

# Beneficial ownership, governance and substance trends across the EU

*Key insights based on responses from KPMG firms based in Europe.*

## The context

The fight against tax avoidance and profit base erosion has been high on the agenda of international bodies – including the Organisation for Economic Co-operation and Development (OECD) and the European Commission (the Commission), as well as local tax authorities, for the last decade.

At the level of the OECD, a significant development was the introduction of anti-abuse measures into existing double tax treaties through the Multilateral Instrument (MLI). The aim of the Multilateral Instrument was to implement the tax treaty related recommendations from the OECD BEPS Action Plan, including a minimum standard to prevent treaty abuse<sup>1</sup>.

At EU level, in parallel to Member States signing up to the OECD MLI, and the adoption of the EU Anti-Tax Avoidance Directive, the application of anti-abuse provisions has also been influenced by the decisions of the Court of Justice of the EU in the so-called “Danish cases<sup>2</sup>”. The “Danish cases” addressed two main issues: guidance on the interpretation of the beneficial owner concept in the context of the Interest and Royalties Directive (IRD) in particular<sup>3</sup>, and the concept of abuse of rights under EU legislation. The cases involved cross-border intra-group payments of interest and dividends between companies that were tax residents in the EU and that benefited from withholding tax exemptions under the IRD and the Parent-Subsidiary Directive (PSD), respectively.

On the first point, the CJEU confirmed that, for the purposes of the IRD, the beneficial owner is the entity that economically benefits from and has the freedom to use and enjoy the interest. In this context, the CJEU emphasized the relevance of the OECD Model Tax Convention and the related Commentaries in interpreting the concept of beneficial owner under the IRD<sup>4</sup>.

On anti-abuse, the CJEU reaffirmed the prohibition of abusive practices as a general principle of EU law. In the Court’s view, Member States are required to deny the benefit of an EU Directive where abuse has been confirmed, even in

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<sup>1</sup> Signatories were offered three options to meet this specific minimum standard, by implementing: (i) a principal purpose test (PPT) alone (default option), (ii) a PPT and a simplified or detailed limitation on benefits provision (LOB), or (iii) a detailed LOB provision, supplemented by a mechanism that would deal with conduit arrangements not already dealt with in tax treaties. The PPT would deny a treaty benefit in respect of an item of income or capital, if it was reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of an arrangement or transaction that resulted directly or indirectly in that benefit, unless it was established that granting that benefit in the given circumstances would be in accordance with the object and purpose of the relevant provisions of the covered double tax treaties. All EU Member States have signed the MLI.

<sup>2</sup> Joined cases N Luxembourg 1 (C-115/16), X Denmark (C-118/16) and C Danmark 1 (C-119/16) and Z Denmark case (C-299/16) on the Interest and Royalties Directive and joined cases T Danmark (C-116/16) and Y Denmark (C-117/16) on the Parent-Subsidiary Directive. See Euro Tax Flash [Issue 396](#) for more details.

<sup>3</sup> The IRD limits the withholding tax exemption to the beneficial owners of the interest. In contrast, the text of the Parent-Subsidiary Directive does not explicitly incorporate a beneficial ownership test concerning dividend payments.

<sup>4</sup> This alignment is rooted in the fact that the original IRD proposal was built on the OECD’s work in this matter.

the absence of explicit applicable anti-abuse provisions. The CJEU also provided guidance regarding the constitutive elements of an abuse of rights under EU law<sup>5</sup>.

In the context of conduit structures, in the CJEU's view, the following elements could indicate, inter alia, the existence of abuse:

- *group structure*: the structure was not set up for reasons that reflect economic reality, and its principal objective or one of its principal objectives was to gain a tax advantage that contradicts the intended goal or purpose of the relevant tax law;
- *pass-through*: all or nearly all dividend or interest income obtained by the intermediate company is passed on, shortly after being received, to another entity that would not have been eligible for withholding tax relief under an EU Directive;
- *insignificant profits*: the intermediate company's profits are insignificant due to the fact that the dividend or interest income received is redistributed;
- *absence of economic activity*: this element needs to be analyzed in the light of the specific features of the economic activity in question, and by looking at all relevant factors including the management of the company, its balance sheet, the structure of its costs and expenditure actually incurred, employees, premises and equipment;
- *right to use and enjoy dividends*: contractual obligations (both legal and actual) which render the intermediate company unable to enjoy and use the dividends;
- *timing*: there is a close connection between the establishment of complex financial transactions and structures and new tax legislation.

As a side note, the CJEU also clarified in case C-504/16 that the mere fact that the economic activity of an entity consists in the management of assets for the group, or that the income of that company results only from such management cannot, per se, indicate the existence of a wholly artificial arrangement which does not reflect economic reality<sup>6</sup>. Instead, the CJEU stated that the relevant tax authority has the task of establishing the existence of the elements constituting the abuse, based on specific facts and circumstances. The CJEU further noted, specifically, that if tax authorities deny a benefit under an EU Directive because the company receiving the income is not its beneficial owner, such authorities are not required to identify the beneficial owners of the income. It is sufficient for the tax authorities to establish that the alleged beneficial owner functions as a conduit company through which an abuse of rights has occurred.

The CJEU's views on beneficial ownership in the context of the IRD and the guidance on the constitutive elements of an abuse of rights under EU law provide some clarity on these concepts. However, as the CJEU was only in a position to provide suggestions on the possible indications of abuse (it is up to national courts to decide on the specific circumstances of the case referred), the legacy of the Danish cases is an increased scrutiny of intra-group dividend and interest payments, in particular where intermediate companies are present in the group's EU structure, without clarity on the interpretation of the abovementioned concepts. The resulting inconsistent approaches to the

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<sup>5</sup> Under settled CJEU case-law, proof of an abusive practice requires, first, a combination of objective circumstances in which, despite formal observance of the conditions laid down by the EU rules, the purpose of those rules has not been achieved and, second, a subjective element consisting in the intention to obtain an advantage from the EU rules by artificially creating the conditions laid down for obtaining it. The presence of a certain number of indications may demonstrate that there is an abuse of rights, in so far as those indications are objective and consistent. While the Court cannot assess the facts in a specific case brought before it, the CJEU may nevertheless specify indicia that could lead to the conclusion that there is an abuse of rights. To this end, in the Danish cases, the CJEU provided illustrative examples that could indicate the existence of abuse in conduit situations.

