty and RETT will be levied only on capital contributions that involve transfers of immovable property. In such case, stamp duty and RETT would need to be paid by the acquirer.

As a general rule, the stamp duty rate on the transfers of immovable property is 0.8% and the RETT rate is 6.5%.

2. ATAD implementation

Portugal implemented the EU Anti-Tax-Avoidance Directive (ATAD), which basically aims at preventing multinational companies sheltering their profits in low or no tax jurisdictions.

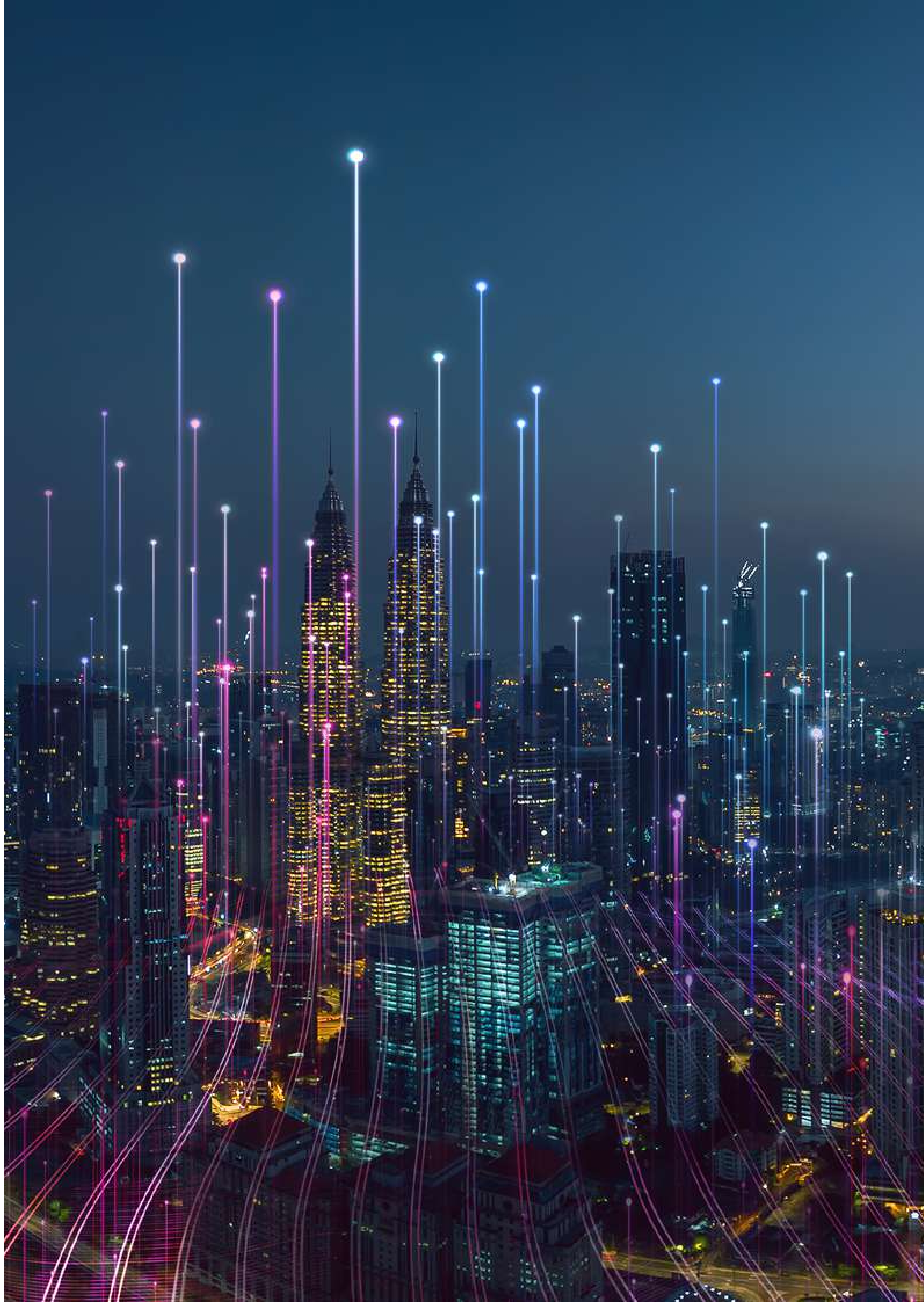
All the measures in ATAD 1 and almost all the measures in ATAD 2 were already reflected in Portuguese tax legislation.

Although these measures are already fully or partially reflected in Portuguese tax law, some adaptations have been made in order to broaden the scope of these rules and facilitate their application.

III. Conclusion

The tax advantages of a Holding Company in Portugal are competitive compared to other countries in Europe.

Due to the application of the EU Directives and the wide net of the DTTs signed by Portugal, the election of Portugal as the country where setting up a Holding entity is particularly convenient for those companies that intend to set up subsidiaries in EU and EEA.



Romania

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I. Introduction

The Romanian taxpayer-favourable participation exemption regime, enforced starting 2014 for Romanian companies that hold shares in other domestic entities or in legal entities located in countries with which Romania has a double taxation treaty, is a viable option for local and regional businesses to create tax-efficient corporate structures.

