Comparative analysis of the taxation of conduit companies

October 2021

pwc

Introduction

Dear Mr. van Raaij,

We hereby present to you the report for a comparative analysis of the taxation of so-called conduit companies (in Dutch: 'doorstroomvennootschappen') as requested by the Commissie Doorstroomvennootschappen*.

The following jurisdictions are in scope of the comparative analysis: Belgium, Cyprus, Germany, Ireland, Jersey, Luxembourg, Malta, the Netherlands, Singapore, United Kingdom and Switzerland.

This comparative analysis provides an overview of the measures listed for further research by the 'Commissie doorstroomvennootschappen'. The 'Commissie Doorstroomvennootschappen' prepared a questionnaire as a basis for the comparative analysis. We have requested our colleagues in the above-mentioned jurisdictions to complete this questionnaire which they have done in May and June 2021. We have included their responses in this report. Information is provided for the calendar year 2021. Any relevant information that jurisdictions had available on changes for up to and including 2022 has also been included in the report.

Based on the information received, we have prepared an executive summary in Chapter 1, which allows for an easy comparison of the tax measures applicable in the Netherlands with the measures applicable in the selected countries. In Chapter 2, the completed questionnaire per jurisdiction is included (in alphabetical order). Please note that Chapter 1 only provides a high-level overview of the measures included in the analysis and is meant to provide visual insight in the position of the Netherlands compared to the other jurisdictions. Chapter 1 should always be read in conjunction with the detailed information in Chapter 2.

This report is reviewed by the International Bureau of Fiscal Documentation ('IBFD').

The 'Dienstverleningsovereenkomst ARVODI-2018' with reference '201850016.093.012' is applicable to our performed activities and this report.

Best regards,

PwC Belastingadviseurs N.V.
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* Besluit van de Staatssecretaris van Financiën – Fiscaliteit en Belastingdienst van 21 februari 2021, nr. 2021-0000031623, houdende instelling van de Commissie doorstroom-vennootschappen.

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Chapter 1.
Executive Summary

1. Inbound payments

Question 1.1 In most jurisdictions a company is (deemed to be) a resident for CIT and DTA purposes if it is legally established or registered or if the place of effective management is located in the jurisdiction concerned. Is that also the case in your jurisdiction?

In the Netherlands a company is subject to corporate income tax if it is resident in the Netherlands. Companies that are incorporated in the Netherlands are deemed to be tax resident in the Netherlands. A legal entity is also tax resident in the Netherlands if it has its place of effective management in the Netherlands. The determination of the place of effective management is based on facts and circumstances.

Table 1.1 shows that all of the jurisdictions apply the rule of effective place of management to determine tax residency of a corporation for CIT and DTA purposes. In addition to effective place of management, nine jurisdictions also determine tax residency based on the legal establishment or registration (statutory seat) of the company.

Table 1.1 Tax residency

	Statutory seat	Effective place of management
BEL	✔	✔
CYP*		✔
GER	✔	✔
IRE	✔	✔
JER	✔	✔
LUX	✔	✔
MAL	✔	✔
NL	✔	✔
SING		✔
SWI	✔	✔
UK	✔	✔

** CYP: The Cypriot Ministry of Finance submitted in Q1 2021 to the Cyprus Parliament a bill for expanding the corporate tax residency test by introducing a test based on incorporation in Cyprus for companies that do not have a tax residency anywhere else in the world. In accordance with the Cyprus Recovery & Resilience Plan 2021 - 2026 Cyprus plans to enact this bill in Q4 2021. The current "management and control test" will remain as is. For detailed information we refer to Chapter 2.*

Question 1.2 If a company receives dividend, interest or royalty payments and meets one of the criteria (in reference to 1.1) is this company always considered to be a tax resident?

Table 1.2 shows that for most of the jurisdictions, having the legal establishment or registration (statutory seat) do suffice for a company to be tax resident. This also includes the Netherlands. For Cyprus, Ireland, Jersey, and Singapore having a legal establishment or registration (statutory seat) is not always enough for being considered tax resident. For example, a company incorporated in Jersey that meets the following criteria is not regarded as tax resident in Jersey: the company is managed and controlled in a jurisdiction outside of Jersey; the company is tax resident in that other jurisdiction and the highest rate of tax paid by any company in that other jurisdiction on any part of its income is at least 10%. In Singapore, the tax administration has clarified that it will only issue a Certificate of Residence for the purpose of the DTA to a foreign-owned investment holding company if, in addition to demonstrating that the control and management is exercised in Singapore, there are valid reasons for setting up an office in Singapore.

Table 1.2 Inbound situation: tax residency in case of statutory seat and little substance

	YES	NO
BEL	✔	
CYP*		✔
GER	✔	
IRE		✔
JER*		✔
LUX	✔	
MAL	✔	
NL	✔	
SING		✔
SWI	✔	
UK	✔	

** CYP: the previously mentioned bill proposes to consider companies incorporated in Cyprus that do not have a tax residency in any other jurisdiction to be tax residents of Cyprus without any additional criteria to be met for residency.*

** JER: The Taxation (Partnerships - Economic Substance) (Jersey) Law was passed on 29 June 2021 and would extend the substance requirements to include partnerships from 1 July 2021 (new partnerships) or 1 January 2022 (partnerships formed before 1 July 2021). The substance requirements for partnerships will broadly mirror the regime applicable to companies.*

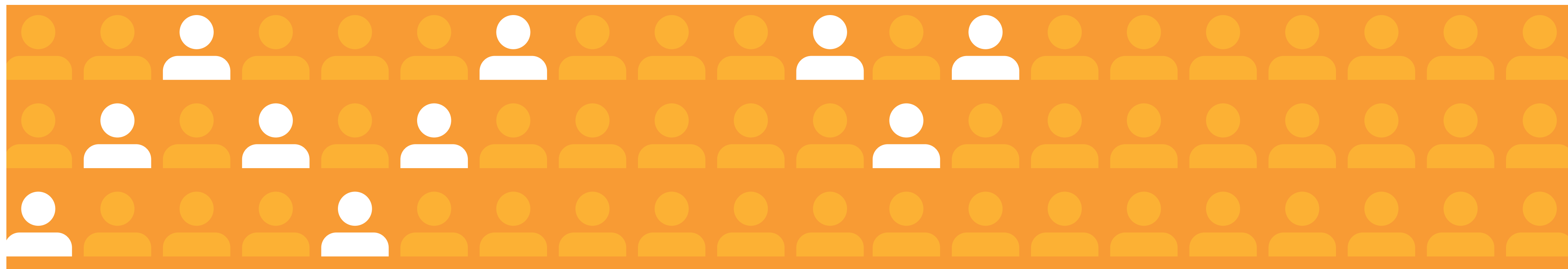
Question 1.3 If a company meets (one of) said criteria, can it obtain a certificate of residence or the like from the tax administration? (With the purpose of obtaining DTA benefits)?

Companies incorporated under Dutch law having an office address in the Netherlands can generally obtain a residency certificate. For companies not incorporated under Dutch law, we see that in practice additional requirements may apply.

In all the jurisdictions a company can obtain a certificate of residence (or a similar equivalent certificate) by the tax administration (see table 1.3).

Table 1.3. Inbound situation: possibility to obtain tax residence certificate if criteria are met

	YES	NO
BEL	✔	
CYP*	✔	
GER	✔	
IRE	✔	
JER	✔	
LUX	✔	
MAL	✔	
NL	✔	
SING	✔	
SWI	✔	
UK	✔	



2. Income flows

Question 2.1 If a company receives and pays dividends, interest and royalties, can it obtain a tax ruling/certainty in advance from the tax administration as regarding the taxable profit that has to be reported on the incoming and outgoing payments ('the spread')[1]?

Question 2.2 If so, should it meet any criteria on substance?

For obtaining a ruling with an international character in the Netherlands as of 1 July 2019 the competent tax inspector or the processing team of International Fiscal Affairs must have submitted the request to the College of International Fiscal Affairs[2] of the tax administration for approval. -the taxpayer filing the ruling request has sufficient relevant economic nexus with the Netherlands;

- avoiding Dutch or foreign tax is not the sole or the decisive reason for a certain transaction, and
- a transaction is not carried out with a country that is mentioned in the Dutch list of low-tax jurisdictions (that includes countries on EU-list of non-cooperative jurisdictions and jurisdictions with a statutory rate of less than 9%).

In the table below, the substance test of the jurisdictions has been divided over three categories that are based on the perspective of the Dutch substance test. Jurisdictions are categorized as light, medium or extensive.
The light substance test refers to no or light substance requirements.
The medium substance test refers to moderate substance requirements, on which guidance is derived from domestic or EU case law.
The extensive substance test refers to substance requirements similar to the Dutch substance requirements or other substance rules that are considered compulsory under legal regulations.

1 We refer to the arm's length remuneration.
2 The College of International Fiscal Affairs is responsible for the central coordination of prior consultation to obtain a ruling with an international character in order to: ensuring the unity of policy and implementation, to monitor the quality of the rulings (correct application of legislation and regulations, case law and policy) and to ensure proper compliance with procedural requirements.

	Table 2.1 and 2.2. Possibility to obtain a ruling/Certainty in advance for a "spread"[3]		Table 2.2 If YES, substance requirements		
	YES	NO	light	medium	extensive
BEL	✔				✔
CYP		✔			
GER		✔			
IRE*		✔			
JER*		✔			
LUX		✔			
MAL	✔			✔	
NL	✔				✔
SING	✔			✔	
SWI	✔		✔		
UK	✔		✔		

** IRE In Ireland requests will generally not be accepted where the matter is straight-forward and the taxpayer/agent is simply looking for a letter of comfort from the tax administration of a position or issue which can be readily established from existing published information and is not in doubt. Confirmation of a taxable income (i.e., the spread) in Ireland should normally not be considered a complex matter and thus the tax administration are unlikely to issue an opinion on this matter. However, opinions/confirmations may be issued in certain limited circumstances, in particular, in relation to a proposed transaction or business activity where the circumstances are complex, or unusual, or information is not readily available, or there is genuine uncertainty in relation to the interpretation or application of the relevant tax/duty rules. The tax administration does not issue opinions to facilitate tax planning by agents and taxpayers.*
** JER Rulings are only available in Jersey where there is uncertainty within the law.*

In some of the jurisdictions, it is not possible to obtain a ruling/certainty in advance to determine the arm's length remuneration. For the jurisdictions in which it is possible to obtain such a ruling or certainty in advance, the substance requirements should be met. The substance test criteria differ between the jurisdictions: Switzerland and the United Kingdom apply 'light' substance requirements, Malta and Singapore apply 'medium' substance requirements and Belgium and the Netherlands are considered to apply 'extensive' substance requirements.

3 We refer to the arm's length remuneration.

3. Outbound payments

Question 3.1 In outbound situations i.e. a company pays dividends, interest and royalties to an associated enterprise, are there any (substance) requirements as for the receiving associated enterprise (apart from the beneficial ownership requirement)?

Question 3.2 If so, and the receiving associated enterprise does not meet those requirements, then what are the consequences? (E.g. no treaty access, full withholding tax levy, no deduction)

As a general rule, the Netherlands applies a dividend withholding exemption on qualifying participations. This is the case where the receiving associated enterprise is located within the EU/EEA or in a jurisdiction with which the Netherlands has concluded a tax treaty containing a dividend article. Only in cases of abuse a withholding exemption will be denied. As of 1 January 2020, substance requirements no longer function as safe-harbour rules, but only play a role in determining where the burden of proof lies between the taxpayer and the tax administration.

Currently, and as a result of the Danish BO cases, if the recipient of the dividend fulfils the Dutch substance requirements, the tax inspector still has the possibility to impose the Dutch withholding tax levy if he can substantiate tax avoidance. In that regard, the tax inspector should demonstrate that:

- the interest in the Dutch company paying the dividends is held with the main purpose or one of the main purposes to avoid the payment of dividend withholding tax and
- there are no sound business reasons that reflect economic reality. If the tax inspector demonstrates that these two tests are met, the withholding tax exemption is not applicable.

Vice versa, if the recipient of the dividend does not fulfil the substance requirements, both the payor and the recipient of the dividends may still demonstrate that there is no tax avoidance and the withholding tax exemption is applicable.

A conditional withholding tax on interest and royalty payments is applicable as of 1 January 2021, for which relatively the same anti abuse measures compared to dividend payments apply. This tax is only levied on interest and royalty payments to affiliated companies in designated low-tax jurisdictions and in certain tax abuse situations, i.e.

- payments made to associated entities in low tax jurisdictions (statutory corporate tax rate of less than 9 per cent and jurisdictions included in Annex I of the EU list of non-cooperative jurisdictions on tax matters (hereafter EU 'blacklist'[4]).
- in situations where artificial structures are put in place with the main purpose or one of the main purposes to avoid the Dutch withholding tax, e.g. where an interest payment to a Listed Country is artificially routed via a low-substance financing company in a non-Listed Country.

4 PwC the Netherlands has prepared an overview of the implementation of the EU blacklist. See https://www.pwc.nl/nl/actueel-publicaties/assets/pdfs/pwc-eu-list-defensive-measures-march-2021.pdf

Besides these specific anti-abuse rules there are also the ATAD GAAR[5] (the Dutch legislator is of the opinion that the GAAR was already implemented into domestic legislation, although not statutory, but through the doctrine of fraus legis), the PSD GAAR[6], the PPT (which the Netherlands adopted under the MLI and the general principle of abuse of law developed by the CJEU[7]). Most jurisdictions (BEL, CYP, IRE, LUX, MAL, SING, UK) mention application of GAAR and/or PPT but have no specific substance requirements like the Netherlands. In case (substance) requirements aren't met, consequences differ per jurisdiction. Consequences could be no or partial treaty access or no withholding exemption or deduction or a combination of both.

Regarding the beneficial ownership requirement, it is worth mentioning that some jurisdictions like Belgium and Germany explicitly note the impact of the Danish court cases[8]. Furthermore, in Germany the German Income Tax Act (EStG) serves to prevent treaty shopping. Section 50d (3) EStG basically foresees that foreign companies are no longer entitled to a refund of or exemption from German withholding tax to the extent (i) the foreign shareholders would not be entitled to the refund/exemption if they earned the income directly and (ii) the foreign entity does not generate income from own business activities. Furthermore, there are special abuse regulations in some German DTA's, e.g. in the DTA with the US. Section 50d (3) EStG is amended by a bill that came into force on June 9, 2021 to meet EU law requirements. It shall also apply if the DTA contains a provision to avoid abuse. An equivalent claim under another DTA (or an EU directive) is no longer sufficient to preclude the denial of relief. Regarding substance of the receiving entity, a genuine link of the payment received to economic activity of the receiving entity is required. I.e. passing on of income is expected not to be sufficient for relief even if the foreign shareholder has own business activity. An escape will be available if none of the main purposes of the involvement of the foreign company is to obtain a tax advantage or the foreign shareholder is publicly traded on a stock exchange.

5 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.