<sup>6</sup> C-504/16. The CJEU also noted in that context that the existence of abuse requires, on a case-by-case basis, an overall assessment of the relevant situation be conducted, based on factors including the organizational, economic or other substantial features of the group of companies to which the parent company in question belongs and the structures and strategies of that group.

evaluation of potential abuse in the context of intra-group payments means that the evaluation of a taxpayer's access to reduced withholding tax (WHT) rates (under domestic, EU, or treaty law) has become increasingly difficult, therefore leading to significant uncertainty and an increased volume of disputes between tax authorities and taxpayers.

## The EU Unshell Directive proposal

Against this backdrop, the European Commission attempted to take steps towards establishing a common minimum standard on criteria for denying treaty or EU Directive benefits to companies lacking economic substance and which are at risk of being misused for the purpose of gaining tax advantages, through a proposal for an EU Directive commonly known as "Unshell"<sup>7</sup>.

The initial proposal set out a list of indicators to filter entities at risk of being misused for tax purposes. High-risk entities would then be required to report on a series of substance indicators through their annual tax return. Companies failing to meet the substance indicators would be deemed to be 'shell' entities, potentially triggering tax consequences. Since then, the text of the Directive has been subject to discussions in the Council working groups. Several compromise texts were submitted, but Member States were not able to reach consensus on the initiative.

During the Hungarian Presidency of the Council (second half of 2024), a new approach was presented, leading to drafting suggestions on key topics like scope, hallmarks, and reporting obligations. However, delegations in the Council working groups requested further clarifications regarding the relationship of the proposal with the Directive on Administrative Cooperation (DAC) and stressed the need to avoid creating an excessive administrative burden for businesses and authorities.

The ECOFIN report from June 20, 2025, notes that, during the working party discussion in May 2025, it emerged that the analysis of the Unshell proposal in the Council should be discontinued in light of the current EU tax simplification efforts (see below for more information), which was broadly welcomed by member state delegations. According to the report, many delegations were instead of the view that the aims of the Unshell proposal could be achieved with clarifications or amendments of the hallmarks in the Council Directive 2018/822 on the disclosure of cross-border arrangements (the mandatory disclosure rules under DAC6). The report suggests that those clarifications and amendments to DAC6 could be examined once the Commission has finalized its analysis of the functioning of the DAC. A legislative proposal for the recast and potential amendment of the DAC are expected to follow in the first half of 2026.

## KPMG survey

With these developments in mind, in 2025, KPMG's EU Tax Centre (the ETC) conducted an internal survey across the network of KPMG<sup>8</sup> member firms based in Europe to understand beneficial ownership (BO) and anti-abuse trends across the EU and to collect key insights regarding the practice of local tax authorities in this area. Similar surveys were previously carried out in 2022 and in 2023. The 2025 survey had an extended scope as compared to the previous versions. The objective was to identify common trends and key challenges for taxpayers in several key areas:

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<sup>7</sup> European Commission proposal COM(2021) 565 for a COUNCIL DIRECTIVE laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU. Note that the Unshell Directive proposal is also sometimes referred to as "ATAD3", ie the second amendment to the EU's Anti-Tax Avoidance Directive; however, Unshell was put forward by the European Commission as a standalone proposal. It is therefore inaccurate to refer to the proposal as ATAD3.

<sup>8</sup> The current article was produced with the support KPMG member firms located in the EU forming part of KPMG's Europe, the Middle East & Africa (EMA) region. Throughout the submission, "we", "KPMG", "us" and "our" refer to the network of independent member firms operating in the EU.

1. beneficial ownership;
2. substance;
3. corporate governance;
4. withholding tax aspects, including mechanisms for collection and relief procedures;
5. the wider anti-treaty shopping and anti-tax abuse frameworks applicable at a local level, with focus on WHT-related measures; and
6. the practice of the tax authorities, including the frequency of BO-focused audits and their approach to BO and substance assessments;
7. the level of certainty taxpayers can obtain, including the possibility of obtaining advance rulings.

The questions were asked in the context of intra-group transactions between associated companies, and do not necessarily reflect the tax treatment of income flows related to portfolio holdings.

In order to gather insights into the topics outlined above, the survey included targeted questions that explored separately the tax treatment of dividend, interest and royalty payments and the method and criteria for applying the various types of WHT relief available – either through domestic exemption, implementation of EU Directives, (where applicable), or double tax treaties.

In the context of BO, the survey explored whether the beneficial ownership concept is included in local law, and to what extent the lack of BO status might serve as an independent ground for denying relief, both under domestic WHT exemptions generally available for intra-group follows and reliefs based on domestic implementation of EU Directives. Additionally, the survey looked at whether WHT relief could be denied based on the application of specific anti-conduit rules or general anti-avoidance rules (GAAR).

It also inquired about the practice of local courts and tax authorities in identifying the constituent elements of an abuse of rights in cases related to the payment in scope of the survey, and whether there is an increased focus from the tax authorities on BO and substance investigations or other challenges against reduced WHT rates.

The survey also examined the procedural aspects of obtaining withholding tax relief, focusing on the methods of obtaining withholding tax relief or exemptions, the availability of e-filing for refund claims, and whether the submission of hard copy documents is required.

The revised survey includes responses from KPMG member firms in 31 European jurisdictions<sup>9</sup> and reflects information valid as at August 2025. This article outlines the key findings and trends identified in the survey. Please note that all information is of a general nature and does not constitute tax advice based on entity-specific facts and circumstances. No one should act upon such information without seeking appropriate professional advice following a thorough examination of their particular situation.

## Beneficial ownership

*Insight: beneficial ownership or similar concepts can be used as sole criteria to deny dividend WHT benefits in 50 percent of the surveyed countries*

*Key takeaway:* Lack of clarity around the definition and application of the beneficial ownership concept in European jurisdictions creates significant uncertainty and challenges for groups that operate across the region. While some jurisdictions are moving towards greater clarity, the overall landscape remains challenging.