This Holding tax regime, coupled with the wide double taxation treaty network available and low administrative costs, aims to grant access to Romania among the European jurisdictions with a long tradition in this area.

II. The romanian Tax Regime for Holding Companies

A. Incoming Dividends – Withholding Tax in Foreign Jurisdiction

Romania satisfies the ability to extract dividends from its subsidiaries at a zero or low tax rates with:

- The Parent-Subsidiary Directive within EU Member States;
- The extensive number of Double Tax Treaties that Romania has signed. Double Tax Treaties have applicability both to countries outside the European Union or within European Union. In those European Union countries, in which the Parent-Subsidiary Directive for various reasons is not applicable, then the relevant Double Tax Treaty, if one exists, will apply;
- The application of the tax credit relief.

1. Relief under the Parent-Subsidiary Directive

Based on the Romanian implementation of the EU Parent-Subsidiary Directive, dividend revenues are exempted from tax, provided the there is a Holding of minimum 10% between the Holding Company and the operating company paying such revenues, for a minimum period of 1 year. Both the Holding Company and the operating company must be residents in the EU.

2. Double Tax Treaties

Provided the provisions of the EU Parent-Subsidiary Directive cannot be applied, dividend revenues may still benefit from a lower taxation as compared to the domestic legislation, by applying the provisions of a Double Tax Treaty concluded between the country where the Holding Company is resident and the country where the operating company performing the payments is resident.

Romania concluded more than 100 Double Tax Treaties with other EU member states or third states. Double Tax Treaties give relief only to companies/individuals being tax residents in one or in both contracting states. The Romanian tax legislation contains specific provisions that establish the tax residency of foreign companies based on the place of effective management.

The place of effective management is defined as the place where, unless proven otherwise, the foreign company carries out operations that correspond to economic, real and substantial purposes and where at least one of the following conditions is met:

- the economic-strategic decisions necessary for managing the activity of the foreign company as a whole are taken in Romania by the executive directors/members of the board of directors; and/or
- at least 50% of the executive directors/board members of the foreign company are Romanian residents.

If the conditions regarding the place of effective management are met, the foreign company is considered resident in Romania and therefore must keep the accounting records in Romania, respectively prepare the financial statements according to the accounting legislation in Romania, as well as register as corporate income taxpayer in Romania.

Double Tax Treaties usually provide that in case of dispute regarding the residency of a company between contracting states or in case of dual residency where the company is considered resident in both contracting states, then the residency of such company is determined to be there where the effective management is exercised.

3. Tax Credit Relief

Even if the Double Tax Treaty or the relief under the Parent-Subsidiary Directive are not providing sufficient protection or if their criteria are not met for their implementation, the Romanian tax legislation provides that in case a revenue is subject to tax both in Romania and in the source state, then the Romanian taxpayer obtaining such revenue can benefit from a tax credit based on the provisions of the Double Tax Treaty, by diminishing the tax due in Romania, with the tax paid in the source state, up to the tax due in Romania.

Tax credits for taxes paid to a foreign state may be obtained in Romania only if the Double Tax Treaty concluded between Romania and the foreign state applies and only if proper documentation confirming the tax was paid is available.

B. Dividend Income Received in Romania – Taxation in Romania

Dividends received by a Romanian company from another resident company are not subject to corporate income tax.

Going further, dividends received by a Romanian company from a non-resident entity can be also exempt from corporate income tax, provided that the participation exemption applies (i.e. there is a holding of minimum 10% between the Holding Company and the operating company paying such dividends, for a minimum period of 1 year).

C. Outgoing Dividends

1. Romanian Resident Shareholders

Dividends paid by a Romanian company to another resident company are subject to 8% dividend tax, unless the participation exemption applies, case in which no tax will be due, provided there is a holding of minimum 10% for a minimum period of 1 year.

2. Non-Resident Shareholders

Dividends paid by a Romanian company to a non-resident entity are subject to 8% withholding tax in Romania, however such tax can be reduced following the application of a Double Tax Treaty/participation exemption (a minimum 10% holding for an uninterrupted period of at least one year is required).

From a documentary perspective, in order to apply the provisions of the participation exemption, the beneficiary of the income must present to the payer of the income i) a tax residency certificate valid in the year the payments are performed and (ii) an affidavit stating its quality as beneficial owner of the revenues.

In order to apply the provisions of a Double Tax Treaty, the beneficiary of the income must present to the payer of the income a tax residency certificate valid in the year the payments are performed.

D. Capital Gains Tax on the Sale of Shares (Titles)

In general, Romanian corporate income tax of 16% is due on the capital gains on the sale of shares. However, based on the participation exemption regime, capital gains derived from a subsidiary can be exempt from Romanian corporate income tax, provided that the recipient holds at least 10% of the subsidiary's share capital for an uninterrupted period of at least one year.

Also, in case of capital gains obtained by a non-resident company following the sale of shares held in a Romanian company, the participation exemption can only apply provided the non-resident is an EU company.

In the event that exemption conditions are not fulfilled at the moment of the sale, the provisions of the Double Tax Treaty concluded between Romania and the parent entity's country of residence should be consulted to verify which jurisdiction is allocated the taxation rights.

E. Additional Tax Considerations of the Romania Holding Company – ATAD 1 Implementation

Romania has implemented the controlled foreign companies (CFC rules") as per Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market ("ATAD Directive") starting with 1st of January 2018.