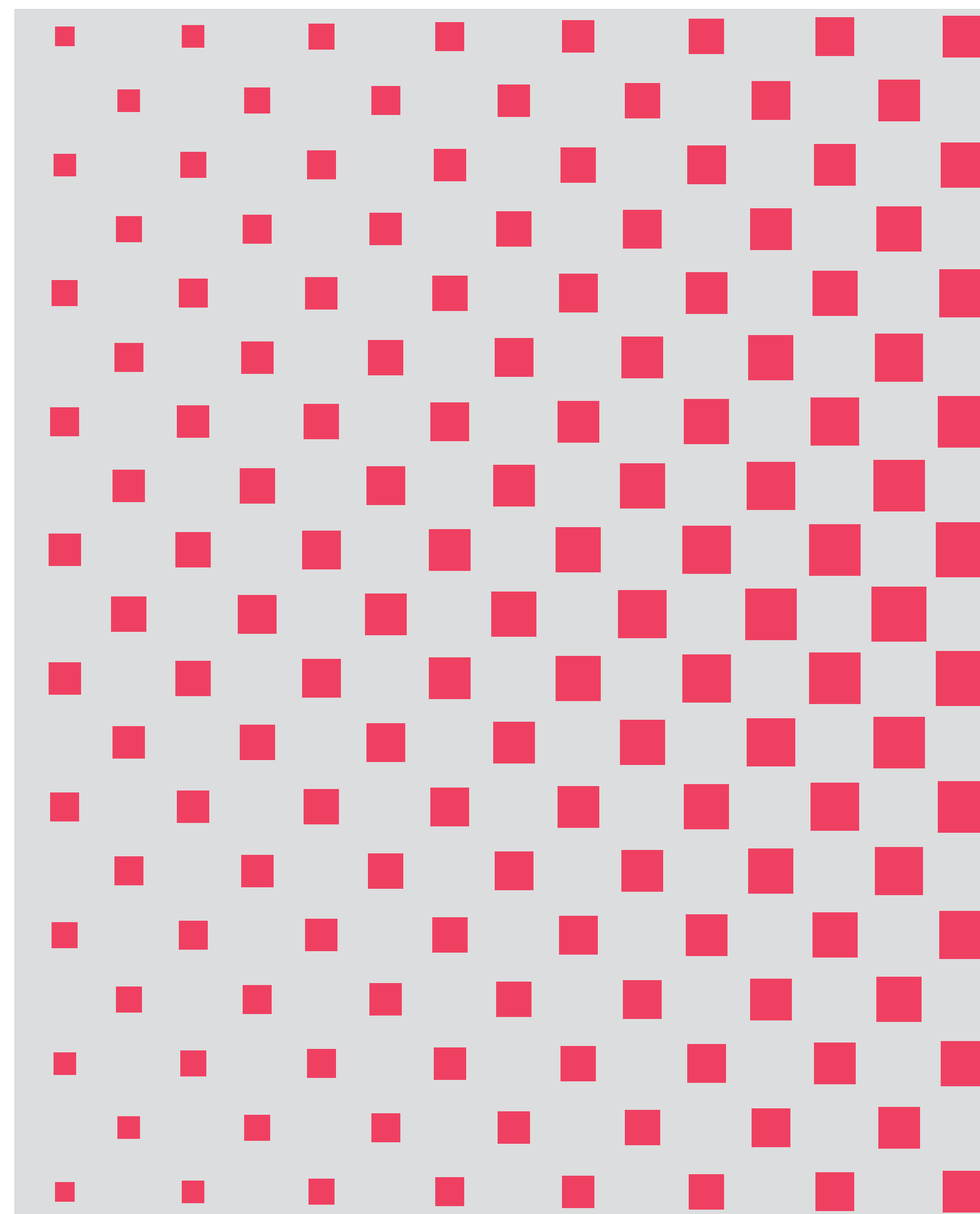
6 Council Directive (EU) 2015/121 of 27 January 2015 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

7 Goedkeuring van het op 24 november 2016 te Parijs tot stand gekomen Multilateraal Verdrag ter implementatie van aan belastingverdragen gerelateerde maatregelen ter voorkoming van grondslaguitholling en winstverschuiving (Trb. 2017, 86, en Trb. 2017, 194).

8 There are many different provisions across Europe (and more widely) that rely on the concept of beneficial ownership. The concept is further heightened by the introduction of the Multilateral Instrument (MLI) and specifically the principal purpose test (PPT). Within the EU, the concept has been the subject of increased attention since the Court of Justice of the European Union (CJEU) issued its decision in the so-called "Danish beneficial ownership cases" in February 2019. In these judgments, the CJEU ruled that Member States must deny a benefit from the Interest and Royalty Directive and the Parent-Subsidiary Directive even if there is no national (or bilateral) provision tackling abuse. Furthermore, the CJEU provided indicators for the assessment of an abusive arrangement. Finally, the CJEU appears to introduce a beneficial ownership requirement for the Parent-Subsidiary Directive to apply. In addition, it ruled that for the interpretation of the beneficial ownership requirement in the Interest and Royalty Directive the OECD commentaries are of importance.

The table below shows an overview of jurisdictions applying substance requirements for the receiving countries. Furthermore, an overview is given for the consequences per jurisdiction in case (substance) requirements aren't met.

	Table 3.1 and 3.2 Outbound payments: substance requirements for receiving company apart from beneficial ownership requirement		Table 3.2 Consequences if requirements (beneficial ownership/ substance) aren't met	
	YES	NO	No or partial treaty access	(withholding) taxation/ no deduction
BEL		✔	✔	
CYP		✔		
GER	✔		✔	
IRE		✔	✔	
JER		✔	N/A	N/A
LUX		✔	✔	✔
MAL		✔		✔
NL	✔		✔	✔
SING		✔		✔
SWI	✔			✔
UK		✔	✔	

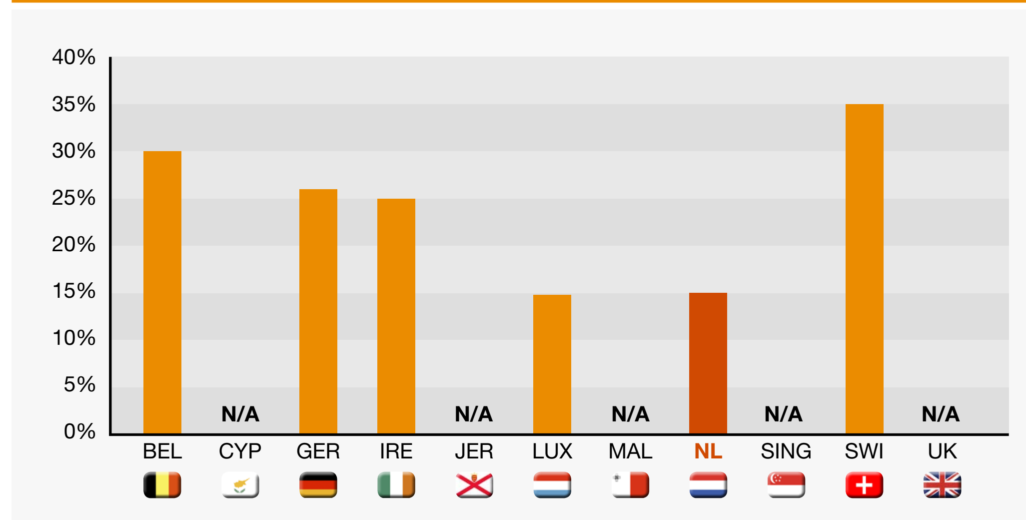


4. Source taxes

Question 4.1 Are there any source taxes on dividends, interest and royalties in national law and if so, what are the rates?

The tables below show the applicable withholding tax rates for dividends, interest and royalties.

4.1.1 Dividend withholding tax rate



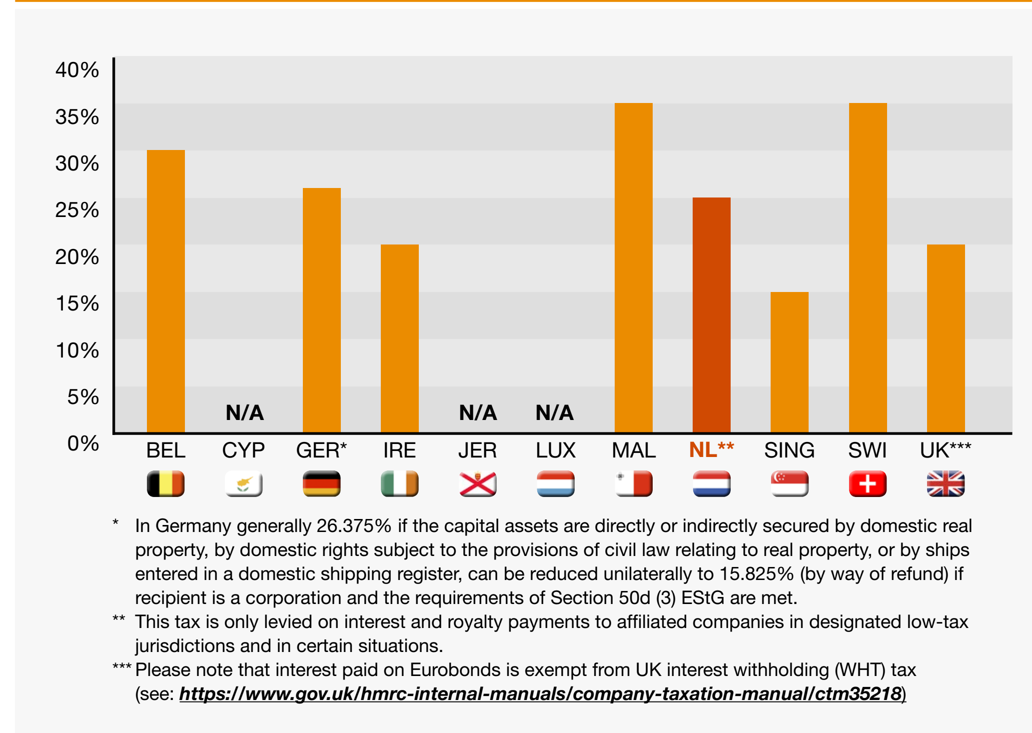
Cyprus, Jersey, Malta, Singapore and the UK do not apply a dividend withholding tax.. In Germany the 26.375% dividend withholding tax rate can be “reduced” unilaterally to 15.825% (by way of refund) if the recipient is a corporation and the requirements of Section 50d (3) EStG are met.

On March 25, 2021, a Dutch draft Bill aiming to introduce a conditional withholding tax on dividends was submitted to the Lower House of Parliament of The Netherlands. The proposed Conditional Withholding Tax on Dividends Act supplements the 2021 Withholding Tax Act and aims to prevent the untaxed flow of dividends from the Netherlands to low-tax jurisdictions and in certain situations. Low-tax jurisdictions are countries with a statutory profit tax rate lower than 9% and countries included in the EU list of non-cooperative jurisdictions. The withholding tax will be levied at a rate equal to the highest rate of Dutch Corporate Income Tax in the current year. For 2021 this rate is 25%. The proposed date of entry into force is January 1st, 2024.

The Cypriot Ministry of Finance submitted in Q1 2021 to the Cyprus Parliament a bill for amending the tax legislation so that for payments to companies in jurisdictions in the EU ‘blacklist’, withholding taxes are introduced (or, in the case of royalties, expanded) for payments made by Cyprus tax resident companies on instruments not listed in a recognized stock exchange as follows:

- for payments of dividends, where the recipient holds directly at least 50% of the capital, votes or entitlement to profit in the company paying the dividends, subject to a percentage holding anti-abuse rule; withholding tax at the rate of 17%.

4.1.2 Interest withholding tax rate



* In Germany generally 26.375% if the capital assets are directly or indirectly secured by domestic real property, by domestic rights subject to the provisions of civil law relating to real property, or by ships entered in a domestic shipping register, can be reduced unilaterally to 15.825% (by way of refund) if recipient is a corporation and the requirements of Section 50d (3) EStG are met.

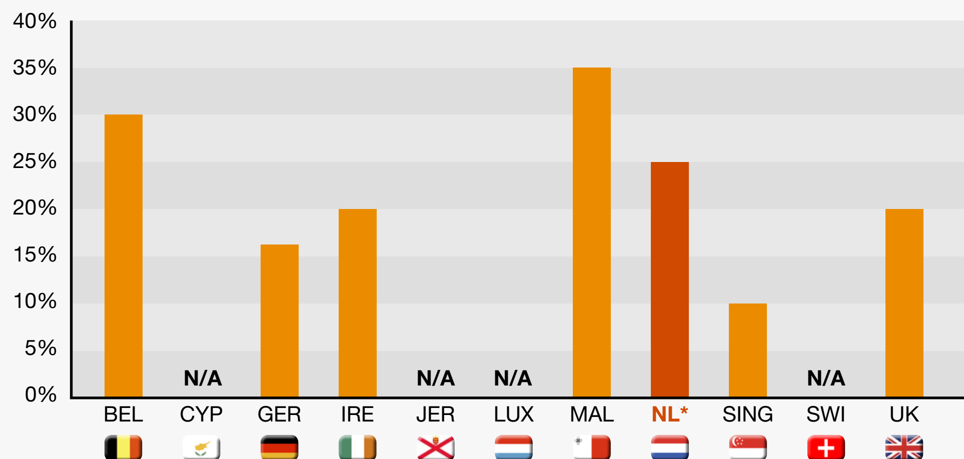
** This tax is only levied on interest and royalty payments to affiliated companies in designated low-tax jurisdictions and in certain situations.

*** Please note that interest paid on Eurobonds is exempt from UK interest withholding (WHT) tax (see: ***https://www.gov.uk/hmrc-internal-manuals/company-taxation-manual/ctm35218***)

Cyprus, Germany, Jersey and Luxembourg do not apply an interest withholding tax. The Cypriot Ministry of Finance submitted in Q1 2021 to the Cyprus Parliament a bill for amending the tax legislation so that for payments to companies in jurisdictions in the EU 'blacklist', withholding taxes are introduced (or, in the case of royalties, expanded) for payments made by Cyprus tax resident companies on instruments not listed in a recognized stock exchange as follows:

- for payments of interest, not accruing from the carrying on of business including any interest closely connected with the carrying on of the business; withholding tax at the rate of 30%

4.1.3 Royalty withholding tax rate



* This tax is only levied on interest and royalty payments to affiliated companies in designated low-tax jurisdictions and in certain situations.

Cyprus, Jersey, Luxembourg and Switzerland do not apply a royalty withholding tax. Cyprus only applies a royalty withholding tax paid to non-residents of Cyprus in the case of royalties earned on rights used within Cyprus, which are subject to withholding tax of 10% (5% in the case of cinematograph films).

The Cypriot Ministry of Finance submitted a bill for amending the tax legislation in Q1 2021 to the Cypriot Parliament to introduce withholding taxes for payments to companies in jurisdictions on the EU 'blacklist', The amendment introduces withholding taxes on interest and dividends and expands existing withholding tax for royalties in case payments are made by Cyprus tax resident companies on instruments not listed in a recognized stock exchange. For payments of royalties for rights used outside Cyprus a withholding tax at the rate of 10% is proposed.

Question 4.2 In general, are these rates approximately more than 40% reduced in DTAs?

All jurisdictions, except Jersey, mention reduced rates of approximately more than 40%. Jersey does not apply any withholding tax and notes that it has a very small full DTA network.

Question 4.3 Does your jurisdiction apply an enhanced source tax on payments to low tax jurisdictions?

Only the Netherlands, Cyprus and Ireland mention the introduction of an enhanced source tax on payments to low tax jurisdictions. In the Netherlands, on March 25, 2021, a bill was submitted aiming to introduce a conditional withholding tax on dividends. The proposed Conditional Withholding Tax on Dividends Act supplements the 2021 Withholding Tax Act and aims to prevent the untaxed flow of dividends from the Netherlands to low-tax jurisdictions and in certain situations. Low-tax jurisdictions are countries with a statutory profit tax rate lower than 9% and countries included in the EU 'blacklist'. The proposed date of entry into force is January 1st, 2024.

In Cyprus in addition to the proposed withholding taxes, in accordance with the Cyprus Recovery & Resilience Plan 2021 - 2026 Cyprus plans to enact a bill in Q4 2023 on payments to low tax jurisdictions by imposing a withholding on interest, dividends, and royalty payments or other equivalent measures.