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<sup>9</sup> Jurisdictions surveyed include the following: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, the UK.

The survey revealed the difficulties faced by multinational groups operating in the EU in navigating the varying approaches to BO for WHT purposes.

*Is the beneficial ownership concept or a similar concept relevant across European jurisdictions when applying WHT relief based on domestic law?*

The survey included targeted questions on whether domestic WHT exemptions applicable to each of the three analyzed income streams could be denied based on beneficial ownership grounds<sup>10</sup>. The term ‘domestic WHT exemptions’ refers both to the implementation of EU Directives and to broader domestic exemptions that operate in parallel with the local implementation of those Directives. One of the reasons for the co-existence of two different types of exemptions in certain jurisdictions is that some Member States already had broad WHT exemptions in place before being required to implement the relevant EU Directives and chose to retain these regimes in parallel with the implementation of the EU Directives.

For the purposes of this survey, only domestic exemptions relevant to the analyzed scenarios were considered – namely, those applicable to intra-group transactions and with a scope at least as broad as the corresponding EU Directive. In practice, such domestic exemptions are often broader than those provided under the EU Directives, either because they apply to a wider category of taxpayers (beyond EU Member States) and / or because they impose less stringent conditions, for example regarding shareholding thresholds or minimum holding periods.

The graphics below illustrate how each jurisdiction approaches the concept of beneficial ownership. Where possible, and to make the information easier to follow, the responses were divided into four main groups.

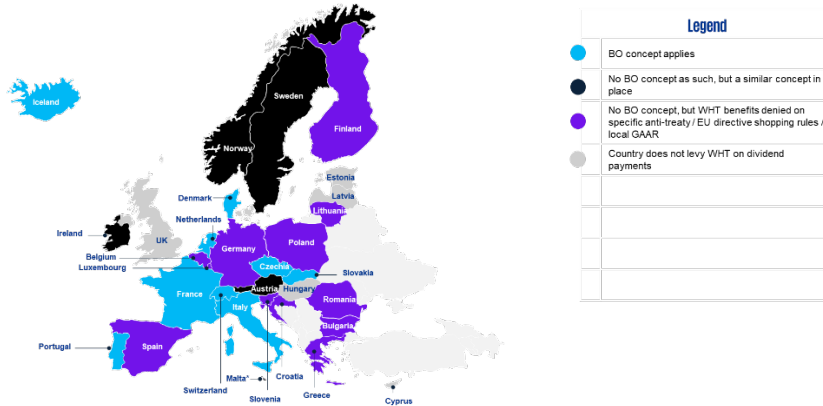
- “BO concept applies”: Jurisdictions where a BO requirement is expressly codified in law or included in relevant administrative guidance with respect to the application of withholding tax exemptions (either purely domestic or based on EU Directive implementation). In these cases, WHT benefits can generally be denied solely on the basis of not meeting the BO requirement. An exception is Iceland, which does not have a domestic exemption, but due to the particulars of local rules – explained below, the applicability of reduced rates under the relevant DTTs can be denied solely on BO grounds. For the sake of completeness, Iceland was also added to the map to illustrate this approach.
- “No BO concept as such, but a similar concept in place”: Jurisdictions that do not impose a BO requirement as such, but where domestic rules reference a comparable concept for the application of domestic WHT exemptions. Similarly to the above, WHT benefits can generally be denied solely on the basis of not satisfying this similar requirement.
- “No BO concept, but WHT benefits denied under specific anti-treaty / EU Directive shopping rules / local GAAR”: Jurisdictions where neither a BO requirement nor a similar concept applies as a standalone criterion for WHT relief. However, WHT benefits may still be denied based on specific anti-treaty shopping rules, EU Directive anti-abuse provisions, or local general anti-avoidance rules. In practice, in many of these jurisdictions, tax authorities also consider BO as one of several indicators of an abusive structure.
- Countries that don’t levy WHT on that specific income stream (i.e., dividends, interest or royalties). Nevertheless, whilst not specifically analyzed by the survey, most of these jurisdictions have implemented various defensive measures targeting payments to countries included on the EU list of non-cooperative jurisdictions or other low-tax jurisdictions.

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<sup>10</sup> For most of the countries surveyed, the application of reduced rates under double tax treaties is subject to a beneficial ownership test as a separate criterion only if this requirement is explicitly included in the relevant treaty. Due to the diversity in approaches and the reliance on the specific wording of each treaty, this information is not depicted in the maps below. An exception is Iceland, which does not offer broad WHT exemptions; however, in practice, the application of reduced rates under double tax treaties is generally contingent upon beneficial ownership testing based on the relevant administrative procedures.

Focusing first on intra-group dividend payments, the survey results show that beneficial ownership or a similar concept serves as an independent criterion for denying WHT exemptions in approximately half of the jurisdictions that impose WHT on such payments.

### In case of dividends, does your jurisdiction apply a BO concept?



As illustrated above, a BO requirement applies in 36 percent of the jurisdictions that levy WHT, as follows:

- Seven EU Member States – Czechia, Denmark, France, Italy, Netherlands, Portugal and Slovakia. This finding is noteworthy, since the PSD does not test whether the recipient of the dividend is the beneficial owner of the income when providing relief from withholding tax. Nevertheless, at least Czechia, Denmark, France, Italy, and the Netherlands have included this test in their domestic law when implementing the Directive. In addition, several specific features were identified:
  - France: As noted above, to benefit from the dividend WHT exemption under the PSD, the recipient must be the BO of the income.
  - Italy: In addition to its local implementation of the PSD, which includes a specific BO requirement, Italy applies a reduced dividend withholding tax rate of 1.2 percent on payments to companies subject to corporate income tax in other EEA countries, provided those jurisdictions allow for the exchange of information with Italy.
  - Netherlands: In addition to the local implementation of the PSD, which includes a specific BO requirement, WHT exemption on intra-group dividends is also available under Dutch national law. One of the conditions for this exemption is that the recipient must qualify as the BO of the dividend.
  - Portugal: The Portuguese tax law does not specifically refer to the concept of BO. However, there is a punitive WHT (35 percent) applicable when capital income, which includes dividends, is paid to an account opened in the name of one or more owners, but on behalf of a non-identified third party if the beneficial owner is not identified.
  - Slovakia generally applies a nil WHT on dividends. However, there is a punitive 35 percent WHT applicable for dividend payments where the beneficial owner cannot be identified or is tax resident in a non-cooperative country.