According to the CFC rules, Romanian Holding Companies may be allocated income derived by their non-resident subsidiaries/permanent establishments, if located in low tax jurisdictions (i.e. other than members of the European Economic Area).

Thus, as per the Romanian tax legislation, a CFC is an entity or PE that meets the following criteria:

- At least 50% of the foreign company's capital is held directly or indirectly by a Romanian legal entity or the Romanian entity has the right to receive at least 50% of the foreign company's profits; and

- The corporate income tax effectively paid by the foreign entity is less than the difference between the corporate income tax that would have been imposed under Romanian tax rules and the corporate income tax effectively paid.

Moreover, revenues that could be allocated to the Romanian controlling entity are represented by passive revenue such as income from interest, royalties, dividends, income from the disposal of shares, finance lease income, income from insurance activities, income from banking activities.

III. Conclusion

The Romanian tax legislation creates a favorable environment for Holding Companies. It has advantages making Romania a good holding location in the international field of holding regimes.

Spain

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I. Introduction

Spanish Holding Companies have traditionally been set up as a vehicle to hold investments in subsidiaries or associate companies.

Their main income consists in dividend income and profits arising from the disposal of their investments, mainly shares.

II. The Spanish Tax Regime for Holding Companies

A. Incoming Dividends – Withholding Tax in Foreign Jurisdiction

Resident companies in Spain are taxed on their worldwide income, so in case that foreign-source dividends or capital gains derived from abroad are taxed in the source country as a consequence of local jurisdiction legal provisions, Spain regulates certain measures in order to avoid the international double taxation, as follows:

- Double Tax Treaties (hereinafter, DTTs). Spain has an extensive network of DTT signed both with countries outside the European Union or within European Union. In those European Union countries in which the European Commission Parent-Subsidiary Directive for various reasons is not applicable, then the relevant Double Tax Treaty, if one exists, will applicable.
- European Union Parent-Subsidiary Directive within European Union Member States.
- Double tax relief.

1. Double Tax Treaties

Spain has signed an extensive number of DTTs aiming to avoid double taxation on the same profits with regards of the same person or entity.

DTTs give relief only to legal persons or individuals who are tax residents in one or in both contracting states.

According to the Spanish CIT Law, a company is considered to be a tax resident of Spain when:

- it has been incorporated under Spanish Law
- its registered office is in Spain
- its effective head office is in Spain. This happens when its business activities are managed and controlled from Spain

Tax residency must always be analysed from the perspective of the other contracting state or according to the Law of the place where the company develops its business.

DTTs usually provide that in case of dispute as to the residency of a legal person between contracting states or in case of dual residency where the legal person is considered as resident in both contracting states, then the residency of the legal person is determined to be there where the effective management is exercised (Tie-break rules). However, this should be reviewed for each case.

2. Relief under the European Parent-Subsidiary Directive

The Parent-Subsidiary Directive provides for the abolition of withholding taxes on dividends paid by a subsidiary to a parent company being resident of any Member State.

Since Spain has implemented the Parent-Subsidiary Directive, it will be key that the country of source has also implemented the EU Parent-Subsidiary Directive in order to gain the tax exemption at source through this path.

3. Unilateral Foreign Tax Credit Relief

To the extent that income received by a Spanish entity is subject to taxation in a foreign jurisdiction, Spain CIT foresees the possibility to apply a foreign tax credit if certain conditions are met:

1. Proof of effective payment of the withholding tax in the other State. The taxpayer is required to prove payment of the tax paid abroad. According to various case-law, this is to be understood as the tax effectively paid and therefore, only payment as a means of extinguishing the

tax liability and no other mechanisms should be considered.
2. The withholding tax to be applied should comply with the applicable Double Taxation treaty (DTT). According to Spanish CIT Law, only the withholding in the source State that is legally applicable in accordance with the DTT signed with the corresponding State may benefit from the deduction.
3. Tax credit limit.Foreign-source income taxed in more than one jurisdiction may benefit from a tax relief of the lower of the following amounts:
    - The tax effectively paid in the other State, or
    - The amount of the CIT that the company would have paid if such gross income had been obtained in Spain.

B. Dividend Income Received in Spain – Spanish Taxation. Partial exemption.

According to Spanish Tax legislation, Spanish resident companies are taxed on their worldwide income whereas non-resident companies with no permanent establishment (PE) in Spain are taxed only on Spanish-source income, subject to the provisions of an applicable tax treaty.

As per Spanish rules, income dividends are subject to Corporate Income T at a general tax rate of 25%, but may benefit from the Participation exemption regime if applicable.
Until January 1st, 2021, Spanish Holding entities could benefit from a full participation exemption (hereinafter "PE") regime. However, from January 1st onwards, the enforcement of the tax measures foreseen in the national budget for FY 2021 increased the tax burden on certain income received by Spanish Holding entities arising from substantial shareholdings in local and foreign entities.