In Ireland in January 2021, the Department of Finance published a corporation tax roadmap update, which provides an indication of the actions that Ireland will take to ensure that the Irish corporation tax system remains competitive, fair and sustainable into the future. In this context, the roadmap suggests that additional defensive measures in respect of EU Blacklisted countries, such as denial of tax deductions, will be considered in 2021.

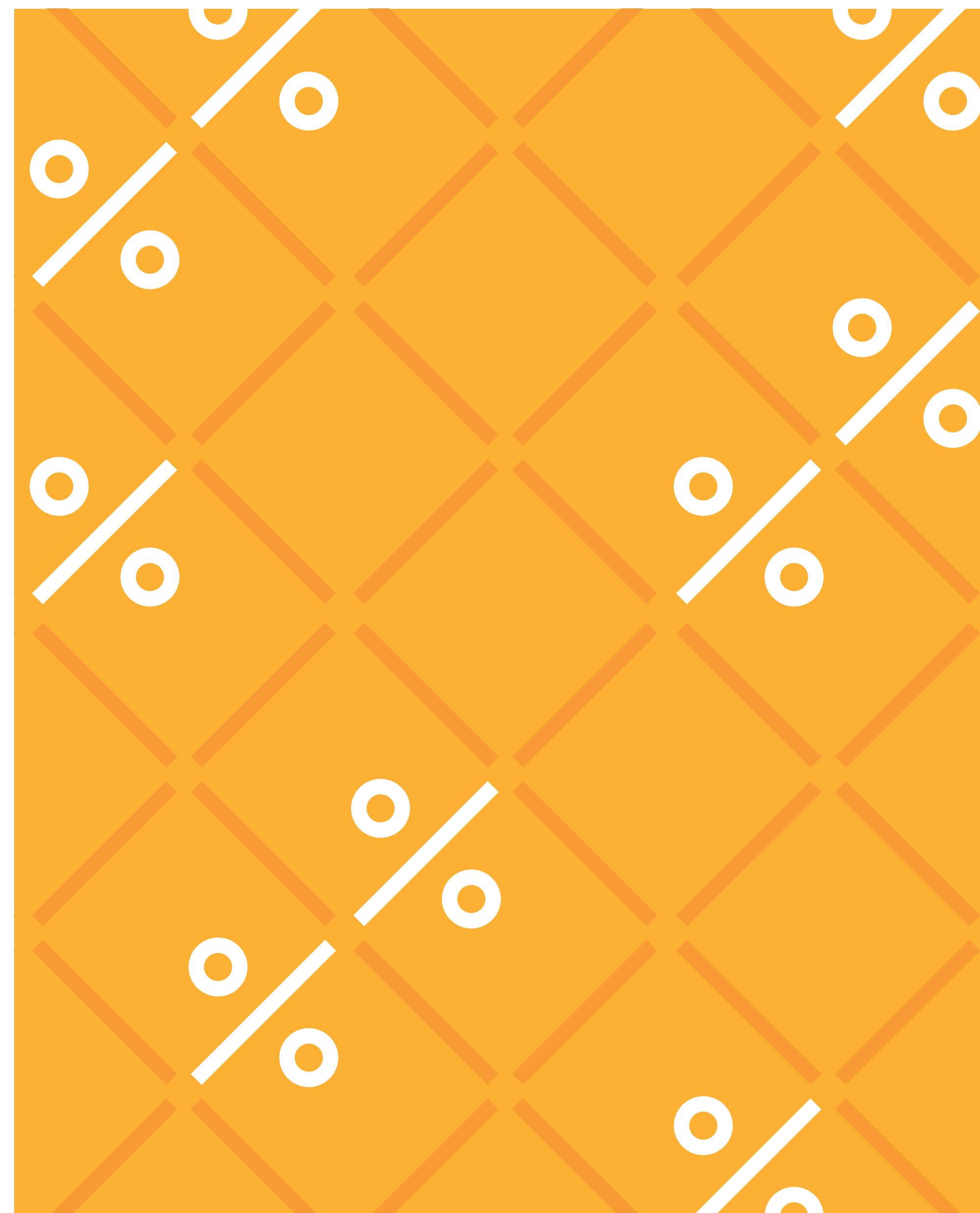
Question 4.4 Are there any other specific rules that apply to payments to low tax jurisdictions?

Only Belgium, Germany and Luxembourg mention specific rules. In Belgium direct or indirect payments to beneficiaries in tax havens have to be reported on a form 275F enclosed to the corporate tax return of the Belgian entity if the total combined amount of all relevant payments equals or exceeds EUR 100.000 during the taxable period. The concept of 'direct or indirect payments' is rather broad. If a payment is reported, the taxpayer will still have to prove that the payment relates to an 'actual and sincere transaction' and to a 'person other than an artificial arrangement'. In addition, also the reporting on a fee form 281.50 remains necessary. Non-reporting could result in non-deductibility of the payment or cost. For more detailed information we refer to chapter 2.

Germany mentions Section 4j ("Lizenzschranke") of the German Income Tax Act. This section is directed against foreign preferential regulations for the taxation of income from usage transfers of rights between related parties. Some of the corresponding expenses can only be deducted to a limited extent. The non-deductible portion is determined as follows: (25% - burden of income taxes in %) / 25%. Furthermore, new German law is expected to be implemented which (i) denies deductibility of expenses in Germany, (ii) tightens CFC rules, (iii) tightens rules for reduction of WHT regarding payments conducted to recipient's resident in a country that is listed on the EU 'blacklist'.

As from 1 March 2021, Luxembourg can disallow the tax deduction of interest or royalties due to a related party, if the beneficiary is a corporate entity established in a country that is listed by the Council of the EU as being "non-cooperative" for tax purposes. The provision does not apply if the Luxembourg taxpayer can prove that the arrangements giving rise to the expense satisfy the 'valid commercial reasons that reflect economic reality' test. Arrangements with non-cooperative States would also need to be mentioned in the corporate tax return and may be subject to DAC 6 reporting.

Furthermore, Jersey notes that it intends to bring into force the "Taxation (Implementation) (International Tax Compliance) (Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures) (Jersey) Regulations 2020" (the Regulations) in due course. The likely date is currently early 2022. The Regulations do not follow the EU model enacted as DAC6, focusing only on Hallmark D arrangements.



5. Participation exemption

Question 5.1 Does your country apply a participation exemption?

Question 5.2 If so, does the participation exemption also apply to capital gains (i.e. upon the alienation of participations)?

Question 5.3 Are there any substance requirements/active business tests as to the subsidiaries to which the participation exemption applies?

The Netherlands applies a participation exemption regime that generally exempts all income derived from qualifying participations of at least 5% and applies to dividends, capital gains and foreign exchange results. Conditions for qualifying participations in general are that the participation is not held as a portfolio investment and/or is sufficiently taxed. There is no minimum holding period.

All other jurisdictions except Jersey apply a participation exemption or similar measures as well, also to capital gains. Jersey does not apply a participation exemption but does not tax capital gains. Regarding Ireland, in the corporation tax roadmap update published by the Department of Finance published in January 2021, the Department of Finance has indicated that a public consultation on the possible move to a territorial regime will be launched in 2021 (also noting that any subsequent policy actions will need to take account of the outcome of the ongoing international discussions at the OECD/G20 Inclusive Framework level).

The table below shows an overview of jurisdictions which apply substance requirements or an active business test as to the subsidiaries to which the participation exemption applies.

Table 5.3 If so, substance requirements/active business test

	YES	NO
BEL	✔	
CYP	✔	
GER*		✔
IRE	✔	
JER	N/A	N/A
LUX*		✔
MAL*	✔	
NL	✔	
SING	✔	
SWI		✔
UK*	✔	

** GER Germany mentions that however, CFC rules can apply to passive income of low-taxed subsidiaries. Also, the participation exemption does not apply in cases in which the income was deducted in a foreign jurisdiction (e.g. hybrid-financing). CFC rules are expected to be amended soon. Anti-Hybrid rules are expected to be amended soon.*

** LUX Luxembourg notes that Luxembourg's general anti-abuse rule could disregard/requalify artificial arrangements.*

** MAL notes that in brief for non-EU subsidiaries the application of the participation exemption requires no receival of a material amount of passive interest or royalties. Furthermore, Malta notes that the application of the participation exemption has been substantially narrowed down for subsidiaries in non-cooperative jurisdictions that fail to meet certain criteria. Broadly, participation exemption does not apply to income from subsidiaries resident in jurisdictions included in the EU 'blacklist' for any period of three months during the year preceding the year of assessment.*

** UK United Kingdom exemptions are available in relation to dividends and capital gains subject to conditions. The dividend exemption is broad and most (but not all) dividends received by UK companies are therefore exempt from corporation tax. The provisions applicable to capital gains are known as the substantial shareholding exemption (SSE) which exempts most disposals of shareholdings of 10% or more. The main exceptions will be those of non-trading subsidiaries (or subgroups), or of companies acquired within the previous year.*

Chapter 2.

Detailed information per country

Belgium

	Measures	Current situation
1	**Inbound payments**	
1.1	In most jurisdictions a company is (deemed to be) a resident for CIT and DTA purposes if it is legally established or registered or if the place of effective management is located in the jurisdiction concerned. Is that also the case in your jurisdiction?	Based on section 2 §1, 5°, b) BITC, a Belgian company is considered to be a resident of Belgium for tax purposes if: • the company has its principal place of business in Belgium; or • the company has its place of management in Belgium; and • the company is not excluded from the scope of Belgian corporate income tax. The section also states that a company having its registered office in Belgium is presumed, in the absence of proof to the contrary, to also have its principal place of business or its seat of management in Belgium. Evidence to the contrary is only accepted if it is demonstrated that the company is resident for tax purposes in a State other than Belgium, in accordance with the tax laws of that other State.
1.2	In inbound situations i.e. if a company receives dividend, interest or royalty payments, is a company that meets (one of these) criteria always considered to be a resident taxpayer? (Even if it only has its legal seat in your jurisdiction and very little substance, neither in your jurisdiction nor in any other jurisdiction.)	From a Belgian company law perspective, no substance requirements are in place. As soon as the registered seat is located in Belgium, Belgian company law (i.e. in practice the BCCA) will apply. As a result of the BCCA applying, the company will need to comply with the minimum number of meetings of its corporate bodies which, in normal circumstances, requires (at least) the organization of an annual shareholders' meeting and a preparatory board meeting. However, in practice for tax purposes, in order to be considered a genuine tax resident of Belgium, a company should be able to demonstrate that it has relevant local presence in line with the functions/risks it is expected to perform/incur. So for tax law purposes the board of directors meetings must be held in Belgium and the management decisions must be taken there.
1.3	If a company meets (one of) said criteria, can it obtain a certificate of residence or the like from the tax administration? (With the purpose of obtaining DTA benefits?)	In principle when a company meets the criteria as mentioned in section 2 §1, 5°, b) BITC the Belgian tax administration will issue a tax residency certificate.
2	**Income flows**	
2.1	If a company receives and pays dividends, interest and royalties, can it obtain a tax ruling/ certainty in advance from the tax administration as regarding the taxable profit that has to be reported on the incoming and outgoing payments ('the spread')?	In principle it is possible to request certainty in advance with the Belgian ruling commission on the spread between incoming and outgoing flows. Advance rulings exist for example with respect to cash pooling activities. Our experience however is that due to the increased international scrutiny on passive income flows, amongst others because of the Danish cases, the Belgian ruling office is reluctant/very careful to grant rulings regarding passive income flows (the ruling commission requires an enormous amount of background information and details about the substance). In order to obtain a ruling, the taxpayer must provide a description of the facts. In practice, we notice that the ruling commission requires a lot of background information, asking the taxpayer over and over again additional information. Therefore, although in principle it is possible to apply for a ruling with the aim of applying a certain spread, such a ruling process may trigger a very lengthy and burdensome process.
2.2	If so, should it meet any criteria on substance?	We refer to our answer to the question above.

Belgium

	Measures	Current situation
3	**Outbound payments**	
3.1	In outbound situations i.e. a company pays dividends, interest and royalties to an associated enterprise, are there any (substance) requirements as for the receiving associated enterprise (apart from the beneficial ownership requirement)?	As a result of the Danish BO cases fierce debate is ongoing on the scope of the beneficial ownership criterion since in Belgium traditionally a legal interpretation was given to the term whereas the CJEU adheres to an economic interpretation. This debate is also different for interest/ royalties versus dividends since there is no explicit BO requirement with respect to dividend payments. Beside the unclear scope of the BO requirement, also the scope and potential impact of the ATAD GAAR, the PSD GAAR the PPT (which Belgium adopted under the MLI) and the general of principle of abuse of law developed by the CJEU are unclear. There is no formal list of substance requirements for Belgian tax purposes, but it is clear from the recent audit waves that the Belgian tax authorities go beyond the BO requirement to challenge reduced WHT under EU Directives or tax treaties.
3.2	If so, and the receiving associated enterprise does not meet those requirements, then what are the consequences? (E.g. no treaty access, full withholding tax levy, no deduction)	As already indicated, a lack of substance/ business purpose can cause a certain transaction/ set of transactions to fall within the scope of abuse, thus preventing any benefits provided for in Directives/ DTAs or Belgian law from being claimed (+ penalties such as late interest payments).
4	**Source taxes**	
4.1	Are there any source taxes on dividends, interest and royalties in national law and if so, what are the rates?	A dividend/ interest/ royalty payment by a Belgian tax resident in principle triggers 30% WHT in Belgium.
4.2	In general, are these rates approximately more than 40% reduced in DTAs?	In most cases, the 30% rate is halved (i.e. 15%) or even less (i.e. 0%/5%/10%). However, whether or not these reductions can be applied depends of course on the specific wording/ requirements (if any) as contained in the relevant DTAs.
4.3	Does your jurisdiction apply an enhanced source tax on payments to low tax jurisdictions?	No.
4.4	Are there any other specific rules that apply to payments to low tax jurisdictions?	Direct or indirect payments to beneficiaries in tax havens have to be reported on a form 275F enclosed to the corporate tax return of the Belgian entity if the total combined amount of all relevant payments equals or exceeds EUR 100.000 during the taxable period. The concept of “direct or indirect payments” is rather broad. If a payment is reported, the taxpayer will still have to prove that the payment relates to an “actual and sincere transaction” and to a “person other than an artificial arrangement”. In addition, also the reporting on a fee form 281.50 remains necessary. Non-reporting could result in non-deductibility of the payment or cost.
5	**Participation exemption**	
5.1	Does your country apply a participation exemption?	Yes, it is called the Dividend Received Deduction (“DRD”) that in principle applies to dividends received, but also to Belgian capital gains on shares.
5.2	If so, does the participation exemption also apply to capital gains (i.e. upon the alienation of participations)?	See previous question.

	Measures	Current situation
5.3	Are there any substance requirements/active business tests as to the subsidiaries to which the participation exemption applies?	In order to be able to claim the DRD, one must be able to fulfill certain quantitative and qualitative conditions. One of the qualitative conditions is the “anti-abuse test”. Under this test, the DRD regime is excluded for dividends received from a company that distributes income that is connected to an artificial arrangement whereby a legal deed or a series of legal deeds of which the administration, considering all relevant facts and circumstances, has proven, unless the contrary can be evidenced, that this legal deed or series of legal deeds is artificial and is set up with the main purpose, or one of the main purposes to benefit from one of the benefits of the EU Parent-Subsidiary Directive (in this case the DRD). Furthermore, certain requirements relate to dividends received (directly or indirectly) from subsidiaries located in low tax jurisdictions (jurisdictions with a nominal or effective tax rate below 15%) which can result in the denial of the participation exemption.