The assumption based on which the survey was designed was that a potential beneficial ownership requirement relevant when applying the provisions of a double tax treaty would stem from the wording of that treaty. It is,

however, worth noting that the BO requirement in France also applies more broadly to tax treaties. This means that, in order to benefit from the reduced (or nil) WHT rate on dividends under an applicable tax treaty, the recipient must be the BO – even if the treaty itself does not explicitly include such a requirement. Furthermore, readers should note that Iceland is the only jurisdiction included in the graph for which the information does not relate to a beneficial ownership requirement relevant for domestic WHT exemptions. This is due to the fact that Icelandic legislation does not provide for a broad dividend withholding tax exemption in the scenario analyzed in the survey, i.e., intra-group payments. Instead, reduced dividend WHT rates for intra-group transactions are typically available through double tax treaties and, in practice, only granted if the recipient is the beneficial owner of the payment. Whilst the Icelandic tax code does not explicitly reference beneficial ownership, the application form for claiming treaty benefits requires the applicant to confirm their status as the beneficial owner. This means that only the actual beneficial owner can apply for an exemption or refund and must provide supporting documentation accordingly. This *de facto* requirement is reflected in the map.

Additionally, 16 percent of the surveyed jurisdictions that levy dividend WHT apply a concept similar to beneficial ownership for the purpose of domestic exemptions, as follows:

- Austria: This jurisdiction applies an ‘economic ownership’ test to determine eligibility for both the domestic dividend withholding tax exemption and the exemption under its local implementation of the PSD. The concept of ‘economic ownership’ is similar to that of beneficial ownership.
- Ireland: The domestic dividend withholding tax exemption requires, among others, that the recipient is ‘beneficially entitled’ to the payment. Although this term is not specifically defined in legislation, it is generally understood to align with the concept of beneficial ownership. On a related note, Ireland did not include an explicit reference to BO when implementing the PSD withholding tax exemption; however, references to ownership in the relevant provisions are typically interpreted as referring to beneficial ownership. For the purposes of the map above, Ireland is nevertheless classified under the “No BO concept as such, but a similar concept in place” due to the fact that, in practice, taxpayers more commonly rely on the domestic dividend WHT exemption rather than the PSD exemption.
- Norway: This jurisdiction does not refer to the concept of BO in domestic law. Nevertheless, Norwegian jurisprudence suggests that there may be similarities with the BO concept when determining whether the direct recipient is entitled to treaty benefits.
- Sweden: Local law restricts the applicability of dividend WHT benefits granted under domestic exemptions to the party that holds “the right to the dividend income” (i.e. defined as the person who is entitled to withdraw a dividend for their own account at the time of the dividend payment).

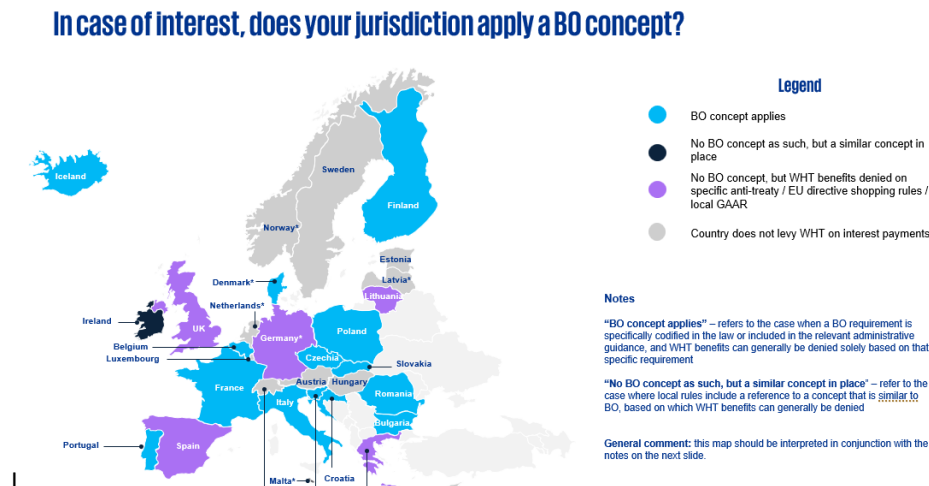
The remaining surveyed jurisdictions that do levy a dividend WHT (48 percent) – Belgium, Bulgaria, Croatia, Finland, Germany, Greece, Lithuania, Luxembourg, Poland, Romania, Slovenia, Spain, do not rely on BO as an independent criterion for applying dividend WHT exemptions. However, even in the case of these jurisdictions it is notable that BO remains relevant to the wider assessment of the transaction. BO status often serves as a key indicator in determining whether a transaction or structure may be abusive. This can be based on legal provisions, or on the practice of the local tax authorities. The degree of relevance of beneficial ownership to these assessments can nevertheless vary between jurisdictions. An example of a jurisdiction where the relevance can be considered to be high is Germany, where an anti-treaty/directive shopping provision is in place that denies the reduction of WHT if (i) the recipient is not the beneficial owner of the income and, (ii) if its shareholders (assuming they are the beneficial owners) would not be eligible for the treaty/directive benefits had they made the investment directly (additional conditions also apply). On the other hand, in jurisdictions such as Greece or Romania, the relevance is lower. For example, the responses received indicated that whilst tax authorities could theoretically consider beneficial ownership as evidence of an abusive structure, this rarely occurs in practice. Instead, tax authorities in

these two countries typically look at legal ownership and consider that the legal owner is entitled to the dividend payments, whilst relying on other criteria when determining whether local anti-abuse provisions apply.

Finally, a particularly interesting jurisdiction in this third category is Poland. Whilst the local implementation of the PSD does not include a BO requirement - and the Polish Supreme Administrative Court confirmed in 2021 (case file II FSK 240/21) that Polish PSD provisions do not require BO status, guidelines issued in July 2025 by the Ministry of Finance take a more restrictive approach. These guidelines require that beneficial ownership status be demonstrated as a condition for applying the dividend exemption under the Polish implementation of the PSD. As a result, it is possible that, based on evolving administrative practice, Poland may be reclassified into a different category in the future.