Currently, the participation exemption regime allows that dividend income received by a Spanish company from a Spanish or foreign company benefits from a 95% exemption (5% of the dividends are subject to tax at the standard corporate income tax rate 25%, resulting in an effective tax rate of 1,25%) when the following requirements are met:
- The Spanish company owns an interest of at least 5% of the share capital in the company for at least one year before the dividend is collected or is held thereafter for the time necessary to complete this period.
- In case of foreign companies, the subsidiary must be subject to a tax similar to the Spanish Corporate Income Tax with a nominal tax rate of at least 10 %, or be resident in a country with tax treaty (DTT) with Spain.
- This exemption will not apply when the subsidiary is resident in a territory qualified as a tax heaven, unless it is resident in an EU member state and the company proves that its business is linked to valid economic reasons and that it carries out economic activities.
- The tax exemption does not apply for dividends whose distribution generates a tax-deductible expense in the company paying such dividends.

This regime will have certain special conditions in certain cases of Tax-Free Reorganisations.

Out of the situations foreseen by CIT Law, any other income will be taxed at the general rate of 25%. In case of newly incorporated operating companies developing a business activity, it may be possible to apply a 15% reduced rate during first tax period and the following one under certain requirements.

C. Outgoing Dividends

1. Non- Spanish Resident Shareholders (holding the shares either directly or through nominees)

Dividends payable by a Spanish resident company to its foreign shareholders (whether a company or individual) is generally subject to a final withholding tax levied on the gross amount.

Non-residents are subject to a 19% withholding tax, unless a lower rate applies under a tax treaty, or the dividends qualify for an exemption under the EU Parent-Subsidiary Directive.

2. Spanish tax resident shareholders

In case of Spanish individuals obtaining dividends from a Spanish entity a withholding tax of 19% will apply.

When submitting personal Income Tax return, the individual may apply this 19% as a tax credit against his final tax liability.

Saving taxable income is subject to taxation according to the following rates:
- 19% for the first euro 6.000
- 21% for the following euro 6.000 to euro 50.000
- 23% for the following euro 50.00 to euro 200.000
- 27% for the following euro 200.000 to euro 300.000
- 28% for any amounts over euro 300.000

With regards to Spanish entities, no withholding tax would apply on the payment of the dividends, as long as the entity receiving the dividends meets all the requirements foreseen in Spanish CIT Law for the application of the participation exemption regime.

D. Capital Gains Tax on the Sale of Shares (Titles)

Capital gains are generally treated as ordinary income subject to the general rate (25%). A partial tax exemption is available for capital gains derived from the transfers of shares if certain requirements are met, mainly the requirements previously appointed for the participation exemption regime.

Except in certain cases, where special rules apply, gains on the transfer of an ownership interest in an entity, as well as gains arising on its liquidation, the exit of a shareholder, a merger, a full or partial spin-off, a capital reduction, non-monetary contribution or the global transfer of assets and liabilities, are partially tax exempt provided they meet the exemption requirements for dividends or shares in the profits of entities, particularly:
- The Spanish company has at least 5% in the company that has been held for at least one year.
- In case of foreign companies, the subsidiary must be subject to a tax similar to the Spanish Corporate Income Tax with a nominal tax rate of at least 10 %, or be resident in a country with tax treaty (DTT) with Spain.
- This exemption will not apply when the subsidiary is resident in a territory qualified as a tax heaven, unless it is resident in an EU member state and the company proves that its operation is linked to valid economic reasons and that it carries out economic activities.

This exemption does not apply in the following cases:
- Income from the transfer of a shares in an entity considered as an equity entity and that does not correspond to an increase in undistributed profits generated by the investee during the holding of the shareholding.
- Income from the transfer of the participation in Economic Interest Groups, and which does not correspond to an increase in undistributed profits generated by the investee during the holding of the participation.
- Entity subject to the international tax transparency regime

Generally speaking, capital gains received by non-resident entities without a permanent establishment are taxed at the rate of 19%, unless a lower rate applies following applicable tax treaty provisions. Additionally, capital losses arising from the transfer of shares will not be included in the Spanish CIT taxable income (i) when at least a 5% interest is owned in the company and this has been held for at least one year and (ii) in case of foreign companies do not comply with the so-called 'subject-to-tax' requirement (i.e. the non-Spanish resident entity must be subject to a CIT similar to the Spanish CIT at a minimum 10 percent rate). This requirement will be met when the subsidiary is resident in a country which Spain has signed a Double Tax Treaty which contains an information exchange clause.

E. Special Holding regime- ETVE

Spanish ETVE´s are entities whose corporate purpose includes the management and administration of securities representing the equity of non-resident entities in Spanish territory, by means of the corresponding organization of material and personal resources.

In general terms, in addition to the application of the Participation Exemption Regime, the distribution of exempted income (PEX regime) from non-resident subsidiaries by the Spanish ETVE will not qualify as a Spanish sourced income when the recipient is an entity or an individual non-resident in Spanish territory without a permanent establishment. No Withholding Tax would accrue in this event.

F. Additional Tax Considerations of the Spanish Holding Company

1. Indirect tax on capital contributions.

In general terms Capital duty tax rate applied to corporate transactions is 1%. However capital increases and contributions made by shareholders are exempt from Spanish Capital duty tax.

2. ATAD implementation

Spain implemented the EU Anti-Tax-Avoidance Directive (ATAD), which basically aims at preventing multinational companies sheltering their profits in low or no tax jurisdictions.