Belgium

	Measures	Any changes expected in the near future (i.e. up to and including 2022)
3	**Outbound payments**	
3.1	In outbound situations i.e. a company pays dividends, interest and royalties to an associated enterprise, are there any (substance) requirements as for the receiving associated enterprise (apart from the beneficial ownership requirement)?	To our best knowledge no changes expected in the near future other than any potential changes based on the communication of the EC on 18.05.2021 and the intention to draft a legislative proposal setting out union rules to neutralize the misuse of shell entities for tax purposes (by Q4 2021).

Cyprus

	Measures	Current situation
1	**Inbound payments**	
1.1	In most jurisdictions a company is (deemed to be) a resident for CIT and DTA purposes if it is legally established or registered or if the place of effective management is located in the jurisdiction concerned. Is that also the case in your jurisdiction?	In accordance with the Cyprus tax legislation only companies whose management and control are exercised in the Republic are tax residents of Cyprus. The “management and control” concept is similar to the concept of “place of effective management” referred to in DTAs.
1.2	In inbound situations i.e. if a company receives dividend, interest or royalty payments, is a company that meets (one of these) criteria always considered to be a resident taxpayer? (Even if it only has its legal seat in your jurisdiction and very little substance, neither in your jurisdiction nor in any other jurisdiction.)	As noted in the response above, currently residency in Cyprus is based exclusively on the management and control concept which by its nature takes into account that such management and control activity is taking place within Cyprus.
1.3	If a company meets (one of) said criteria, can it obtain a certificate of residence or the like from the tax administration? (With the purpose of obtaining DTA benefits?)	For obtaining a tax residency certificate a company should complete and submit to the Cyprus Tax Authority (“CTA”) a “Tax Residence Certificate Request and Questionnaire for Legal Entities” ((Form T.D. 98) 2015). The relevant form can be accessed online. In accordance with the said Form the information on the below mentioned topics regarding the relevant company needs to be provided to the CTA as requested in Section C “Questionnaire” of the form: 1. Company incorporation and Tax residence 2. Directors/Board meetings 3. Shareholder meetings 4. Powers of Attorney 5. Maintenance of books and records 6. Tax filings and payments In accordance with CTA circular 2015/19 of 30 October 2015, the above mentioned Form is designed to include all the necessary information needed by the competent CTA official to be able to examine the issuance of the certificate and, in those cases where clarifications are needed, the said official can contact the applicant accordingly.
2	**Income flows**	
2.1	If a company receives and pays dividends, interest and royalties, can it obtain a tax ruling/ certainty in advance from the tax administration as regarding the taxable profit that has to be reported on the incoming and outgoing payments (‘the spread’)?	The CTA practice for issuance of tax rulings on request is set out in CTA circulars 2015/13 of 22 September 2015, 2016/13 of 16 August 2016, 6 of 9 August 2017 and Council of Ministers decree 130/2016 of 22 April 2016. Our experience is that the recent practice of the CTA has been not to issue tax rulings/certainty in advance as regards the taxable profit that has to be reported on the incoming and outgoing payments (‘the spread’) due to practical matters at the CTA rulings department (as referred to in CTA circular EE6 of 9 August 2017). However, this is a developing area and the practical matters at the CTA rulings department are being tackled (again, as referred to in CTA circular EE6 of 9 August 2017). Furthermore, new regulations in this area are expected to be in place in the near future.
2.2	If so, should it meet any criteria on substance?	n/a

	Measures	Current situation
3	**Outbound payments**	
3.1	In outbound situations i.e. a company pays dividends, interest and royalties to an associated enterprise, are there any (substance) requirements as for the receiving associated enterprise (apart from the beneficial ownership requirement)?	The Cyprus tax legislation does not include any specific substance requirements for the application of the EU Parent-Subsidiary Directive ("PSD"), EU Interest-Royalty Directive ("IRD") and DTA benefits, nor has the CTA issued any guidance in this regard. Cyprus has a long standing GAAR ("General Anti-Abuse Rule) and has introduced the ATAD GAAR (as from 1 January 2019) as well as the PPT ("Principal Purpose Test") in a number of its DTAs. For the application of such no specific guidance has been issued by the CTA except for the ATAD GAAR where the CTA clarified in Application Directive number 8/2021 of 9 February 2021 that the burden of proof for the existence of the non-genuine arrangements falls with the CTA and for its interpretation the relevant case law of the CJEU and Commission Recommendation 2012/772 / EU will be followed. For the application of such each case is to be looked at based on its own facts and circumstances.
3.2	If so, and the receiving associated enterprise does not meet those requirements, then what are the consequences? (E.g. no treaty access, full withholding tax levy, no deduction)	n/a as regards specific guidance on substance. The consequences of domestic GAARs and DTA PPT application will depend upon the specific facts and circumstances. For example, the DTA PPT could operate to deny DTA benefits in circumstances where the DTA PPT conditions are met, e.g. in those cases where Cyprus per its domestic law would apply a WHT on royalty payments it may be the case that a DTA provides for an exemption, however, the application of the DTA PPT may operate to reinstate the domestic WHT. In another example the operation of the domestic GAARs may result in a denial of deduction of an interest or royalty payment where such is considered to be the appropriate application of the domestic GAARs' provisions.
4	**Source taxes**	
4.1	Are there any source taxes on dividends, interest and royalties in national law and if so, what are the rates?	Cyprus does not levy a withholding tax (WHT) on dividends, interests, and royalties paid to non-residents of Cyprus except in the case of royalties earned on rights used within Cyprus, which are subject to WHT of 10% (5% in the case of cinematograph films).
4.2	In general, are these rates approximately more than 40% reduced in DTAs?	For cases where Cyprus imposes WHT i.e. on royalties for rights used within Cyprus, the rate is typically reduced more than 40% in approximation or eliminated by DTAs.
4.3	Does your jurisdiction apply an enhanced source tax on payments to low tax jurisdictions?	No
4.4	Are there any other specific rules that apply to payments to low tax jurisdictions?	No
5	**Participation exemption**	
5.1	Does your country apply a participation exemption?	Yes
5.2	If so, does the participation exemption also apply to capital gains (i.e. upon the alienation of participations)?	Yes

Cyprus

	Measures	Any changes expected in the near future (i.e. up to and including 2022)
1	**Inbound payments**	
1.1	In most jurisdictions a company is (deemed to be) a resident for CIT and DTA purposes if it is legally established or registered or if the place of effective management is located in the jurisdiction concerned. Is that also the case in your jurisdiction?	The Cypriot Ministry of Finance (MoF) submitted in Q1 2021 to the Cyprus Parliament a bill for expanding the corporate tax residency test by introducing a test based on incorporation in Cyprus for companies that do not have a tax residency anywhere else in the world. In accordance with the Cyprus Recovery & Resilience Plan 2021 - 2026 Cyprus plans to enact this bill in Q4 2021. The current "management and control test" will remain as is.
1.2	In inbound situations i.e. if a company receives dividend, interest or royalty payments, is a company that meets (one of these) criteria always considered to be a resident taxpayer? (Even if it only has its legal seat in your jurisdiction and very little substance, neither in your jurisdiction nor in any other jurisdiction.)	As regards the additional test, the above mentioned bill proposes to consider companies incorporated in Cyprus that do not have a tax residency in any other jurisdiction to be tax residents of Cyprus without any additional criteria to be satisfied for residency.
1.3	If a company meets (one of) said criteria, can it obtain a certificate of residence or the like from the tax administration? (With the purpose of obtaining DTA benefits?)	We are not aware whether and how the introduction of the above additional test may affect the residency certificate application process.
2	**Income flows**	
2.1	If a company receives and pays dividends, interest and royalties, can it obtain a tax ruling/ certainty in advance from the tax administration as regarding the taxable profit that has to be reported on the incoming and outgoing payments ('the spread')?	We are aware that the Cyprus authorities are reviewing the Cyprus transfer pricing framework and it is possible that this review may provide for a formal Advance Pricing Agreement (APA) procedure.
2.2	If so, should it meet any criteria on substance?	We will need to await the outcome of the review referred to in the cell immediately above.

	Measures	Any changes expected in the near future (i.e. up to and including 2022)
4	**Source taxes**	
4.1	Are there any source taxes on dividends, interest and royalties in national law and if so, what are the rates?	The Cypriot MoF submitted in Q1 2021 to the Cyprus Parliament a bill for amending the tax legislation so that for payments to companies in jurisdictions in the EU 'blacklist' (i.e. companies in jurisdictions included in Annex I of the EU list of non-cooperative jurisdictions on tax matters), WHTs are introduced (or, in the case of royalties, expanded) for payments made by Cyprus tax resident companies on instruments not listed in a recognised stock exchange as follows: • for payments of dividends, where the recipient holds directly at least 50% of the capital, votes or entitlement to profit in the company paying the dividends, subject to a percentage holding anti-abuse rule; WHT at the rate of 17% • for payments of interest, not accruing from the carrying on of business including any interest closely connected with the carrying on of the business; WHT at the rate of 30% • for payments of royalties for rights used outside Cyprus (for rights used within Cyprus it is already provided for in the Cyprus tax legislation); WHT at the rate of 10%. In accordance with the Cyprus Recovery & Resilience Plan 2021 - 2026 Cyprus plans to enact this bill in Q4 2021. In addition, in accordance with the Cyprus Recovery & Resilience Plan 2021 - 2026 Cyprus plans to enact a bill in Q4 2023 on payments to low tax jurisdictions by imposing a WHT on interest, dividends, and royalty payments or other equivalent measures.
4.2	In general, are these rates approximately more than 40% reduced in DTAs?	Based on the latest update of the EU 'blacklist' in February 2021, Cyprus has a DTA with just one EU 'blacklist' jurisdiction (Seychelles, which DTA provides for 5% WHT on royalties).
4.3	Does your jurisdiction apply an enhanced source tax on payments to low tax jurisdictions?	We refer to the above.
4.4	Are there any other specific rules that apply to payments to low tax jurisdictions?	We refer to the above.

Germany

	Measures	Current situation
1`	**Inbound payments**	
1.1	In most jurisdictions a company is (deemed to be) a resident for CIT and DTA purposes if it is legally established or registered or if the place of effective management is located in the jurisdiction concerned. Is that also the case in your jurisdiction?	Yes. A company is tax resident if it has either its statutory seat in Germany or if the place of effective management is located in Germany.
1.2	In inbound situations i.e. if a company receives dividend, interest or royalty payments, is a company that meets (one of these) criteria always considered to be a resident taxpayer? (Even if it only has its legal seat in your jurisdiction and very little substance, neither in your jurisdiction nor in any other jurisdiction.)	Yes. A company is tax resident if it has either its statutory seat in Germany or if the place of effective management is located in Germany.
1.3	If a company meets (one of) said criteria, can it obtain a certificate of residence or the like from the tax administration? (With the purpose of obtaining DTA benefits?)	Yes; unless the tie-breaker rule in a DTA rules otherwise in case of dual-resident entities (e.g. incorporation in Germany but place of effective management abroad). Tie-breaker rule is included in numerous DTAs.
2	**Income flows**	
2.1	If a company receives and pays dividends, interest and royalties, can it obtain a tax ruling/ certainty in advance from the tax administration as regarding the taxable profit that has to be reported on the incoming and outgoing payments ('the spread')?	No.
2.2	If so, should it meet any criteria on substance?	n/a
3	**Outbound payments**	
3.1	In outbound situations i.e. a company pays dividends, interest and royalties to an associated enterprise, are there any (substance) requirements as for the receiving associated enterprise (apart from the beneficial ownership requirement)?	Yes. Section 50d (3) of the German Income Tax Act (EStG) serves to prevent treaty shopping. Section 50d (3) EStG (amended by a bill that came into force on June 9, 2021 ("Gesetz zur Modernisierung der Entlastung von Abzugsteuern und der Bescheinigung der Kapitalertragsteuer")) basically limits treaty entitlement if none of the following tests are met: 1. Personal entitlement to relief 2. Substance: Material connection with the own activity Exceptions: If none of the aforementioned tests are met, WHT relief can still be achieved if a principal purpose test is met or if the stock exchange clause applies. Furthermore, there are special abuse regulations in some German DTAs, e.g. in the DTA with the US. The amended law is applicable in all in all open cases, unless Section 50d (3) in the version applicable at the time the income accrued does not preclude the entitlement to relief.
3.2	If so, and the receiving associated enterprise does not meet those requirements, then what are the consequences? (E.g. no treaty access, full withholding tax levy, no deduction)	No treaty access or only partial granting of treaty benefits. I.e. German WHT could be partially reduced depending on the circumstances of the case.

Germany

	Measures	Current situation
4	**Source taxes**	
4.1	Are there any source taxes on dividends, interest and royalties in national law and if so, what are the rates?	(1) Dividends: 26.375% WHT (can be "reduced" unilaterally to 15.825% (by way of refund) if recipient is a corporation and the requirements of Section 50d (3) EStG are met); (2) Interest: Generally 26.375% WHT if the capital assets are directly or indirectly secured by domestic real property, by domestic rights subject to the provisions of civil law relating to real property, or by ships entered in a domestic shipping register (can be reduced unilaterally to 15.825% (by way of refund) if recipient is a corporation and the requirements of Section 50d (3) EStG are met); (3) Royalties: 15.825% WHT.
4.2	In general, are these rates approximately more than 40% reduced in DTAs?	Yes.
4.3	Does your jurisdiction apply an enhanced source tax on payments to low tax jurisdictions?	Not specifically a withholding tax, but Section 4j of the German Income Tax Act denies the deduction of license expenses. (Section 4j ("Lizenzschranke") of the German Income Tax Act is directed against foreign preferential regulations for the taxation of income from usage transfers of rights between related parties. Some of the corresponding expenses can only be deducted to a limited extent. The non-deductible portion is determined as follows: (25% - burden of income taxes in %) / 25%.)
4.4	Are there any other specific rules that apply to payments to low tax jurisdictions?	New law expected to be implemented (i) denies deductibility of expenses in Germany, (ii) tightens CFC rules, (iii) tightens rules for reduction of WHT regarding payments conducted to recipient's resident in a country that is listed on the EU blacklist of non-cooperative Countries.
5	**Participation exemption**	
5.1	Does your country apply a participation exemption?	Yes. Effectively 95%, provided i.a. the shareholder is a corporation and the minimum holding requirement of 10% shareholding (15% for Trade Tax purposes) is fulfilled. For non-corporate shareholders a partial (40%) exemption applies if the shares form part of the business assets.
5.2	If so, does the participation exemption also apply to capital gains (i.e. upon the alienation of participations)?	Yes. Effectively 95% given the shareholder is a corporation (no minimum holding requirement). For non-corporate shareholders a partial (40%) exemption applies if the shares form part of the business assets.
5.3	Are there any substance requirements/active business tests as to the subsidiaries to which the participation exemption applies?	No. However, CFC rules can apply to passive income of low-taxed subsidiaries. Also the participation exemption does not apply in cases in which the income was deducted in a foreign jurisdiction (e.g. hybrid-financing).

Germany

	Measures	Any changes expected in the near future (i.e. up to and including 2022)
3	**Outbound payments**	
3.1	In outbound situations i.e. a company pays dividends, interest and royalties to an associated enterprise, are there any (substance) requirements as for the receiving associated enterprise (apart from the beneficial ownership requirement)?	Section 50d (3) is to be updated to meet EU law requirements. It shall also apply if the DTA contains a provision to avoid abuse. An equivalent claim under another DTA (or an EU directive) should be no longer sufficient to preclude the denial of relief. Regarding substance of the receiving entity, under proposed new law, a genuine link of the payment received to economic activity of the receiving entity is required. I.e. passing on of income is expected not to be sufficient for relief even if the foreign shareholder has own business activity. An escape will be available if none of the main purposes of the involvement of the foreign company is to obtain a tax advantage or the foreign shareholder is publicly traded on a stock exchange.
4	**Source taxes**	
4.4	Are there any other specific rules that apply to payments to low tax jurisdictions?	New law expected to be implemented (i) denies deductibility of expenses in Germany, (ii) tightens CFC rules, (iii) tightens rules for reduction of WHT regarding payments conducted to recipients resident in a country that is listed on the EU black list of non-cooperative Countries.
5	**Participation exemption**	
5.3	Are there any substance requirements/active business tests as to the subsidiaries to which the participation exemption applies?	CFC rules are expected to be amended soon. Anti-Hybrid rules are expected to be amended soon.