Moving to interest payments, a BO requirement applies for the purpose of a domestic WHT exemption (local implementation of the IRD or purely domestic exemption) in 72 percent of the jurisdictions that levy WHT. The increased relevance, as compared to dividend payments, is not surprising due to the fact that all EU Member States were required to implement the IRD, which includes a BO requirement.

In line with the findings concerning dividends, Ireland is listed in the second category, i.e., “No BO concept as such, but a similar concept in place”. Whilst the Irish implementation of the IRD includes the term beneficial owner, typically domestic exemptions are relied on in practice, hence the relevance of the term “beneficially entitled”.



All of the remaining surveyed jurisdictions that levy an interest withholding tax without relying on BO as an independent criterion for granting WHT exemptions are, interestingly, EU Member States. The following insights explain the specific reasons why each of these jurisdictions has been included in this category:

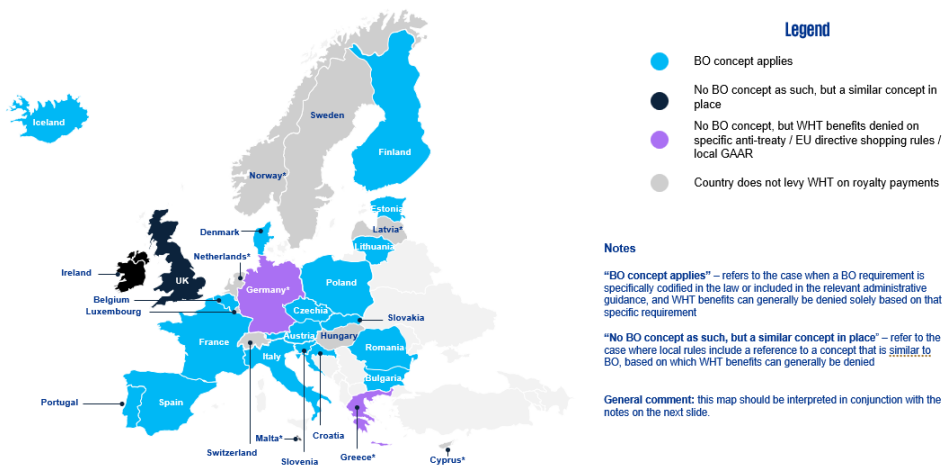
- Germany: Whilst the German implementation of the IRD includes the term BO, relief in practice is rather denied based on the anti-treaty/directive shopping rules.
- Greece: The local implementation of the IRD does not explicitly include a BO condition (it refers to the ‘beneficiary’ of the income and not to the ‘beneficial owner’ of the income).
- Lithuania: The local implementation of the IRD does include a BO requirement. However, in addition to that, a domestic WHT exemption applies for interest paid to non-resident companies registered or

otherwise established in an EEA country, or in a country with which Lithuania has an effective tax treaty. This local exemption does not include a BO requirement.

- Spain: The local implementation of the IRD does include a BO requirement. However, a separate domestic WHT exemption applies for interest derived by EU residents, which does not include any specific anti-avoidance rules, nor does it include a beneficial owner requirement.

Finally, with respect to royalty payments, a BO requirement applies to the domestic WHT exemptions (whether under the local implementation of the IRD or other provisions) in 85 percent of jurisdictions that levy WHT. The greater prevalence of BO requirements for royalties compared to interest reflects the fact that Member States have fewer parallel domestic WHT exemptions for royalties that do not include BO as a standalone condition – unlike the case of interest.

### In case of royalties, does your jurisdiction apply a BO concept?



In the UK, a specific domestic WHT exemption applies to royalty payments and is linked to a concept similar to BO. Specifically, when a UK-resident company pays royalties to a recipient outside the scope of UK corporation tax, a statutory exemption may allow payment at a reduced treaty WHT rate if the payer reasonably believes that the recipient is "beneficially entitled" to the royalties and qualifies for relief under a double tax treaty.

#### Is the BO concept defined in the local law of European jurisdictions?

The survey also examined whether jurisdictions in which the concept of BO (or a similar concept) is relevant (either as an independent criterion for denying WHT benefits or as one of the indicators of abuse under local GAAR or specific anti-abuse provisions) provide clarity to taxpayers by including clear definitions of BO in their legislation or guidance. The question was formulated in general terms and did not specifically ask whether such guidance or definitions apply only to certain types of WHT exemptions.

The survey responses reveal that only a limited number of jurisdictions provide a clear definition of the BO concept (or a similar concept, where applicable) in their domestic legislation, such as tax codes or official guidelines. Specifically, just 28 percent of jurisdictions have such a definition in place for dividends. The proportion is slightly higher for interest and royalties, with 36 percent of jurisdictions offering a specific domestic definition. It is important

to note that these percentages refer only to jurisdictions with a definition that goes beyond the standard wording typically included through the implementation of the IRD<sup>11</sup>.

For example, the domestic BO definition was introduced under the Bulgarian Tax and Social Security Procedural Code in the context of DTT application procedures. Specifically, if WHT relief on the basis of a DTT is being sought, the tax authorities are expected to refer to that definition which states: a non-resident person shall be the beneficial owner of the income in cases where that person: (i) has the right to dispose of the income and to decide on its use and to take up the whole risk, or a substantial part of it, resulting from the activity which generates the income, and (ii) does not act as an income allocation company.

Several respondents fall into a category where no explicit definition BO is provided in the law; however, the concept can be inferred from existing jurisprudence or administrative practice. Accordingly, the responses indicate that in 40 percent of jurisdictions, BO or a similar concept for dividends is derived from case law and administrative practice. For interest and royalties, this figure is 23 percent. Jurisdictions in this category arguably offer a lower level of clarity, as determining BO status requires ongoing monitoring of relevant case law and administrative decisions.

For example, in Belgium, local case-law and administrative commentaries provide a basis for the indicators that are taken into account when determining beneficial ownership<sup>12</sup>. A similar situation exists in Iceland, where – regardless of the absence of a reference to beneficial ownership in the local Tax Code, in practice, BO is essential when seeking treaty WHT rates, and the application form for reduced rates includes an interpretation of the concept according to the Icelandic Director of Internal Revenue<sup>13</sup>.