Despite the Spanish legislation was very similar to ATAD, recently some amendments to Company Income Tax have been implemented on the prevention and fight against tax fraud. Specifically, Law 11/2021 implemented two new aspects of ATAD related to "Controlled Foreign Company (CFC) regime" and Exit tax guarantees that should be considered when investing in Spain.

III. Conclusion

Despite the changes operated since FY 2021 which shaded the previous full participation exemption regime for dividends and capital gains, the tax advantages of a Holding Company in Spain are Still competitive compared to other countries in Europe.

Due to the application of the EU Directives and the wide net of the tax treaties signed by Spain, the election of Spain as the country where setting up a Holding entity is particularly convenient for those companies that intend to set up subsidiaries in EU and Latin American countries.

Switzerland

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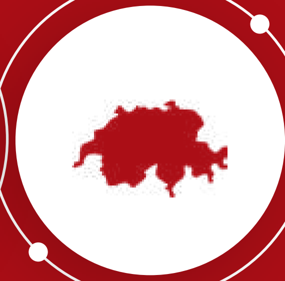

I. Introduction

Switzerland is composed by 26 sovereign cantons and more than 2'100 municipalities. Under tax perspective, other than the Federal Tax Law, each canton has its own tax law and the right to levy corporate income tax and capital tax at cantonal and municipal level. At federal level there is no tax on capital. The tax burden varies then from canton to canton and from municipality to municipality. As a general rule the tax rate on profit before taxes is between 11.9% and 21%.

The Federal Law on the Harmonization of the direct taxes determines the direct taxes to be levied by the cantons and lays down the determining principles for their regulation in cantonal legislation.

This law also applies to municipalities insofar as cantonal law grants them tax sovereignty for cantonal taxes as described in the law. The cantons retain the freedom to determine their tax rates.

The "holding" company is a legal entity set up with the main purpose to purchase or incorporate other companies, in Switzerland or abroad. Under Swiss perspective Swiss corporate law does not provide specific legal framework, excepted from few statutory provisions.

The Holding Company assumes one of the legal form accepted in Switzerland, mainly as a Limited company (Ltd – AG in German, SA in French and in Italian) or a Limited Liability Company (LLC – GmbH in German, Sàrl in French, Sagl in Italian).

II. Taxation of Holding Companies in Switzerland

The Holding Companies are taxed as any other legal entity for federal, cantonal and municipal purposes.

1. Incoming Dividends

1.1 In general

In general, income from dividends paid to a Swiss company, either holding or not, is subject to Swiss ordinary taxes at federal, cantonal and municipal level.

1.2 Participation relief

However, dividends from qualifying participations benefit from a participation relief.

The taxable income is reduced in the proportion to the net income from participation and the total net profit if the company holds

- at least 10% of the share capital or
- at least 10% of the profits and reserves of the distributing company, or
- equity securities with a fair value of at least CHF 1 million

There is no minimum holding period.

Net income is calculated as gross income, less 5% administrative and financing costs and any depreciation of the participation. Based on this tax relief, the effective tax exemption usually arises between 90 and 95% of the net dividend.

2. Outgoing Dividends

2.1 In general

In general dividends paid by a Swiss company (either holding or not) is subject to 35% WHT.

However, such WHT may be reduced according to (i) the Agreement between Switzerland and EU on the automatic exchange of financial information to improve international tax compliance or to (ii) the Double Tax Treaties concluded by Switzerland with more than 100 between countries and territories.

2.2 Agreement between Switzerland and EU on the automatic exchange of financial information to improve international tax compliance

Technically this agreement is an amending protocol to the agreement between EU and Switzerland providing for measures equivalent to those laid down in EU council directive 2003/48/EC on taxation of saving income in the form of interest payments.

Payment of dividends by a Swiss company (either holding or not) to a company residing in one of the EU countries is reduced to zero if the below conditions are cumulatively met:

- the parent company has a direct minimum holding of 25 % of the capital of the Swiss company for at least two years, and
- one company is resident for tax purposes in a member state of EU and the other company is resident for tax purposes in Switzerland, and
- under any double tax agreements with any third States neither company is resident for tax purposes in that third State, and
- both companies are subject to corporation tax without being exempted and both adopt the form of a Limited company or a Limited Liability Company.

2.3 Double Tax Treaties (DTTs)

Dividends paid by a Swiss company (either holding or not) to a person residing abroad may be reduced according to DTTs concluded by Switzerland with the country of residence of this person. It is to note that some DTTs contains anti-abuse rules, even not necessarily following Action Plan 6 BEPS. Switzerland is currently negotiating bilaterally with many countries amendment of DTTs to include anti abuse rules following Action Plan 6 BEPS.

For EU countries, the parent company may choose to apply the agreement under paragraph 2.2. above or the DTT, what better it is. We recommend to analyze them case by case and in particular the anti-abuse rules, because may be different.

2.4 Refund or notification procedures

Relief is generally granted, if applicable, by refund. In principle, the claim of refund expires if the application is not filed within three years after expiry of the calendar year, in which the WHT has been levied.

Alternatively, the foreign parent company may apply to the notification procedure, which replaces the payment of Swiss WHT and further request of reimbursement. As of January 1, 2023, the notification procedure has been extended to shareholding of 10% or more (previously 20%) and for all legal entities holding a Swiss qualified participation.