Ireland

	Measures	Current situation
1	**Inbound payments**	
1.1	In most jurisdictions a company is (deemed to be) a resident for CIT and DTA purposes if it is legally established or registered or if the place of effective management is located in the jurisdiction concerned. Is that also the case in your jurisdiction?	Companies are deemed to be tax resident in Ireland based on their place of incorporation or by virtue of their place of central management and control, except where the company is, by virtue of a DTT concluded between Ireland and another territory, considered to be tax resident in another territory and not in Ireland. The majority of Irish DTTs seek to solve the question of dual residence by virtue of the company's place of effective management. However, a small number of Irish DTTs (either due to the application of the MLI or agreed in individual treaties, such as in the DTT with the Netherlands) now require a competent authority agreement for solving dual residence of companies. Under this provision, the competent authorities of the contracting States will endeavour to determine a sole jurisdiction of residence by mutual agreement having regard to that company's place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors.
1.2	In inbound situations i.e. if a company receives dividend, interest or royalty payments, is a company that meets (one of these) criteria always considered to be a resident taxpayer? (Even if it only has its legal seat in your jurisdiction and very little substance, neither in your jurisdiction nor in any other jurisdiction.)	A company that receives dividend, interest or royalty payments is not always considered to be a resident taxpayer. From 1 January 2021, all Irish incorporated companies are, prima facie, regarded as Irish tax residents (i.e., regardless of their substance), except where the company is, by virtue of a DTT concluded between Ireland and another territory, considered to be tax resident in that other territory and not in Ireland. Generally, for non-Irish incorporated companies, it is required that substantial evidence be shown that the company is being managed and controlled in Ireland to be considered an Irish tax resident. The term "central management and control" is not defined in Irish legislation and its meaning has developed from UK case law (which, whilst not legally binding in Ireland, is generally regarded as persuasive). The case law interpretation of central management and control is, in broad terms, directed at the highest level of control of the business of a company, and is to be distinguished from the place where the main operations of a business are to be found. Based on case law, a strong indicator of the location of central management and control is the location of directors' meetings at which the strategic decisions affecting the company are taken. Generally, the company's board minutes confirming (i) the frequency of the board meetings, (ii) the place of the board meetings being Ireland (ideally the office of the Irish company), (iii) all or the majority of the directors attending the board meetings in Ireland, (iv) the key policy decisions taken and the decisions authorising the signing and execution of important documents at the board meetings should be supportive to confirm the company's Irish residence. It would also be necessary to demonstrate that the directors have sufficient competence and seniority to discharge their duties and that they are not acting on behalf of foreign resident "shadow" directors. Other factors may include e.g. the company having a at least one Irish tax resident director, the physical location of company documents (accounts, minute books, company seal,

	Measures	Current situation
		share register, etc) being held in Ireland, meetings of committees which report into and are directed by the Board being held in Ireland, etc. If a company wishes to be Irish tax resident, ideally the majority of its directors would be Irish tax residents.
1.3	If a company meets (one of) said criteria, can it obtain a certificate of residence or the like from the tax administration? (With the purpose of obtaining DTA benefits?)	Irish tax resident companies (either by virtue of their incorporation or place of central management and control) can obtain a certificate of residence from Irish Revenue by submitting a request via Revenue Online Service (ROS). Annex 3 in Revenue Tax and Duty Manual Part 35-01-05 (available online) includes a template letter of tax residence for a company in Ireland.
2	**Income flows**	
2.1	If a company receives and pays dividends, interest and royalties, can it obtain a tax ruling/ certainty in advance from the tax administration as regarding the taxable profit that has to be reported on the incoming and outgoing payments ('the spread')?	Generally no - requests will not be accepted where the matter is straight-forward and the taxpayer/agent is simply looking for a letter of comfort from Revenue of a position or issue which can be readily established from existing published information and is not in doubt. Confirmation of a taxable income (i.e., the spread) in Ireland should normally not be considered a complex matter and thus Revenue is unlikely to issue an opinion on this matter. In light of BEPS Action 14, Ireland introduced a formal bilateral Advance Pricing Agreement (APA) system for advance certainty effective from 1 July 2016 (Tax and Duty Manual 35-02-07: Bilateral Advance Pricing Agreement Guidelines). Since July 2016, taxpayers may request Irish Revenue to enter an APA with a foreign tax administration regarding transfer pricing issues (including the attribution of profits to a PE). For any correlative adjustments or mutual agreement procedure (MAP), the taxpayer may file a request following the guidelines published in Part 35-02-08 of the Tax and Duty Manual. However, Revenue may issue opinions/confirmations in certain limited circumstances, in particular, in relation to a proposed transaction or business activity where the circumstances are complex, or unusual, or information is not readily available, or there is genuine uncertainty in relation to the interpretation or application of the relevant tax/duty rules. Revenue do not issue opinions to facilitate tax planning by agents and taxpayer.
2.2	If so, should it meet any criteria on substance?	N/A

	Measures	Current situation
3	**Outbound payments**	
3.1	In outbound situations i.e. a company pays dividends, interest and royalties to an associated enterprise, are there any (substance) requirements as for the receiving associated enterprise (apart from the beneficial ownership requirement)?	**Dividend WHT** Dividend WHT applies at 25% to dividends and other distributions. However, domestic legislation provides for a number of exemptions which can operate to eliminate DWT in certain circumstances, including: • Exemption on dividends paid to a company resident in an EU/DTT country not under the control of Irish residents. • Exemption on dividends paid to a company, wherever resident, under the control of EU/DTT country residents and not under the control of a person or persons that are not so resident (including Ireland), or • Exemption where dividends are paid to a non-resident company, or the 75% direct or indirect non-resident subsidiary of a company, whose shares are listed and regularly traded on a recognized stock exchange in an EU/Treaty country. Aside from tax residence mentioned above, there are no specific substance requirements for the above WHT exemptions to apply. However, the associated enterprise receiving the dividends is required to provide a declaration to the Irish resident company in advance of the distribution being paid. The EU P/S Directive or relevant DTT may also provide relief from WHT, but it should be noted that the Irish legislation was amended to incorporate the anti-avoidance measures introduced in the EU P/S directive. **Interest WHT** Certain annual interest payments are subject to WHT at 20%. Interest payments made by companies to companies resident in other EU/DTT countries are generally not subject to a WHT. The EU Interest and Royalties Directive may also provide an exemption from WHT for payments between associated companies. There are no specific substance requirements for the above WHT exemptions to apply. **Royalty WHT** Royalties, other than patent royalties, are not generally subject to a WHT under Irish domestic law. Patent royalty payments and certain other annual payments are subject to WHT at 20%. Lower WHT rates may be accessed under treaties, subject to certain documentation and reporting requirements. The EU Interest and Royalties Directive may also provide an exemption from WHT for payments between associated companies. There are no specific substance requirements for the above WHT exemptions to apply.

	Measures	Current situation
3.2	If so, and the receiving associated enterprise does not meet those requirements, then what are the consequences? (E.g. no treaty access, full withholding tax levy, no deduction)	It is important to note that, where the taxpayer enters into a transaction and it would be reasonable to consider that the principal purpose test (PPT) would be difficult to satisfy for the purpose of applying the DTA benefits where the transaction is considered a "tax avoidance transaction" by Irish Revenue under domestic General Anti-Avoidance Rules (GAAR), the taxpayer should not be able to benefit from the DTA. As noted above, the Irish legislation incorporates the anti-avoidance measures introduced in the EU P/S directive. Accordingly, where the taxpayer relies on the EU P/S Directive (as implemented into Irish law) for claiming the relevant WHT exemption on dividends, the arrangement, or series of arrangements, must (i) not been put in place for the main purpose of, or one of the main purposes of which is, obtaining a tax advantage that defeats the object and purpose of the arrangement, and (ii) is genuine having regard to all facts and circumstances. Furthermore, the exemption under the EU P/S Directive is not available as regards distributions made to a parent company if the majority of the voting rights in the parent company are controlled directly or indirectly by persons in non-EU/non-DTA countries, unless it is shown that the parent company exists for bona fide commercial reasons and does not form part of any arrangement or scheme of which the main purpose, or one of the main purposes, is the avoidance of liability to income tax (including dividend withholding tax), corporation tax or capital gains tax.
4	**Source taxes**	
4.1	Are there any source taxes on dividends, interest and royalties in national law and if so, what are the rates?	Please see our comments above under "Outbound payments"
4.2	In general, are these rates approximately more than 40% reduced in DTAs?	Typically yes. Please see an overview of the withholding tax rates under Irish DTAs here https://taxsummaries.pwc.com/ireland/corporate/withholding-taxes
4.3	Does your jurisdiction apply an enhanced source tax on payments to low tax jurisdictions?	No (but see our further comments below)
4.4	Are there any other specific rules that apply to payments to low tax jurisdictions?	No - to date, no specific amendments have been made to the legislation in relation to imposition or relief from WHT in the context of low tax jurisdictions. That said, a reporting requirement has been introduced in relation to certain payments (that would typically attract WHT) as regards payments to territories in the so-called EU Blacklist. The reporting requirement is included in the corporation tax returns for accounting periods ending in 2019 (and 2020 etc).

Ireland

	Measures	Any changes expected in the near future (i.e. up to and including 2022)
4	**Source taxes**	
4.3	Does your jurisdiction apply an enhanced source tax on payments to low tax jurisdictions?	No, but note that, in January 2021, the Department of Finance published a corporation tax roadmap update, which provides an indication of the actions that Ireland will take to ensure that the Irish corporation tax system remains competitive, fair and sustainable into the future. In this context, the roadmap suggests that additional additional defensive measures in respect of EU Blacklisted countries, such as denial of tax deductions, will be considered in 2021.
4.4	Are there any other specific rules that apply to payments to low tax jurisdictions?	See our comments above.
5	**Participation exemption**	
5.1	Does your country apply a participation exemption?	No, but note that, in the corporation tax roadmap update published by the Department of Finance published in January 2021 (see above), the Department of Finance has indicated that a public consultation on the possible move to a territorial regime will be launched in 2021 (also noting that any subsequent policy actions will need to take account of the outcome of the ongoing international discussions in at the OECD/G20 Inclusive Framework level).
5.2	If so, does the participation exemption also apply to capital gains (i.e. upon the alienation of participations)?	See our comments above.
5.3	Are there any substance requirements/active business tests as to the subsidiaries to which the participation exemption applies?	See our comments above.

Jersey

	Measures	Current situation
1	**Inbound payments**	
1.1	In most jurisdictions a company is (deemed to be) a resident for CIT and DTA purposes if it is legally established or registered or if the place of effective management is located in the jurisdiction concerned. Is that also the case in your jurisdiction?	In accordance with Article 123 of the Income Tax (Jersey) Law 1961, a company is resident in Jersey for tax purposes if it is either incorporated in Jersey or it is managed and controlled in Jersey. A company incorporated in Jersey that meets the following criteria is not regarded as tax resident in Jersey: - It is managed and controlled in a jurisdiction outside of Jersey; - It is tax resident in that other jurisdiction; and - The highest rate of tax suffered by any company in that other jurisdiction on any part of its income is at least 10%. Note that Jersey has a limited treaty network and does not have a full DTA with the Netherlands.
1.2	In inbound situations i.e. if a company receives dividend, interest or royalty payments, is a company that meets (one of these) criteria always considered to be a resident taxpayer? (Even if it only has its legal seat in your jurisdiction and very little substance, neither in your jurisdiction nor in any other jurisdiction.)	As noted above, if a company is incorporated in Jersey (legal seat), it is deemed to be tax resident in Jersey unless it meets the three criteria specified above. It is therefore depenant on where the company is managed and controlled and the domestic tax residency legislation of the other jurisdiction. If a company incorporated in Jersey does not meet the three criteria listed above, it will be deemed to be tax resident in Jersey. Jersey introduced Taxation (Companies - Economic Substance) (Jersey) Law in 2019. This legislation con-tains an economic substance test which applies to companies that are resident in Jersey for tax purposes and are carrying on “relevant activities” (defined in the legislation) that generate gross income. For each accounting period starting on or after 1 January 2019 in which a company meets these conditions, a company with gross income from a relevant activity must demonstrate that it has adequate substance in Jersey. Relevant activities include banking, insurance, fund management, finance & leasing, headquarters, shipping, (pure equity) holding company, intellectual property holding and distribution & service center business. If a company was tax resident in Jersey, it would need to consider whether it falls into Taxation (Companies - Economic Substance) (Jersey) Law and may be required to meet the economic substance test. By way of an example, if a Jersey incorporated and tax resident company were to receive interest income, this could be indictive of conducting the finance and leasing business relevant activity. Alternatively, if the company received dividends, this could be indicative of holding company business relevant activity. Royalty flows could be indicative of an IP holding company.

	Measures	Current situation
		The test A company is considered to have adequate substance in Jersey, and thus satisfy the economic substance test, where it can demonstrate that it meets all of the following conditions for each relevant activity carried on by it and for each relevant accounting period: • The company is directed and managed in Jersey in relation to its relevant activity; • Having regard to the level of relevant activity carried on in Jersey: – there are an adequate number of employees in relation to that activity who are physically present in Jersey (whether or not employed by the resident company or by another entity and whether on temporary or long-term contracts). – there is adequate expenditure incurred in Jersey proportionate to the level of activity carried on in the Island. – there are adequate physical assets in Jersey; and • All of the company's core income-generating activities (these are the key essential and valuable activities that generate the income of the entity) are carried out in Jersey. **Consequences of failing** Failure to meet Jersey's economic substance test for an accounting period can result in a penalty of up to £10,000. The penalty for failing to meet the economic substance test in subsequent accounting periods can increase to a maximum of £100,000. The Comptroller also has the ability to recommend proceedings to wind up Jersey incorporated companies that fail to satisfy Jersey's economic substance test. The Comptroller might pursue such a policy if, for ex-ample, a company consecutively fails Jersey's economic substance test, or when there are severe failures that present unacceptable risks to Revenue Jersey or where there are failures and the company's directors do not demonstrate a willingness to correct the position. Failing to meet Jersey's economic substance test will also result in the Comptroller of Taxes exchanging information with competent tax authorities (i.e. where Bilateral Agreements and the OECD's Multilateral Convention permits) of the company's holding body, ultimate holding body, ultimate beneficial owner and, if the company is incorporated outside of Jersey, the competent authority of the jurisdiction in which it is incorporated. **Anti-Avoidance** While the Substance Regulations do not include an anti-avoidance provision, the guidance (jointly issued by the Crown Dependencies) includes comments which aim to prevent companies from avoiding any obligation or liability under the substance rules.