Finally, the last category includes relevant surveyed jurisdictions that do not have a definition of BO, nor can one necessarily be determined from case-law – 32 percent for dividends and 14 percent<sup>14</sup> for interest and royalties.

***Insight: Failure to prove beneficial ownership generally leads to the denial of WHT relief, either as a stand-alone criterion or as part of a broader assessment. Punitive WHT rates can also apply.***

Beyond the loss of preferential WHT rates, several countries impose increased punitive WHT rates when the BO condition is not met.

In Czechia, Denmark (interest only), Portugal, Romania (interest and royalties) and Slovakia, an increased punitive WHT rate might apply. In Czechia, if the immediate recipient is not considered the beneficial owner of the dividend, a 35 percent aggravated WHT may apply, rather than the domestic or treaty rate. The increased rate generally applies in cases when the direct recipient is not a resident of the EU or a treaty country (double tax treaty or exchange of information). However, it is likely that it would also apply if the taxpayer is unable to substantiate the tax residence of the beneficial owner in the EU or a treaty country. A similar increased 35 percent WHT rate could apply in Portugal, in specific situations. Slovakia also imposes an increased 35 percent WHT rate if the beneficial owner cannot be identified or is tax resident in a non-cooperative jurisdiction.

In Romania, a punitive WHT rate of 50 percent is applicable for royalty and interest payments if two conditions are met simultaneously: (i) the transaction is classified as artificial, according to the general anti-abuse rule specified in

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<sup>11</sup> Under Article 1, paragraph 4 of the IRD, a company of a Member State “shall be treated as the beneficial owner of interest or royalties only if it receives those payments for its own benefit and not as an intermediary, such as an agent, trustee or authorized signatory, for some other person”.

<sup>12</sup> Such indicators may include: having an active business, local board of directors meetings (with a preference for a majority of Belgian resident directors), employing one or more full-time personnel with authority to legally bind the company for day-to-day management purposes, having an office space (which may be leased), maintaining local bookkeeping, various assets on the balance sheet, and a local bank account.

<sup>13</sup> In this case, the beneficial owner is defined as an entity that enjoys the benefits of owning a security or property, irrespective of the name on the title.

<sup>14</sup> In the case of interest and royalties, the remaining countries (27 percent) only made reference to the BO concept included in the IRD, as defined above.

tax law, and (ii) the income is paid to a bank account from a state that has not established any information exchange treaty with Romania.

Denmark also applies an increased WHT of 22 percent on interest paid to foreign related entities outside of the EU or a tax treaty partner jurisdiction, and BO is relevant in determining whether the increased rate applies.

***Insight: Inconsistent look-through approach***

The survey also explored whether a look-through approach could apply in practice<sup>15</sup>. As mentioned in our introductory comments, the CJEU held in the Danish cases that tax authorities that challenge beneficial ownership at the level of the recipient are not required to identify the actual beneficial owners of the income. In line with these judgments, taxpayers should not assume that a look-through approach will be automatically applied. Instead, they may attempt to present evidence to tax authorities to establish the identity of the beneficial owner and request the application of EU Directives or treaty benefits for this beneficial owner, where available.

The graphs below illustrate the potential feasibility of applying a look-through approach in each of the surveyed countries. The information is of a general nature and indicates whether such an approach could be achieved either under local domestic WHT exemptions – whether granted through the local implementation of EU Directives or other national provisions, or in the context of double tax treaty benefits.

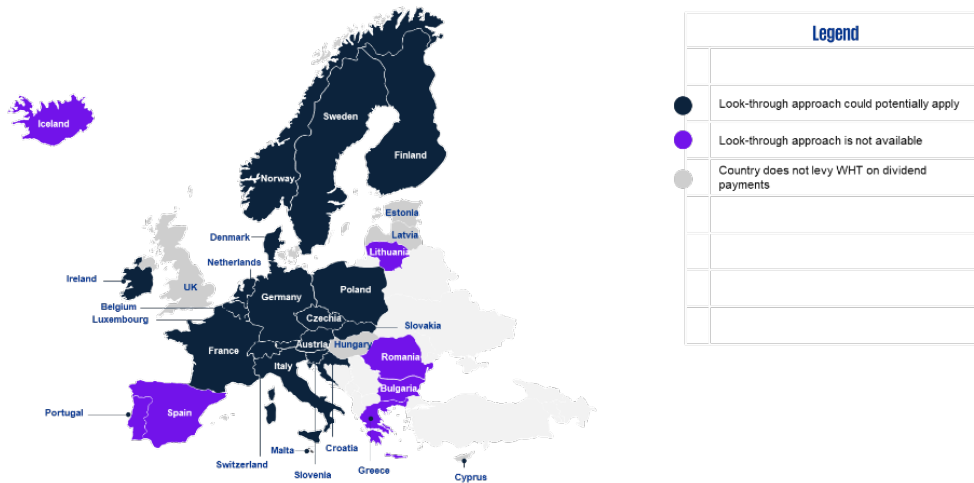
Note that even in jurisdictions that have indicated that tax authorities could look through the structure and identify the beneficial owner of the income beyond the formal recipient, this approach is not guaranteed. The graphs do not provide any indication of the likelihood of the approach being adopted. In most cases, outcomes may vary significantly, as the look-through approach is typically not explicitly mandated by law and often depends on the administrative practice of the tax authorities, the interpretation of local courts, and the facts and circumstances of the case. Furthermore, the applicability of a look-through approach under double tax treaties frequently depends on the specific wording of the relevant treaty, particularly on whether reduced WHT rates or exemptions extend to indirect payments. The survey found significant differences across jurisdictions in whether the look-through approach is applied, as follows:

- Look-through approach could apply in practice: Several countries have indicated that, in this case, if presented with sufficient evidence, the tax authorities *might* consider a look-through approach – in 72 percent of the relevant jurisdictions surveyed for dividends, and in 68 percent for interest and royalties. Generally, the burden of proof lies with the claimant that needs to provide evidence that the beneficial ownership requirements are satisfied by a higher-tier group entity. As mentioned above, in most of these countries, the look-through approach is not explicitly codified in law; as a result, outcomes are not guaranteed and are typically determined on a case-by-case basis. Furthermore, the approach taken by local tax authorities and courts may not be consistent.
- Look-through is generally unavailable: 28 percent of relevant surveyed jurisdictions for dividends; and 32 percent for interest and royalties.