Moreover, once granted, this authorization will be valid for a period of five years (previously three), renewable.

3. Capital Gain

Capital gain is calculated as the difference between the sale price and the booked investment costs. In general, it is subject to Swiss ordinary taxes at federal, cantonal and municipal level.

However, a participation relief is granted if the following conditions are cumulatively met:

- the participation was owned by the Swiss company for a period of at least one year and
- the participation was owned for at least 10% of the share capital or was entitled to at least 10% of the profits and reserves. If following the sale, the participation falls below 10%, the capital gain's relief following further sales is granted only if the residual market value of the participation amounted to at least CHF 1 million at the end of the year preceding the further sale

4. Additional considerations

4.1 Capital tax

Capital tax for legal entities is only due at cantonal and municipal levels. It is based on the equity. In general, for calculating the taxable equity it is taken into consideration the nominal capital, any share premium, any capital reserve, the retained earnings and any potential hidden equity following application of the Swiss thin capitalization rules. The tax rate varies from 0.001% to 0.5%.

In some cantons, the capital tax is set off against the income tax. The cantons may foresee in their tax law to reduce the equity taken into for the calculation of capital tax, insofar as it is linked to qualified participations, patents and other comparable rights, as well as intra-group loans.

4.2 Stamp duty

The stamp duty tax of 1% is levied on the issuance and increase of the nominal value of participation rights of a Swiss company or similar transactions. It is important to highlight that supplementary payments that shareholders or members make to the legal entities without a corresponding consideration and without an increase in the capital are equivalent to participation rights.

The first CHF 1 million of equity in exchange of ownership rights is exempt from this tax.

4.3 Controlled foreign company's rules

There are no controlled foreign company (CFC) rules. Anyway, the foreign company shall be managed abroad and not incorporated for avoiding Swiss taxes.

4.4 Thin capitalization rules

Thin capitalization rules only apply to related parties' debt. In case of thin capitalization, the part of the related party's debt exceeding the maximum allowed is treated as hidden capital and added, for tax purposes, to the equity subject to capital tax as described under paragraph 4.1. It must be emphasized that any interest calculated on the hidden capital is reclassified as a deem dividend, subject to 35% Swiss WHT.

4.5 Pillar Two

On June 18, 2023 the Swiss voters approved the constitutional amendment for introduction of a minimum taxation of 15% for internationally groups of companies that reach the threshold of 750 million euros turnover (known as Pillar Two). It is then expected implementation of this minimum taxation as of January 1, 2024.

V. Conclusion

Switzerland remains a competitive country for companies, thanks to a political and monetary stability, a strong bank system, an extensive number of DTTs , a favorable framework conditions, other than an attractive taxation in international comparison. Moreover, as of January 1, 2023, legal changes have also been introduced, such as the possibility of having the share capital not only in Swiss francs, but also in the company's main currency, of keeping the accounts in that currency, as well as certain facilitations in the company management.

United Kingdom

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I. Introduction

Holding Companies are set up as vehicles to hold investments in subsidiaries or associate companies. Their primary income derived from their holding activities is dividend income and profits from the disposal of their investments, mainly shares.

II. The UK Tax Regime for Holding Companies

A. Incoming Dividends – Withholding Tax in Foreign Jurisdiction

Corporation tax is imposed on United Kingdom (UK) companies on their worldwide income and gains, subject to an election to exempt profits attributable to a foreign permanent establishment of the UK resident company. Where dividend income received from a foreign jurisdiction is subject to withholding tax, the UK mitigates the potential double taxation as follows:

- The extensive number of Double Tax Treaties (DTT) that the UK has signed
- The application of the unilateral tax credit relief

1. Double Tax Treaties

The UK has an extensive DTT network aiming to avoid juridical double taxation on income and gains accruing to a UK resident person. DTTs give relief only to legal persons or individuals who are tax residents in one or in both contracting states.

Under the UK's domestic rules, a company is tax resident in the UK if it is:

- Incorporated in the UK; or
- Centrally managed and controlled in the UK

Where a UK resident company is also tax resident under the domestic law of the other contracting state, the tie-breaker clause in the DTT must be considered in order to determine the treaty residence of the company.

2. Unilateral Tax Credit Relief

Where the UK has no DTT with the Country imposing the withholding tax or relief is not available under the DTT and the DTT does not deny UK residents tax credit, the UK domestic law also provides unilateral relief for tax paid in these jurisdictions. The UK tax credit provided for foreign tax paid cannot exceed the UK tax payable on foreign income.

However, for unilateral relief to be granted the following conditions must be satisfied:

- a foreign tax must be paid and not just imposed; and
- the tax must be charged on income or chargeable gains and correspond to corporation tax.