	Measures	Current situation
1.3	If a company meets (one of) said criteria, can it obtain a certificate of residence or the like from the tax administration? (With the purpose of obtaining DTA benefits?)	Revenue Jersey can supply tax residency certificates on request to foreign companies (i.e. not incorporated in Jersey/no legal seat in Jersey). Jersey has a very small, full DTA network, details of which can be found here: https://www.gov.je/TaxesMoney/InternationalTaxAgreements/DoubleTaxation/Pages/FullDoubleTaxation.aspx
2	**Income flows**	
2.1	If a company receives and pays dividends, interest and royalties, can it obtain a tax ruling/certainty in advance from the tax administration as regarding the taxable profit that has to be reported on the incoming and outgoing payments ('the spread')?	Most companies in Jersey are subject to tax at a rate of 0%. Companies resident in Jersey for tax purposes are taxable on their worldwide tax adjusted profits (i.e. trading profits, dividend and interest income etc. net of allowable expenses and available reliefs etc.) at the rate of 0%, 10% or 20% depending on the activities undertaken. The 10% rates apply to Jersey financial services companies. A company is defined as a financial services company, under Article 123D of the Income Tax (Jersey) Law 1961, if: • It is registered under the Financial Services (Jersey) Law 1998 to carry out investment business; trust company business; fund services business as an administrator, custodian or registrar in relation to an unclassified or unregistered fund; or general insurance mediation business as described in either class P or class Q in Part 3 of the Schedule to the Financial Services (Financial Service Business) (Jersey) Order 2009; • It is registered under the Banking Business (Jersey) Law 1991; • It holds a permit under the Collective Investment Funds (Jersey) Law 1988 as an administrator, registrar or custodian; • It holds either a Category A or Category B permit under the Insurance Business (Jersey) Law 1996; or • It is a company trading in the provision of credit facilities to customers by way of making any advance or granting of any credit including (but not limited to): – the provision, in connection with the supply of goods by hire purchase, leasing, conditional sale or credit sale, of credit in instalments for which a separate charge is made and disclosed to the customer, and – any assignment to the company of an advance or credit repayable by the customer to a person other than the company. The 20% tax rate applies to certain utility companies operating in Jersey. Certain other income sources are taxable at 20%, including Jersey real estate income, (which includes rental income and property development profits), quarrying activities and importing and supplying hydrocarbon fuels. Furthermore, from 1 January 2018, a 20% rate also applies to retailers in Jersey with taxable turnover exceeding GBP £2 million and net taxable profit greater than GBP £500,000. Jersey companies not falling to be liable to tax at the rates of 10% and 20% and not exempt are taxable at the general rate of 0%.

Jersey

	Measures	Current situation
		Rulings are only available in Jersey where there is uncertainty within the law. There is no transfer pricing legislation Jersey but there is a General Anti-Avoidance provision that could be utilised by the Comptroller if there is concern about abuse.
2.2	If so, should it meet any criteria on substance?	Jersey's Economic Substance law would likely apply to a Jersey tax resident company. We refer you to the above for further details on the economic substance test and penalties.
3	**Outbound payments**	
3.1	In outbound situations i.e. a company pays dividends, interest and royalties to an associated enterprise, are there any (substance) requirements as for the receiving associated enterprise (apart from the beneficial ownership requirement)?	No.
3.2	If so, and the receiving associated enterprise does not meet those requirements, then what are the consequences? (E.g. no treaty access, full withholding tax levy, no deduction)	No.
4	**Source taxes**	
4.1	Are there any source taxes on dividends, interest and royalties in national law and if so, what are the rates?	There are no WHTs on dividends, interest, or royalties paid by Jersey companies to non-residents.
4.2	In general, are these rates approximately more than 40% reduced in DTAs?	N/A, as above.
4.3	Does your jurisdiction apply an enhanced source tax on payments to low tax jurisdictions?	N/A, as above.
4.4	Are there any other specific rules that apply to payments to low tax jurisdictions?	No.
5	**Participation exemption**	
5.1	Does your country apply a participation exemption?	No.
5.2	If so, does the participatioin exemption also apply to capital gains (i.e. upon the alienation of participations)?	N/A - Jersey does not tax capital gains.
5.3	Are there any substance requirements/active business tests as to the subsidiaries to which the participation exemption applies?	N/A

Jersey

	Measures	Any changes expected in the near future (i.e. up to and including 2022)
1	**Inbound payments**	
1.2	In inbound situations i.e. if a company receives dividend, interest or royalty payments, is a company that meets (one of these) criteria always considered to be a resident taxpayer? (Even if it only has its legal seat in your jurisdiction and very little substance, neither in your jurisdiction nor in any other jurisdiction.)	The Taxation (Partnerships - Economic Substance) (Jersey) Law was passed on 29 June 2021 and would extend the substance requirements to include partnerships from 1 July 2021 (new partnerships) or 1 January 2022 (partnerships formed before 1 July 2021). The substance requirements for partnerships will broadly mirror the regime applicable to companies (described in current situation).
4	**Source taxes**	
4.4	Are there any other specific rules that apply to payments to low tax jurisdictions?	No. Note that Jersey intends to bring into force the Taxation (Implementation) (International Tax Compliance) (Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures) (Jersey) Regulations 2020 (the Regulations) in due course. We understand the likely date is currently early 2022. The Regulations do not follow the EU model enacted as DAC6, focusing only on Hallmark D arrangements.

Luxembourg

	Measures	Current situation
1	**Inbound payments**	
1.1	In most jurisdictions a company is (deemed to be) a resident for CIT and DTA purposes if it is legally established or registered or if the place of effective management is located in the jurisdiction concerned. Is that also the case in your jurisdiction?	Yes, a company becomes tax resident in Luxembourg if either its statutory seat or its effective place of management is in Luxembourg.
1.2	In inbound situations i.e. if a company receives dividend, interest or royalty payments, is a company that meets (one of these) criteria always considered to be a resident taxpayer? (Even if it only has its legal seat in your jurisdiction and very little substance, neither in your jurisdiction nor in any other jurisdiction.)	In principle yes, unless a tie breaker rule under a tax treaty would allocate tax residency to another State
1.3	If a company meets (one of) said criteria, can it obtain a certificate of residence or the like from the tax administration? (With the purpose of obtaining DTA benefits?)	Yes, provided that the company is up-to-date with all the relevant Luxembourg tax filings.
2	**Income flows**	
2.1	If a company receives and pays dividends, interest and royalties, can it obtain a tax ruling/ certainty in advance from the tax administration as regarding the taxable profit that has to be reported on the incoming and outgoing payments ('the spread')?	The taxable profit as such cannot be fixed in advance, rulings could be requested to determine the tax treatment of a future transaction or the arm's length character of a transaction.
2.2	If so, should it meet any criteria on substance?	For intra-group financing activities, there exists a Luxembourg tax circular setting out concrete requirements. In brief, these require that the Luxembourg company has the relevant resources to contract and oversee the risks in relation to its financing activity (including a majority of the managers being professionally resident in Luxembourg and sufficient qualified personnel) and an appropriate amount of equity (and the company should earn an arm's length remuneration for its financing activity).
3	**Outbound payments**	
3.1	In outbound situations i.e. a company pays dividends, interest and royalties to an associated enterprise, are there any (substance) requirements as for the receiving associated enterprise (apart from the beneficial ownership requirement)?	The Luxembourg law does not have foreign substance requirements - generally, for non-EU companies there is a requirement to meet a subject-to-tax test (i.e., the company must be subject to a tax rate of at least 8.5% on a tax basis which is comparable to the Luxembourg corporate tax basis). Foreign substance could be reviewed in light of the general anti-abuse rule implemented in the Luxembourg participation exemption, Luxembourg case law and the Danish beneficial ownership cases.
3.2	If so, and the receiving associated enterprise does not meet those requirements, then what are the consequences? (E.g. no treaty access, full withholding tax levy, no deduction)	This would depend on the nature of the infringement and could lead to e.g. no treaty access, full 15% WHT on dividends, disregarding/requalifying a structure in its entirety under the Luxembourg general anti-abuse rule, etc.
4	**Source taxes**	
4.1	Are there any source taxes on dividends, interest and royalties in national law and if so, what are the rates?	15% for dividends, in principle there is no domestic WHT on interest and royalties (unless exceptional cases).
4.2	In general, are these rates approximately more than 40% reduced in DTAs?	For dividend WHT this is often the case in case of substantial shareholdings held by corporate entities (not for minor shareholdings or individuals).

	Measures	Current situation
4.3	Does your jurisdiction apply an enhanced source tax on payments to low tax jurisdictions?	No
4.4	Are there any other specific rules that apply to payments to low tax jurisdictions?	As from 1 March 2021, Luxembourg could disallow the tax deduction of interest or royalties due to a related party, if the beneficiary is a corporate entity established in a country that is listed by the Council of the EU as being “non-cooperative” for tax purposes. The provision does not apply if the Luxembourg taxpayer can prove that the arrangements giving rise to the expense satisfy the “valid commercial reasons that reflect economic reality” test. Arrangements with non-cooperative States would also need to be mentioned in the corporate tax return and may be subject to DAC 6 reporting.
5	**Participation exemption**	
5.1	Does your country apply a participation exemption?	Yes
5.2	If so, does the participation exemption also apply to capital gains (i.e. upon the alienation of participations)?	Yes, provided that a participation of at least 10% (or shares with an acquisition price of at least EUR 6M) is held for an uninterrupted period of at least 12 months, provided that the Luxembourg holding entity and the disposed of entity are qualifying entities and provided that the disposed of entity is subject to a sufficient level of corporate income tax.
5.3	Are there any substance requirements/active business tests as to the subsidiaries to which the participation exemption applies?	This is not foreseen in the Luxembourg participation exemption, but the Luxembourg general anti-abuse rule could disregard/requalify artificial arrangements.

Luxembourg

	Measures	Any changes expected in the near future (i.e. up to and including 2022)
2	**Income flows**	
2.2	If so, should it meet any criteria on substance?	There are no concrete indications in this sense, updates such as the Danish BO cases are likely to have an impact.
3	**Outbound payments**	
3.1	In outbound situations i.e. a company pays dividends, interest and royalties to an associated enterprise, are there any (substance) requirements as for the receiving associated enterprise (apart from the beneficial ownership requirement)?	There are no concrete indications in this sense, updates such as the Danish BO cases are likely to have an impact on the application of Luxembourg rules.
3.2	If so, and the receiving associated enterprise does not meet those requirements, then what are the consequences? (E.g. no treaty access, full withholding tax levy, no deduction)	The same consequences are expected to apply as under current circumstances.
4	**Source taxes**	
4.2	In general, are these rates approximately more than 40% reduced in DTAs?	N/A
5	**Participation exemption**	
5.3	Are there any substance requirements/active business tests as to the subsidiaries to which the participation exemption applies?	There are no concrete indications in this sense, updates such as the Danish BO cases are likely to have an impact on the application of Luxembourg rules.

Malta

	Measures	Current situation
1	**Inbound payments**	
1.1	In most jurisdictions a company is (deemed to be) a resident for CIT and DTA purposes if it is legally established or registered or if the place of effective management is located in the jurisdiction concerned. Is that also the case in your jurisdiction?	Correct - both criteria are relevant. A company is tax resident in Malta if it is (a) incorporated in Malta, or (b) where not incorporated in Malta, if it is managed and controlled in Malta.
1.2	In inbound situations i.e. if a company receives dividend, interest or royalty payments, is a company that meets (one of these) criteria always considered to be a resident taxpayer? (Even if it only has its legal seat in your jurisdiction and very little substance, neither in your jurisdiction nor in any other jurisdiction.)	The notion of "residence" is based on the statutory definition referred to above and for double taxation treaty purposes, residence tie breaker provisions contained in any applicable double tax treaty would also be determinant.
1.3	If a company meets (one of) said criteria, can it obtain a certificate of residence or the like from the tax administration? (With the purpose of obtaining DTA benefits?)	Satisfying the above criteria is the starting point in terms of qualifying for a tax residence certificate. The Maltese Commissioner for Revenue typically requires additional information in this respect depending on the applicable circumstances, e.g. that the company is not effectively managed in a relevant double taxation treaty jurisdiction, proof of location of effective management in appropriate circumstances etc.
2	**Income flows**	
2.1	If a company receives and pays dividends, interest and royalties, can it obtain a tax ruling/ certainty in advance from the tax administration as regarding the taxable profit that has to be reported on the incoming and outgoing payments ('the spread')?	This depends on the Maltese Commissioner for Revenue being satisfied (on the basis of the proof requested thereby from the company) on whether the particular transactions/ arrangements are truly at arm's length or otherwise. This would currently be dependent on the satisfaction of internationally accepted Transfer Pricing principles, most notably the OECD Transfer Pricing Guidelines and thus naturally substance in the respective jurisdictions would play a part in determining the profits attributable to the respective jurisdiction. Once Malta would eventually enact its own TP rules these would also need to be satisfied although it is anticipated that these will also require satisfaction of internationally accepted Transfer Pricing considerations.
2.2	If so, should it meet any criteria on substance?	Pricing in line with the Arm's length principle as established in internationally-accepted Transfer Pricing considerations should be applied and in a consistent manner. This should take into account, the people, functions and risks (including substance) of the entity.
3	**Outbound payments**	
3.1	In outbound situations i.e. a company pays dividends, interest and royalties to an associated enterprise, are there any (substance) requirements as for the receiving associated enterprise (apart from the beneficial ownership requirement)?	Establishing residence is based on similar considerations as the inbound scenario. Qualifying for tax exemption on such payments is subject to certain conditions e.g. the recipient not having a permanent establishment in Malta and in particular, that the recipient is not resident in Malta. General anti-avoidance provisions (including the ATAD GAAR) entitle the Revenue to check in practice whether such conditions are indeed satisfied (and proving residence in another jurisdiction may possibly nowadays also require demonstrating the requisite substance in this respect).
3.2	If so, and the receiving associated enterprise does not meet those requirements, then what are the consequences? (E.g. no treaty access, full withholding tax levy, no deduction)	If the provisions for exemption from Maltese tax are not met, tax would be imposed. Furthermore if the payment is deductible, a reduction in the deduction in line with the Arm's length amount.

Malta

	Measures	Current situation
4	**Source taxes**	
4.1	Are there any source taxes on dividends, interest and royalties in national law and if so, what are the rates?	Due to the existence of a full imputation system of taxation, typically no further tax is applied on dividend distributions, except in certain specific circumstances, e.g. in situations where no tax is imposed at corporate level on the distributed profits and certain other conditions are met. Interest and royalties arising in Malta are in principle taxable at the rate of 35% (assuming a corporate non-resident taxpayer and in the absence of an applicable treaty setting down lower rates) but these may be exempt if certain statutory conditions are met.
4.2	In general, are these rates approximately more than 40% reduced in DTAs?	Yes
4.3	Does your jurisdiction apply an enhanced source tax on payments to low tax jurisdictions?	No
4.4	Are there any other specific rules that apply to payments to low tax jurisdictions?	No
5	**Participation exemption**	
5.1	Does your country apply a participation exemption?	Yes
5.2	If so, does the participation exemption also apply to capital gains (i.e. upon the alienation of participations)?	Yes
5.3	Are there any substance requirements/active business tests as to the subsidiaries to which the participation exemption applies?	Yes, for non-EU subsidiaries. In brief, the requirement is for the entity to not receive a material amount of passive interest or royalties.

Malta

	Measures	Any changes expected in the near future (i.e. up to and including 2022)
2	**Income flows**	
2.1	If a company receives and pays dividends, interest and royalties, can it obtain a tax ruling/ certainty in advance from the tax administration as regarding the taxable profit that has to be reported on the incoming and outgoing payments ('the spread')?	An enabling provision has been approved by the Maltese Parliament authorising the Minister for Finance to publish detailed Transfer Pricing rules. Thus more detailed Transfer Pricing rules in line with the arm's length principle are anticipated.
2.2	If so, should it meet any criteria on substance?	See previous point.
5	**Participation exemption**	
5.3	Are there any substance requirements/active business tests as to the subsidiaries to which the participation exemption applies?	The application of participation exemption has been substantially narrowed down for subsidiaries in non-cooperative jurisdictions that fail to meet certain criteria. Broadly, participation exemption does not apply to income from subsidiaries resident in jurisdictions included in the EU list of non-cooperative jurisdictions for any period of three months during the year preceding the year of assessment. Where such three months are consecutive and fall in two subsequent consecutive basis years, the exemption shall not apply in any one of the two years (unless the subsidiary maintains sufficient significant people functions in that listed jurisdiction as is commensurate with the type and extent of the activity carried on in that jurisdiction and the income earned therefrom).