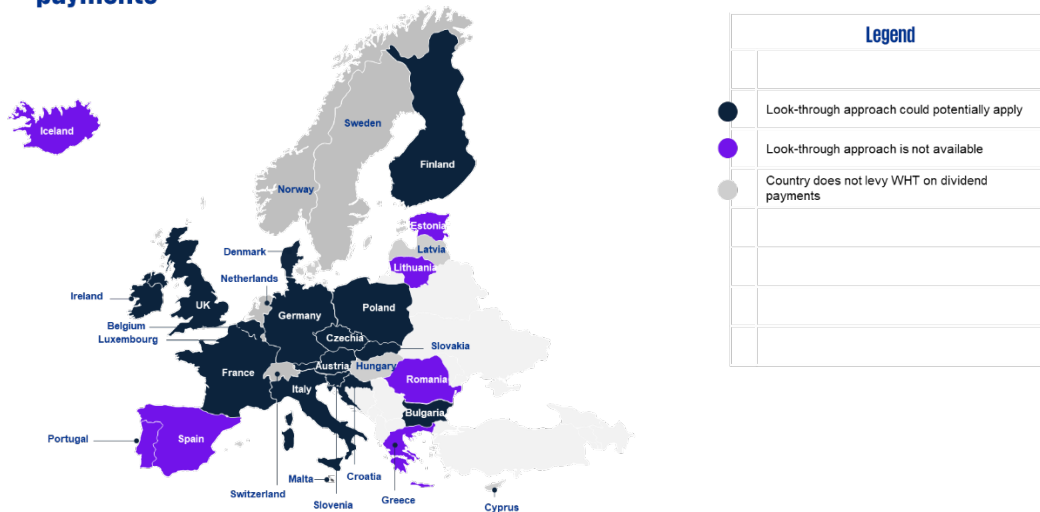
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<sup>15</sup> Under the look-through approach, tax authorities ‘look past’ the immediate recipient of income (such as a holding or intermediary company) to assess whether a higher-tier shareholder in the ownership chain is the true beneficial owner. If that higher-tier shareholder would have been entitled to a reduced WHT rate or exemption, had it invested directly in the source country, the authorities may grant those WHT benefits. Without this approach, domestic exemptions or treaty relief are denied if the immediate recipient fails the beneficial ownership test—even if an upper-tier shareholder would have qualified.

## Possibility of applying look-through approach with respect to dividends



## Possibility of applying look-through approach with respect to interest and royalties payments



The comments below highlight some of the particularities identified based on the responses received. Looking at the first category of jurisdictions – in which the look-through approach might apply, as mentioned above, the likelihood of its application varies significantly. In some jurisdictions, the approach is either encouraged through guidance issued by the tax authorities or has been tested in court. In others, it may be theoretically available, but, as far as respondents were aware of the time of the survey, there was no established court practice on the matter.

Examples of countries that provide greater clarity regarding the availability of the look-through approach include Denmark and Poland.

In the aftermath of the Danish cases, the look-through approach is generally applied in Denmark where the direct recipient of the dividend, interest or royalty payment is deemed not to be the beneficial owner. In such instances, the payments would be subject to taxation as if they were made directly to the beneficial owner. The related WHT could be reduced based on the applicable EU Directives or the double tax treaty in force between Denmark and the jurisdiction where the beneficial owner is tax resident. This approach was confirmed by the Danish Supreme Court ruling<sup>16</sup> of January 9, 2023, in two cases<sup>17</sup> from the “Danish cases” series on the WHT exemption under the EU Parent-Subsidiary Directive. The Danish Supreme Court concluded that the taxpayer proved that its US parent was the beneficial owner of the second dividend distribution and, as a result, the benefits of the Denmark-US double tax treaty should be applied.

It is important to note that, based on the practice of the Danish courts, the burden of proof lies with the taxpayer to establish the identity of the beneficial owner of the payment. As such, in its May 4, 2023 ruling<sup>18</sup> regarding two cases concerning WHT exemption under the Interest and Royalties Directive, the Danish Supreme Court concluded that it could not ascertain the beneficial owner due to the limited evidence presented by the taxpayers. Consequently, the payments were subject to domestic Danish WHT, and no double tax treaty benefits were granted.

Poland took steps in July 2025 to clarify the applicability of the look-through approach, by issuing WHT guidelines that also cover this topic. Specifically, these guidelines indicate that the look-through approach may be applied to dividends, interest and royalties, provided certain conditions are met, including maintaining the legal nature of the payments and ensuring taxation in each jurisdiction involved. In respect of interest, the look-through approach may be applied only if payment is effectively taxed in each jurisdiction to which it is transferred. On the downside, the guidelines also clarify that tax authorities are not obliged to apply the look-through approach.

The UK also took steps in reducing uncertainty and adopted guidance<sup>19</sup> illustrating how the look-through approach would apply for interest flows, on which the UK levies withholding tax. As such, the guidance notes that treaty relief will not be denied merely because the immediate recipient is not the genuine beneficial owner of the payment. This remains valid as long as the actual beneficial owner would have been eligible for the gross payment (meaning no UK WHT would be applicable) under the relevant treaty.

Some jurisdictions take a nuanced position on the look-through approach, applying it differently depending on whether the taxpayer seeks to use it in the context of EU Directives or with respect to double tax treaties. For example, with regards to the local implementation of the PSD, Dutch regulations provide for a look-through approach under which a benefit might still be granted if a conduit company – although lacking substance but meeting the formal PSD criteria, passes the payment on to another company that satisfies all the relevant requirements. On the other hand, the Netherlands doesn’t generally apply a look-through approach under double tax treaties.