B. Dividend Income Received in UK – UK Taxation (Dividend Exemption)

Companies other than small companies (see below) are fully exempt from corporation tax on dividends received, regardless of whether the distributing company is located in the UK or outside the UK, provided that:

- the dividend distribution falls within one of the five exempt classes described below
- the dividend is not taken out of an exempt class by anti-avoidance rules; and
- no tax deduction is allowed to a resident of a territory outside the UK in respect of the dividend. No minimum holding period applies

The classes of exempt dividends are:

I. dividend distributions received from a company (alone or jointly) controlled by the UK recipient in terms of powers or economic rights. A targeted anti-avoidance rule applies which is aimed at preventing schemes that seek to obtain the benefit of this exempt class without exposing profits to the CFC regime by manipulation of the ownership of a foreign company
II. dividend distributions in respect of non-redeemable ordinary shares. Certain types of foreign companies do not issue share capital; although this does not necessarily prevent these distributions being included in this class of exempt dividends, it is essential to consider the facts of each case separately. This exempt class covers any percentage of non-redeemable ordinary shares held. A targeted anti-avoidance rule applies which seeks to prevent schemes in which the shareholder obtains quasi-preference or quasi-redeemable shares
III. dividend distributions received from a company in which the UK recipient, together with connected persons, (i) holds 10% or less of the issued share capital, (ii) is entitled to less than 10% of the profits available for distribution to shareholders in the paying company, and (iii) would be entitled to less than 10% of the assets available for distribution on a winding-up. An anti-avoidance rule applies which targets manipulation of the maximum threshold of 10%
IV. dividends received on shares of any kind paid out of distributable profits other than profits derived from transactions designed to achieve a reduction in UK tax. If a paying company has any such profits, this exempt class is not available and will not be until all these 'tainted' profits have been fully paid out in taxable form; and
V. dividends received in respect of shares that are accounted for as liabilities in accordance with UK generally accepted accounting practice and are taxed as loan relationships for UK tax purposes, except if they are held for an unallowable purpose

The above classes of dividend which are exempt from corporation tax are relatively broad and most 'normal' dividends of UK and foreign companies will be exempt from UK corporation tax, subject to relevant anti-avoidance rules.

As a general anti-avoidance rule, the dividend payment must not be tax deductible in the source jurisdiction. Furthermore, the distribution must not be made as part of a scheme where:

- a tax deduction is obtained or taxable income is given up in return for the distribution or a right to receive the distribution
- goods and services are paid for on terms that differ from the arm's length price and the reason for the difference is that one of the parties expects to receive a distribution
- the dividend exemption is used to produce a return which is equivalent to interest where the payer and recipient of the distribution are connected and the main purpose, or one of the main purposes, of the scheme is to obtain a more than negligible tax advantage
- an overseas tax deduction is being given in respect of an amount determined by reference to the distribution where the distribution is made as part of the scheme, and the main purpose, or one of the main purposes, of the scheme is to obtain a more than negligible tax advantage; or
- a company for which a distribution would represent a trade receipt diverts the distribution to a connected company which would want to claim an exemption for the dividend

It is possible for the UK recipient to elect for a distribution not to be treated as exempt, as a consequence of which foreign tax credit rules may apply on dividends received from foreign companies. This election may be beneficial where the terms of a double tax treaty would apply a higher rate of withholding tax if the dividends were exempt in the hands of the UK recipient compared to if the dividends were not exempt.

Special conditions apply for a full exemption from corporation tax for dividends received by a UK company which is a small company within the meaning of Commission Recommendation 2003/361/ EC of May 6, 2003, (i.e. a company which employs less than 50 persons and whose annual turnover and/ or annual balance sheet does not exceed EUR 10 million).

C. Outgoing Dividends

The UK does not currently impose withholding tax on dividends paid to both residents and non-residents.

D. Capital Gains Tax on the Sale of Shares

Capital gains are treated as income of the company and are subject to tax at the corporation tax rate of 25%. However, an exemption is available to companies if they have a substantial shareholding in the company whose shares it is selling. This exemption, The Substantial Shareholdings Exemption (SSE) provides that, if certain conditions are met, chargeable gains accruing in companies on the disposal of substantial shareholdings or substantial interests in shares are exempt from corporation tax and also that, if a capital loss arises, that loss is not an allowable loss. This can include de-grouping gains/losses arising when a company leaves a group. The exemption is automatic – no claim is required.

The legislation uses the term "group" in various contexts. For these purposes, "group" is based on the chargeable gains definition but the percentage of ordinary share capital held by the parent company must be more than 50%. The requirement for the subsidiary to also be an "effective 51% subsidiary" remains.

Core provisions

There are two main conditions that need to be met in order for the SSE to apply:

- the "substantial shareholding requirement"; and
- requirements to be met in relation to the company invested in

There is a targeted anti-avoidance rule which prevents the SSE applying where the sole or main benefit that could be expected to arise is that the gain on a disposal would not be a chargeable gain.

Substantial shareholding requirement

The vendor company (the "investing company") must have held a "substantial shareholding" in the company invested in throughout a twelve-month period beginning not more than six years before the day on which the disposal takes place.

A company holds a "substantial shareholding" in another company if it holds shares or interests in shares in that company by virtue of which:

- it holds not less than 10% of the company's ordinary share capital
- it is beneficially entitled to not less than 10% of the profits that are available for distribution to the equity holders of the company; and
- it would be beneficially entitled to not less than 10% of the company's assets that would be available for distribution to the equity holders on a winding up of the company

Requirements in relation to the target company

The company invested in must have been a "qualifying company" throughout the latest twelve-month period (see above) during which the substantial shareholding requirement was met. A "qualifying company" is a trading company or the Holding Company of a trading group or of a trading subgroup.

For these purposes, trading means carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities. In considering this point, intra-group activities are disregarded.