Netherlands

	Measures	Current situation
1	**Inbound payments**	
1.1	In most jurisdictions a company is (deemed to be) a resident for CIT and DTA purposes if it is legally established or registered or if the place of effective management is located in the jurisdiction concerned. Is that also the case in your jurisdiction?	A company is deemed to be a resident for CIT purposes if it is incorporated in the Netherlands. Companies that are not incorporated in the Netherlands are also considered to be a resident in case their effective management is located in the Netherlands. A company is deemed to be resident for DTA purposes if the effective management is located in the Netherlands. In case a company is considered resident based on legally establishment in the Netherlands, but the effective management is in another jurisdiction, the DTA can prevent or restrict the taxation of that company in the Netherlands.
1.2	In inbound situations i.e. if a company receives dividend, interest or royalty payments, is a company that meets (one of these) criteria always considered to be a resident taxpayer? (Even if it only has its legal seat in your jurisdiction and very little substance, neither in your jurisdiction nor in any other jurisdiction.)	In principle yes, a company is deemed to be a resident if it is incorporated in the Netherlands or its place of effective management, unless a tie breaker rule under a DTA would allocate tax residency to another jurisdiction.
1.3	If a company meets (one of) said criteria, can it obtain a certificate of residence or the like from the tax administration? (With the purpose of obtaining DTA benefits?)	Companies incorporated under Dutch law having an office address in the Netherlands can generally obtain a residency certificate. For companies not incorporated under Dutch law, we see that in practice additional requirements may apply (e.g., having at least 2 FTE).
2	**Income flows**	
2.1	If a company receives and pays dividends, interest and royalties, can it obtain a tax ruling/certainty in advance from the tax administration as regarding the taxable profit that has to be reported on the incoming and outgoing payments ('the spread')?	Yes, taxpayers are able to obtain certainty in advance on the application of tax laws and regulations. They may request the Dutch tax authorities to conclude an APA with respect to the transfer pricing of controlled transactions. Taxpayers may also request the Dutch tax authorities to provide an ATR with respect to the CIT implications of a (contemplated) set of transactions.
2.2	If so, should it meet any criteria on substance?	Prior consultation is not possible, in case: • there is no sufficient relevant economic nexus • saving of Dutch or foreign tax is the sole or decisive reason for the transaction, or • a transaction takes place with a country that is on the Dutch list of low-tax jurisdiction or the EU list of non-cooperative jurisdictions The taxpayer applying for an ATR or APA will be required to have sufficient 'economic nexus' in the Netherlands to conclude a ruling. This means that the level of relevant operational (group) business activities in the Netherlands will have to match with the position and function of the relevant Dutch entity (or entities). This means e.g. that operational activities are performed for the risk and account of the company in the Netherlands. There is sufficient personnel relevant for the tasks performed in the Netherlands and the number of employees is proportional to the overall employees available within the group. The level of costs is also proportional to the activities carried out within the group.

	Measures	Current situation
3	**Outbound payments**	
3.1	In outbound situations i.e. a company pays dividends, interest and royalties to an associated enterprise, are there any (substance) requirements as for the receiving associated enterprise (apart from the beneficial ownership requirement)?	**Dividend payments** Companies are exempt from dividend withholding tax on qualifying participations in cases where the recipient of the dividends is located in an EU/EEA country, or a country with which the Netherlands has concluded a tax treaty containing a dividend article. This is different in cases of abuse, i.e. artificial arrangements with the purpose to avoid dividend withholding tax. As of 1 January 2020, the role of substance requirements for the purposes of the dividend withholding tax exemption has changed. Substance requirements no longer function as safe harbour rules (i.e., when satisfied there is no risk of being abusive), but only play a role in determining where the burden of proof lies between the taxpayer and the tax authority. Currently, if the recipient of the dividend fulfils the Dutch substance requirements, the tax inspector can still demonstrate that there is tax abuse. In that regard, the tax inspector has to demonstrate that a) the interest in the Dutch company paying the dividends is held with the main purpose or one of the main purposes to avoid the payment of dividend withholding tax and b) there are no sound business reasons that reflect economic reality. If the tax inspector demonstrates that these two tests are met, the withholding tax exemption is not applicable. Vice versa, if the recipient of the dividend does not fulfil the substance requirements, both the payor and the recipient of the dividends may still demonstrate that there is no tax abuse and the withholding tax exemption is applicable. In both cases, the Dutch tax authorities and the recipient/payor of the dividend can rely on the indicators of abuse included in the so-called “Danish beneficial ownership cases” of the CJEU. **Interest and royalties payments:** As of 1 January 2021, the Netherlands applies a conditional withholding tax (WHT) on interest and royalty payments. This tax is only levied on interest and royalty payments to affiliated companies in designated low-tax jurisdictions and in certain tax abuse situations: • payments made to associated entities in low tax jurisdictions (statutory corporate tax rate of less than 9 per cent and jurisdictions on the EU list for non-cooperative jurisdictions) • in situations where artificial structures are put in place with the main purpose or one of the main purposes to avoid the Dutch withholding tax, e.g. where an interest payment to a Listed Country is artificially routed via a low-substance financing company in a non-Listed Country. **Anti-abuse measures:** Besides the aforementioned specific anti-abuse rules there are also the ATAD GAAR (the Dutch legislator is of the opinion that the GAAR was already implemented into domestic legislation, although not statutory, but through the doctrine of fraus legis), the PSD GAAR, the PPT (which The Netherlands adopted under the MLI) and the general principle of abuse of law developed by the CJEU. The scope and impact of these anti-abuse measures are unclear.

	Measures	Current situation
3.2	If so, and the receiving associated enterprise does not meet those requirements, then what are the consequences? (E.g. no treaty access, full withholding tax levy, no deduction)	In case the receiving associated enterprise does not meet the requirements stated above for the dividend withholding tax exemption the result is that the dividend payment will be subject to a full withholding tax levy. The same applies for interest and royalties payments regarding the situations described above. As already indicated, a lack of substance/business purpose can cause a certain transaction/ set of transaction to fall within the scope of abuse, thus preventing any benefits provided for in Directives/DTA's or Dutch law from being claimed. Whether the Netherlands can actually effectuate such levy may also be subject to the relevant double tax treaty. To the extent such treaty includes a PPT, the Dutch legislator is of the view that such levy should indeed be possible.
4	**Source taxes**	
4.1	Are there any source taxes on dividends, interest and royalties in national law and if so, what are the rates?	Yes, • a 15% source tax on dividends • a 25% source tax on interest and royalties (these taxes will only apply to payments made to low-tax jurisdictions or in the case of abuse)
4.2	In general, are these rates approximately more than 40% reduced in DTAs?	Based on the Dutch Tax Treaty Policy, The Netherlands consistently seeks to agree on exclusive resident state taxation for participations (of in general 10% or more). To counter possible dividend conduit arrangements, the Netherlands can propose to include an anti-abuse provision in the treaty. As regards portfolio-dividends the Netherlands seeks to maintain the domestic rate of taxation (dividend withholding tax; currently at 15%). The Netherlands seek to agree on exclusive resident state taxation for interest and royalties. On request of the treaty partner, the Netherlands is willing to consider reasonable anti-abuse provisions.
4.3	Does your jurisdiction apply an enhanced source tax on payments to low tax jurisdictions?	Yes, as per 1 January 2021 a source tax on interest and royalties. This tax is only levied on interest and royalty payments to affiliated companies in designated low-tax jurisdictions and in certain situations.
4.4	Are there any other specific rules that apply to payments to low tax jurisdictions?	No.
5	**Participation exemption**	
5.1	Does your country apply a participation exemption?	Yes, the participation exemption will apply to a shareholding in a Dutch company if the holding is at least 5 per cent of the investee's capital, provided the conditions are met (see answer to the last question).
5.2	If so, does the participation exemption also apply to capital gains (i.e. upon the alienation of participations)?	Yes, subject to meeting the conditions for the participation exemption, a Dutch company or branch of a foreign company is exempt from Dutch tax on all benefits connected with a qualifying shareholding, including cash dividends, dividends in kind, bonus shares, hidden profit distributions, capital gains, and currency exchange results.

	Measures	Current situation
5.3	Are there any substance requirements/active business tests as to the subsidiaries to which the participation exemption applies?	As a general rule, the participation exemption is applicable as long as the participation is not held as a portfolio investment. The intention of the parent company, which can be based on the particular facts and circumstances, is decisive. Regardless of the company's intention, the participation exemption is also applicable if the sufficient tax test (i.e. the income is subject to a real profit tax of at least 10 per cent) or the asset test (i.e. the subsidiary's assets do not usually consist of more than 50 per cent of portfolio investments) is met.

	Measures	Any changes expected in the near future (i.e. up to and including 2022)
3	**Outbound payments**	
3.1	In outbound situations i.e. a company pays dividends, interest and royalties to an associated enterprise, are there any (substance) requirements as for the receiving associated enterprise (apart from the beneficial ownership requirement)?	On 10 July 2020, the Dutch political party 'GroenLinks' submitted an own initiative draft bill of law ('exit tax') to counter the loss of the Dutch dividend withholding tax claim, which may occur when companies/head offices are relocated from the Netherlands to certain other jurisdictions. The proposed bill is aimed at various ways in which a head office can be relocated, as a result of which the existing Dutch dividend withholding tax claim could be forfeited. In particular, the bill introduces the following four cases as a taxable event: • Cross-border relocation of the registered office of a Dutch company; • Cross-border legal merger of a Dutch company; • Cross-border division of a Dutch company, and • Cross-border share merger of a Dutch company. The bill is currently in draft and being prepared to propose for debate in the House of Representatives. Even though the draft bill is being adjusted in order to be compatible with EU law and tax treaties provisions: it is being discussed (also among academics) that the draft bill is still not compatible with EU law. One of the concerns is that the Netherlands appropriates levy rights that do not exist on the basis of international and EU law. In addition, it is being argued that the exit tax is a restriction to the freedom of establishment (cross border relocation of registered offices). This restriction may not be justified by the CJEU, also because the CJEU has not yet ruled on exit taxes that considered deemed dividend distributions.
4	**Source taxes**	
4.3	Does your jurisdiction apply an enhanced source tax on payments to low tax jurisdictions?	On March 25, 2021, the Bill aiming to introduce a conditional withholding tax on dividends was submitted to the Lower House of Parliament. The proposed Conditional Withholding Tax on Dividends Act supplements the 2021 Withholding Tax Act and aims to prevent the untaxed flow of dividends from the Netherlands to low-tax jurisdictions and in abuse situations. Low-tax jurisdictions are countries with a statutory profit tax rate lower than 9% and countries included in the EU list of non-cooperative jurisdictions. The proposed date of entry into force is January 1st, 2024.
5	**Participation exemption**	
5.3	Are there any substance requirements/active business tests as to the subsidiaries to which the participation exemption applies?	In a letter from the Dutch secretary of Finance dated September 15th 2020, the Dutch participation regime is discussed in connection with conduit companies (conduit of dividends). The Secretary states that the possibility is examined to introduce legislation from January 2022 to provide the exchange of information with foreign jurisdictions in the event a conduit company in the Netherlands has little or no substance.

Singapore

	Measures	Current situation
1	**Inbound payments**	
1.1	In most jurisdictions a company is (deemed to be) a resident for CIT and DTA purposes if it is legally established or registered or if the place of effective management is located in the jurisdiction concerned. Is that also the case in your jurisdiction?	Place of incorporation does not determine corporate residence under Singapore tax law. In Singapore, a company is considered to be a Singapore tax resident if the control and management of its business is exercised in Singapore. This is a question of fact. Based on case law principles, companies may generally be considered Singapore tax resident if the control and management of the company is exercised through Board of Directors meetings physically held in Singapore. Whilst legislation does not refer to incorporation, Singapore-incorporated companies are generally presumed to be resident unless it can be demonstrated that control and management is outside Singapore. Non-Singapore incorporated companies will only be considered resident if control and management is clearly established. In practice, the tax authorities may look at a number of factors in determining the tax residency of a company, such as the board composition, whether key personnel are based in Singapore, reasons for doing business in Singapore, etc. Place of incorporation is one such indicative factor the authorities may consider. Depending on their circumstances, companies which request a Singapore Certificate of Residence may be expected to provide evidence documenting a number of these indicators to the authorities.
1.2	In inbound situations i.e. if a company receives dividend, interest or royalty payments, is a company that meets (one of these) criteria always considered to be a resident taxpayer? (Even if it only has its legal seat in your jurisdiction and very little substance, neither in your jurisdiction nor in any other jurisdiction.)	As mentioned above, in practice the tax authorities may look at a number of factors in determining the tax residency of a company. The Singapore tax authorities pay particular attention to foreign-owned (i.e. 50% or more foreign ownership) investment holding companies deriving only passive income or foreign-sourced income, and generally view them as not being Singapore residents unless they can demonstrate a certain level of economic nexus to Singapore. For example, the tax authority has clarified that it will only issue a Certificate of Residence to a foreign-owned investment holding company if, in addition to demonstrating that the control and management is exercised in Singapore, there are valid reasons for setting up an office in Singapore, i.e. at least one of the following are met: • Have related companies in Singapore that are tax residents or that have business activities in Singapore; • Receives support or administrative services from a related company in Singapore; • Have at least 1 director based in Singapore who holds an executive position and is not a nominee director; • Have at least 1 key employee (e.g. CEO, CFO, COO) based in Singapore.

Singapore

	Measures	Current situation
1.3	If a company meets (one of) said criteria, can it obtain a certificate of residence or the like from the tax administration? (With the purpose of obtaining DTA benefits?)	A Singapore incorporated company which is not a foreign-owned investment holding company would generally be able to obtain a certificate of residence if it meets the control and management test detailed in 1.1 above. A Singapore incorporated foreign-owned investment holding company would also generally need to meet the additional criteria detailed in 1.2 above. Non-Singapore incorporated companies may be able to obtain a certificate of residence if they meet the control and management criteria detailed in 1.1 above, but the burden of proof is generally higher for such companies.
2	**Income flows**	
2.1	If a company receives and pays dividends, interest and royalties, can it obtain a tax ruling/certainty in advance from the tax administration as regarding the taxable profit that has to be reported on the incoming and outgoing payments ('the spread')?	Singapore provides for unilateral, bilateral and multilateral Advance Pricing Agreement (APA) mechanisms, through which taxpayers can seek certainty on the pricing of a company's related party transactions for a specific period of time.
2.2	If so, should it meet any criteria on substance?	There are no quantitative substance requirements an entity must meet in order to apply for the Singapore APA programme. That said, for the Singapore tax authorities to accept an APA application they would need to be satisfied that the arrangements in question are carried out under arm's length conditions as described in Singapore law. See the Singapore Income Tax Act, Sections 34D, E, and F relate to TP, https://sso.agc.gov.sg/Act/ITA1947
3	**Outbound payments**	
3.1	In outbound situations i.e. a company pays dividends, interest and royalties to an associated enterprise, are there any (substance) requirements as for the receiving associated enterprise (apart from the beneficial ownership requirement)?	There are no specific domestic provisions stipulating substance requirements for outbound counterparties. However, outbound payments must comply with general Singapore transfer pricing principles (broadly the arm's length principle) and general anti-avoidance provisions. If the company is seeking to utilize treaty benefits, then a certificate of residence of the recipient will be required. Singapore has adopted the main purpose test to exclude treaty benefits in some of its tax treaties if the main purpose or one of the main purposes of the transaction is to seek treaty relief. It has also signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting on 7 June 2017. As part of this, Singapore has adopted the mandatory Principal Purpose Test for its covered tax agreement.
3.2	If so, and the receiving associated enterprise does not meet those requirements, then what are the consequences? (E.g. no treaty access, full withholding tax levy, no deduction)	Non-compliance with arm's length principles could result in the authorities imposing expense deduction adjustments. Application of the general anti-avoidance rules could result in the authorities disregarding the relevant transaction / scheme and thereby denying tax deductions and / or treaty access. Such adjustments could also potentially be subject to penalties and surcharges. If treaty requirements are not met, treaty benefits (e.g. in the form of reduced withholding tax rates) would accordingly not be available.