The term "substantial" in this context is subjective and HMRC's practice is to weigh up various factors (such as assets, profits, management time, overall nature of the group etc) and to consider the "trading" requirement to have been met where at least 80% of the activities are trading activities. HMRC's practice does not, however, have the force of law.

Losses On Shares

Losses on a disposal of shares in respect of which the conditions of the substantial shareholding exemption are met do not qualify as an allowable loss for tax purposes.

If such conditions are not met, losses on a disposal of shares generally qualify as allowable capital losses which may be offset only against taxable capital gains in the current year and in future years. No carry back of capital losses is possible.

An anti-avoidance measure applies which provides that a capital loss arising on a disposal in connection with arrangements having a main purpose of obtaining a tax advantage will not qualify as an allowable capital loss.

Accounting provisions or write offs on shareholdings can generally not be taken into account for tax purposes. Exceptionally, where the market value of a shareholding has become negligible, a claim can be made to the UK tax authorities to treat the asset as having been sold and immediately reacquired at its negligible value, thus establishing a capital loss that could, in principle, be set off against capital gains on other assets, unless the capital loss does not qualify as an allowable loss for tax purposes.

Cost of Acquisition / Debt Cap

Costs relating to the acquisition or sale of the participation are generally not deductible against income profits but may be deducted from capital gains on disposal (if not covered by the substantial shareholding exemption).

However, interest expenses on debt incurred to purchase or to fund participations (whether located in the UK or not) are, in principle, tax deductible, provided the level of debt taken on and the interest payable comply with arm's length terms, do not breach the unallowable purpose rule (i.e. debt should be within business or commercial purposes of the debtor) and provided no other specific rule limiting the deductibility of interest applies.

The UK's 'interest-barrier' regime limits the deductibility of interest expense for companies that are part of groups with more than £2 million of net UK interest expense in a given accounting period. The default position under the rules is that the tax deductibility of a group's net interest expense is limited to a fixed ratio of 30% of its taxable EBITDA. A debt cap applies to ensure that the net UK interest expense does not exceed the net external interest expense of the worldwide group.

Alternatively, a group may substitute the fixed 30% ratio with a 'group ratio' method. The group ratio is based, broadly, on the ratio of the net interest expense of the worldwide group to its EBITDA for the period (ignoring amounts payable to shareholders and related parties, and equity-like instruments) on the basis of its consolidated accounts. A debt cap also applies to the group ratio.

Interest expense for which deductions are denied may be carried forward indefinitely to any later period where there is sufficient interest allowance. Unused interest allowance can be carried forward for five years.

Interest deduction may also be curtailed by the UK's hybrid mismatch rules which seek to counteract mismatches involving either double deductions (double deduction cases) for the same expense or deductions for expenses without any corresponding receipt being taxable (deduction/non-inclusion cases). The rules apply to arrangements involving a hybrid financial instrument, a hybrid entity, companies with permanent establishments or a dual resident company.

E. Special Holding Regime – Qualifying Asset Holding Company (QAHC)

The QAHC regime was introduced in the UK in 2022 and seeks to relax certain corporation rules mainly in relation to tax to make the UK a more attractive proposition and a domicile of choice for institutional investors and funds in structuring their investments.

The regime is restricted to pure equity Holding Companies and covers investments in shares and securities (unlisted and listed although corporation tax will be chargeable on dividends from the latter) as well as businesses in relation to overseas land. Shareholding in the QAHC is restricted to 30 percent where the investor is not another QAHC, an insurance company and other listed category A investors. A company can be a QAHC in relation to only part of its business undertaking while the normal corporation regime will apply to its other trade.

Generally, gains from disposals made by a QAHC will not be subject to corporation tax nor will stamp duties be payable when it repurchases its own shares or loan capital. Furthermore, neutrality is provided on equity and debt financing for the QAHC as its dividend and interest payments are made free from any withholding tax obligations. Finally, a payment by a QAHC to its shareholders from its assets will not be regarded as a distribution for corporation tax purposes nor will payments made with regards to a hybrid financial instrument be caught by the UK hybrid mismatch rules.

F. Additional Tax Considerations for a UK Holding Company

1. Tax on capital contributions

There is no tax on capital contributions in the UK. However, stamp duty or stamp duty reserve tax is payable at 0.5% on consideration for the transfer of shares in a UK incorporated company, unless an exemption is applicable.

2. Corporation Tax Rate

The corporation tax since April 2023 is 25% for companies with profit in excess of £250,000. However, companies with profits of up to £50,000 will not be affected, the 19% rate will continue to apply. For companies with profits between £50,000 and £250,000 a tapered rate will apply.

An additional 8% corporation tax surcharge is chargeable on the profits of certain banking companies and building societies. There is an annual allowance of £25 million per group (or per company for non-group members).

Where taxable profits (including the sale of a product that includes a patent, and income from patent royalties) can be attributed to the exploitation of patents, a lower effective rate of 10% may apply.

III. Conclusion

With the UK having left the EU, the EU Directives are no longer applicable to it as of 31st December 2020; however, its wide treaty network coupled with the zero-withholding rate on UK source dividend income and SSE means it remains a destination of choice for investors seeking a Holding Company in Europe.

IV. Disclaimer

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