	Measures	Current situation
4	**Source taxes**	
4.1	Are there any source taxes on dividends, interest and royalties in national law and if so, what are the rates?	Singapore imposes withholding taxes in respect of interest and royalty payments made to non-Singapore tax residents. The domestic interest and royalty withholding tax rates are 15% and 10% respectively provided the payments are not derived by the non-resident from a trade or business carried on in Singapore and not effectively connected with a PE in Singapore. Singapore does not impose withholding or other source taxes on dividend payments.
4.2	In general, are these rates approximately more than 40% reduced in DTAs?	The rates provided in DTAs may provide a complete reduction of domestic withholding tax rates in certain cases and in other cases may provide no reduction. However, reduced DTA interest withholding tax rates are more typically between 33% and 67% of the domestic withholding rate (5% to 10%). Reduced DTA royalty withholding tax rates are typically between 50% and 80% of the domestic withholding rate (5% to 8%).
4.3	Does your jurisdiction apply an enhanced source tax on payments to low tax jurisdictions?	No
4.4	Are there any other specific rules that apply to payments to low tax jurisdictions?	No
5	**Participation exemption**	
5.1	Does your country apply a participation exemption?	Companies are taxed on foreign-sourced income only when it is received (as defined) in Singapore. For foreign sourced dividends, branch profits, and service income received in Singapore by a Singapore resident company, a tax exemption exists if certain conditions are met (broadly, that the income has been taxed in the foreign jurisdiction and the headline tax rate in the country meets a certain threshold). In the event these conditions are not met, exemption could still be granted to the Singapore resident company if the foreign income falls within certain specified scenarios. Singapore does not tax gains which are capital in nature. As determining whether a gain is on account of capital or revenue is not always straightforward, Singapore has a safe harbour rule which may provide certainty for non-taxation of gains on the sale of shares provided certain conditions are met (including, duration of holding period, percentage of ownership, and not falling within certain exclusions).
5.2	If so, does the participation exemption also apply to capital gains (i.e. upon the alienation of participations)?	See comments above.

	Measures	Current situation
5.3	Are there any substance requirements/active business tests as to the subsidiaries to which the participation exemption applies?	In order to obtain the specific foreign sourced income exemption described above, the Singapore Company receiving the specified foreign income has to be tax resident in Singapore (see our responses above on the Singapore tax residency requirements). In addition, the general requirements mentioned above (such as, GAAR, and adherence with Singapore TP principles) will be applicable. If the conditions for general exemption are not met, there are further requirements to avail of some of the specified exemption scenarios for certain types of income (namely that dividends must originate from profits derived from substantive business activities carried out in the originating foreign country). There are no active business tests which the investee company (whose shares are being disposed) need to satisfy, in order for the safe harbour rules relating to gains from share disposals to apply.

Singapore

	Measures	Any changes expected in the near future (i.e. up to and including 2022)
5	**Participation exemption**	
5.1	Does your country apply a participation exemption?	1. Exemption of foreign-sourced dividends We are not aware of any changes to these measures in the near future. 2. Safe-harbour rules The safe harbour rules are currently set to expire by 31 December 2027, which means to say it will not cover disposals that take place on or after 1 January 2028.

Switzerland

	Measures	Current situation
1	**Inbound payments**	
1.1	In most jurisdictions a company is (deemed to be) a resident for CIT and DTA purposes if it is legally established or registered or if the place of effective management is located in the jurisdiction concerned. Is that also the case in your jurisdiction?	Yes, according to Swiss tax law for both federal and cantonal/ communal corporate tax as well as WHT purposes a company is considered resident if the company legal seat (meaning: is registered in the commercial register) or if the place of effective management and control is located in Switzerland. If the legal domicile and place of effective management differ then the tie breaker rule of the applicable DTA would need to be considered. According to the vast majority of Swiss treaties, tax residency will be at the location of effective place of management and control.
1.2	In inbound situations i.e. if a company receives dividend, interest or royalty payments, is a company that meets (one of these) criteria always considered to be a resident taxpayer? (Even if it only has its legal seat in your jurisdiction and very little substance, neither in your jurisdiction nor in any other jurisdiction.)	Yes, from a unilateral perspective the entity would be considered a taxpayer for federal and cantonal/ communal corporate tax and WHT purposes from a Swiss tax perspective (however income of a foreign PE in outside of Switzerland is excluded from the taxable basis in Switzerland). If a DTA applies to a specific situation, it is however possible that tax residency is allocated to another state under tie breaker rules according to such treaty. Assuming there is also no substance elsewhere, tax residency would generally be assumed to be at the place of legal seat. We note that whether or not such Swiss entity would be able to reclaim WHT on dividends etc. received from a foreign subsidiary / foreign entity would have to be evaluated under an applicable DTA, i.e., in order to benefit from treaty protection, it must be the true beneficial owner of the income.
1.3	If a company meets (one of) said criteria, can it obtain a certificate of residence or the like from the tax administration? (With the purpose of obtaining DTA benefits?)	Yes, if a company has its statutory legal seat in Switzerland or is managed and controlled from Switzerland (i.e., is subject to unlimited tax liability in Switzerland), the tax administration generally certifies tax residency in Switzerland and issue a certificate of domicile. The certificate does however not confirm a specific level of substance or similar in Switzerland. It is the obligation of the paying state to ensure that all its own substance criteria are met.
2	**Income flows**	
2.1	If a company receives and pays dividends, interest and royalties, can it obtain a tax ruling/ certainty in advance from the tax administration as regarding the taxable profit that has to be reported on the incoming and outgoing payments ('the spread')?	Tax rulings are possible for various scenarios if the subject matter and the ruling application are in line with the applicable law. As such, a Swiss company can in principle also obtain a ruling confirming that a spread it earns e.g. on interest received it at arm's length (e.g. for a financing company). It's therefore also in principle acceptable if the Swiss company uses such income to cover similar expenses (e.g. interest or royalties), as long as the overall structure is at arm's length. Any such case will be reviewed by the tax authorities on the basis of its specific facts and circumstances.

Switzerland

	Measures	Current situation
2.2	If so, should it meet any criteria on substance?	The tax liability as such is not dependent on any substance criteria, and the Swiss tax code does not define such criteria in general. However, specifically with regard to using treaty protected income such as interest, royalties and dividends to settle claims from foreign parties in a third country, Switzerland has unilateral anti-abuse rules which limit or prevent the "forwarding" of such income in particular in case of conduit companies. Also, a company will not be able to claim any treaty protection if it is not the beneficial owner of the treaty protected income which it receives. Beneficial ownership will again be reviewed on a case-by-case basis.
3	**Outbound payments**	
3.1	In outbound situations i.e. a company pays dividends, interest and royalties to an associated enterprise, are there any (substance) requirements as for the receiving associated enterprise (apart from the beneficial ownership requirement)?	Interest and royalties are deductible from the CIT basis as long as they are at arm's length, and there are no substance or subject to tax requirements for the receiving company. Dividends are paid out of retained earnings and not CIT deductible anyways. This question is also relevant with regard to Swiss WHT on the payments in question, and the right to refund or reduction of such WHT. A differentiation is made between royalties (no unilateral WHT) and interest (WHT only in specific circumstances, but usually not e.g. on single IC loans) on the one hand, and dividends on the other hand. For dividend payments, the receiving company must meet the formal requirements of the DTA and must qualify as the beneficial owner in line with Swiss requirements, which includes a substance test.
3.2	If so, and the receiving associated enterprise does not meet those requirements, then what are the consequences? (E.g. no treaty access, full withholding tax levy, no deduction)	A shareholder not qualifying as beneficial owner will not be able to benefit from the DTA with regard to the WHT, and in principle no refund of 35% WHT will be granted.
4	**Source taxes**	
4.1	Are there any source taxes on dividends, interest and royalties in national law and if so, what are the rates?	WHT at 35% on dividends and certain interest payments, no WHT on royalties. Non-arm's length interest and royalty payments are recharacterized as constructive dividends, i.e. they will not be CIT deductible and will be subject to dividend WHT.
4.2	In general, are these rates approximately more than 40% reduced in DTAs?	WHT on dividends for qualified holdings (shareholding over 10%-25% depending on treaty) often is reduced to 0% (EU) or for example 5% (DTA CH-US). For other shareholdings, the portfolio rate of usually 15% is applicable. A number of DTAs have different minimum shareholding thresholds and portfolio and substantial shareholding rates. WHT on interest is often reduced to 15% or 0% as well.
4.3	Does your jurisdiction apply an enhanced source tax on payments to low tax jurisdictions?	No such tax applicable.
4.4	Are there any other specific rules that apply to payments to low tax jurisdictions?	No specific CFC / low tax jurisdiction rules, general arm's length requirements apply.

	Measures	Current situation
5	**Participation exemption**	
5.1	Does your country apply a participation exemption?	Yes, available for capital corporations and cooperatives
5.2	If so, does the participation exemption also apply to capital gains (i.e. upon the alienation of participations)?	Yes, however there are two requirements: 1. only the amount exceeding the initial investment costs will qualify; and 2. the participation sold must have amounted to at least 10% and must have been held by the seller for at least one year; if the participation ratio falls below 10 percent as a result of a partial sale, the reduction may only be claimed for each subsequent gain on disposal if the participation rights had a market value of at least one million francs at the end of the tax year prior to the sale.
5.3	Are there any substance requirements/active business tests as to the subsidiaries to which the participation exemption applies?	No

Switzerland

	Measures	Any changes expected in the near future (i.e. up to and including 2022)
	No expected changes in the near future	

United Kingdom

	Measures	Current situation
1	**Inbound payments**	
1.1	In most jurisdictions a company is (deemed to be) a resident for CIT and DTA purposes if it is legally established or registered or if the place of effective management is located in the jurisdiction concerned. Is that also the case in your jurisdiction?	Yes, (1) UK incorporated companies are generally treated as UK resident; and (2) companies incorporated overseas are also generally treated as UK resident if their central management and control is situated in the United Kingdom. This means if the place of the highest form of control and direction over a company's affairs, as opposed to decisions on the day-to-day running of the business, is in the United Kingdom. However, companies resident in the UK under domestic law but treated as solely resident in another country under that countries double tax treaty with the UK, are treated as not UK resident for the purposes of UK domestic law.
1.2	In inbound situations i.e. if a company receives dividend, interest or royalty payments, is a company that meets (one of these) criteria always considered to be a resident taxpayer? (Even if it only has its legal seat in your jurisdiction and very little substance, neither in your jurisdiction nor in any other jurisdiction.)	As noted above, a company that is treated as solely resident in another jurisdiction under that jurisdiction's double tax treaty with the UK, is treated as not UK resident for the purposes of UK domestic law. That is the only exception to the usual residence test. Special rules exist to deal with companies which are treated as resident in both the UK and another jurisdiction but where the double tax treaty concerned has not allocated residence solely to one jurisdiction (or there is no applicable treaty). Those special rules deny such companies certain reliefs in certain circumstances, but the companies continue to be treated as resident in the UK.
1.3	If a company meets (one of) said criteria, can it obtain a certificate of residence or the like from the tax administration? (With the purpose of obtaining DTA benefits?)	Yes - please see this guidance in relation to the documents / information needed to make application (https://www.gov.uk/guidance/get-a-certificate-of-residence)
2	**Income flows**	
2.1	If a company receives and pays dividends, interest and royalties, can it obtain a tax ruling/ certainty in advance from the tax administration as regarding the taxable profit that has to be reported on the incoming and outgoing payments ('the spread')?	The UK's tax authority (HMRC) will give clearance in relation to the receipt or payment of a dividend, interest or royalty only if there is a genuine point of uncertainty regarding its tax treatment. For their guidance on such 'non-statutory clearances', see www.gov.uk/guidance/non-statutory-clearance-service-guidance
2.2	If so, should it meet any criteria on substance?	No
3	**Outbound payments**	
3.1	In outbound situations i.e. a company pays dividends, interest and royalties to an associated enterprise, are there any (substance) requirements as for the receiving associated enterprise (apart from the beneficial ownership requirement)?	No (on the assumption that by outbound payments you mean payments of dividends / interest / royalties made by a UK resident company to a non-UK tax resident company).

	Measures	Current situation
3.2	If so, and the receiving associated enterprise does not meet those requirements, then what are the consequences? (E.g. no treaty access, full withholding tax levy, no deduction)	If tax planning is undertaken that might be considered abusive, the principal weapon available to the UK revenue authority is our domestic GAAR. Where an arrangement is found to be within the scope of the GAAR, the tax advantage obtained will be counteracted and a penalty of up to 60% of the counteracted tax may also be imposed. Note however that there is no requirement in the UK to deduct WHT from dividend payments in any circumstances. If relief is sought under an applicable double tax treaty, it will be subject to anti-abuse measures in that treaty including the PPT where it contains one (or has one due to the MLI). Such measures may result in treaty benefits being denied entirely, or relief being reduced, depending on the terms of the treaty and the avoidance concerned.
4	**Source taxes**	
4.1	Are there any source taxes on dividends, interest and royalties in national law and if so, what are the rates?	As a general rule, domestic law requires UK requires companies making payments of interest or royalties with a UK source to deduct withholding tax. The rate is currently 20%. There is no withholding tax applicable to dividends.
4.2	In general, are these rates approximately more than 40% reduced in DTAs?	Yes
4.3	Does your jurisdiction apply an enhanced source tax on payments to low tax jurisdictions?	No
4.4	Are there any other specific rules that apply to payments to low tax jurisdictions?	No
5	**Participation exemption**	
5.1	Does your country apply a participation exemption?	Strictly no. However, exemptions are available in relation to dividends and capital gains subject to conditions. The dividend exemption is broad and most (but not all) dividends received by UK companies are therefore exempt from corporation tax. The provisions applicable to capital gains are known as the substantial shareholding exemption (SSE) which exempts most disposals of shareholdings of 10% or more. The main exceptions will be those of non-trading subsidiaries (or subgroups), or of companies acquired within the previous year.
5.2	If so, does the participation exemption also apply to capital gains (i.e. upon the alienation of participations)?	See above.
5.3	Are there any substance requirements/active business tests as to the subsidiaries to which the participation exemption applies?	Yes. As noted above, the SSE broadly exempts gains arising on the disposal of trading entities or subgroups where >10% of the shares have been held for a continuous period of 12 months within a 6-year period before the date of disposal for disposals made on or after 1 April 2017 or within a 2-year period for disposals made before 1 April 2017. The company being disposed of must meet certain requirements (including that it must be a trading company or the holding company of a trading sub-group for 12 months before the disposal). According to guidance issued by the UK tax authorities, a company or group is not considered to be ‘trading’ for these purposes if more than 20% of its activities is non-trading in nature.

United Kingdom

	Measures	Any changes expected in the near future (i.e. up to and including 2022)
4	**Source taxes**	
4.1	Are there any source taxes on dividends, interest and royalties in national law and if so, what are the rates?	Payments to recipients in the EU currently benefit from relief equivalent to the EU Interest & Royalties Directive, but that will cease to be the case from 1 June 2021.

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