Similar nuances can be found in other jurisdictions, where the applicability of the look-through approach can vary depending on the type of income involved. In Bulgaria, for instance, the look-through approach is generally not permitted for dividends for double tax treaty relief, meaning WHT relief is typically limited to the direct recipient of the income. In contrast, for interest and royalty payments, it may be possible to obtain DTT relief through the look-

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<sup>16</sup> In the context of the Danish cases, the CJEU provided guidance on what could constitute abuse under EU Law. However, it was for the local Danish courts to assess whether the arrangements under review constituted an abuse based on the guidance provided.

<sup>17</sup> This ruling relates to cases T Denmark (C-116/16) and Y Denmark (C-117/16), the two joined Danish cases on the concept of BO of dividend distributions that were ruled on by the CJEU. Both cases concern dividend distributions made by a Danish resident company to an intermediate holding company resident in the EU. For more details, please refer to E-news [Issue 169](#).

<sup>18</sup> The ruling relates to cases N Luxembourg 1 (C-115/16) and X Denmark (C-118/16), two of the four joined Danish cases on the concept of BO in respect of cross-border interest payments. For more details, please refer to E-news [Issue 177](#).

<sup>19</sup> See: <https://www.gov.uk/hmrc-internal-manuals/international-manual/intm332060>, which notes (in the context of an example involving a payment of interest to a Special Purpose Vehicle, which in turn makes onward payments to bondholders): “HMRC will also accept that there is no need to invoke the “international fiscal meaning” of beneficial ownership to deny treaty benefits where the lender receiving income directly from the SPV (the “true” beneficial owner of the interest) would, if they had been the direct recipient of the interest, have been entitled to treaty benefits as a resident of a state with which the UK has a DTC with zero withholding on interest. It is not necessary for the beneficial lender in this scenario to have made a formal claim for treaty benefits in order to assess what entitlement to claim would have arisen.”

through approach, provided that the taxpayer can demonstrate that all relevant conditions – including beneficial ownership requirements, are met by an entity other than the direct recipient of the Bulgaria-sourced income.

Based on the responses received, a common recommendation is that taxpayers involved in tax audits where their WHT treatment is being challenged on BO grounds should engage early and proactively with the tax authorities to discuss the possible application of the look-through approach during the inspection phase. If the tax authorities ultimately reject the application of this approach, taxpayers may then consider whether it could be successfully pursued before the local courts.

## Other WHT specific anti-abuse or anti-treaty shopping measures

### *Insight: Additional specific WHT anti-abuse provisions are in place in several jurisdictions*

As illustrated by the maps in the “Beneficial ownership” section above, the mere absence of a specific BO requirement in certain jurisdictions does not automatically imply that WHT reductions are available without further scrutiny. All jurisdictions surveyed have, at a minimum, general anti-abuse rules that allow tax authorities to challenge abusive transactions. In addition, some jurisdictions have introduced specific anti-treaty shopping provisions that apply alongside the general rules.

For example, Austrian law imposes formal substance requirements for withholding tax relief under the Parent-Subsidiary Directive. Shareholders must provide a written statement confirming that they (i) generate income from active business operations, (ii) have their own personnel, and (iii) maintain their own business premises.

Another example is Spanish tax law, which does not include a beneficial owner clause for dividends, but does include a specific anti-abuse provision. This provision denies the EU Parent-Subsidiary exemption if more than 50 percent of the shares in the EU entity are ultimately owned by non-EU investors. In such cases, the taxpayer must demonstrate that the decision to hold the entity through an EU parent is not primarily tax-driven and that there are genuine business reasons and economic justifications for the structure. In practice, this often requires that the EU entity conducts substantial business activities.

## Governance

The survey also examined corporate governance requirements across jurisdictions, focusing on situations where an entity incorporated abroad may nevertheless be deemed tax resident in a jurisdiction – for example, the circumstances under which the German tax authorities might treat an Irish-incorporated entity as tax resident in Germany.

*Insight: Most European countries determine tax residency of foreign-incorporated companies based on POEM, while others apply central management and control (CMC) or domestic definitions; a few rely solely on incorporation/registration.<sup>20</sup>*

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<sup>20</sup> The two most common approaches to determining tax residence for corporations are (i) place of incorporation, i.e., the jurisdiction considers a corporation to be tax resident if it is incorporated under its laws, and (ii) place where the corporation is effectively managed from. The latter is an assessment of facts and circumstances and typically takes the form of a place of effective management (POEM) test, a central management and control (CMC) test, or an assessment of other factors indicative of tax nexUs, i.e., a connection to that jurisdiction (e.g., where the company has its bank accounts and bookkeeping).

- When assessing POEM, jurisdictions may consider facts such as: place of day-to-day management, where strategic decisions are taken, where the annual meetings of shareholders are held, place where board meetings are held, place of residence of board members, etc.
- The exercise of central management and control (CMC) generally looks at where board meetings are held but also considers other facts and circumstances, such as whether in reality decision making power sits with persons other than the board so that central

Among countries that do apply rules that can deem a foreign incorporated entity to be tax resident in their jurisdiction, Place of Effective Management (POEM) is the most commonly used test (in 67<sup>21</sup> percent of the surveyed jurisdictions), with Central Management and Control (CMC) being used in approximately 19 percent of jurisdictions in this group.

The remaining 15 percent of surveyed jurisdictions – France, Iceland, Norway and Poland, do not rely either on POEM or CMC, but instead use their own definitions. For example, in Poland, domestic law does not explicitly apply the POEM rule but does include an illustrative example of when place of management is considered to be located in Poland. Whilst this example shares certain features with the POEM concept, it is not identical to it. In practice, cases where the Polish tax authorities assert residency over foreign entities are rare and usually arise in connection with the controlled foreign company rules for Polish individuals. The Polish Ministry of Finance has issued guidance outlining indicators of Polish tax residency, which are used to determine whether a foreign entity's effective management is located in Poland.

Interestingly, in only 13 percent of surveyed jurisdictions – Estonia, Latvia, Lithuania, and Sweden, the sole indicator used to determine tax residency is the place of incorporation or registration.

***Insight: Location of board meetings relevant when determining tax residence in the vast majority of surveyed jurisdictions.***

***Key finding: Tax residency assessments are case-specific, but common factors include the location and substance of board meetings, director presence and residence and decision-making independence.***

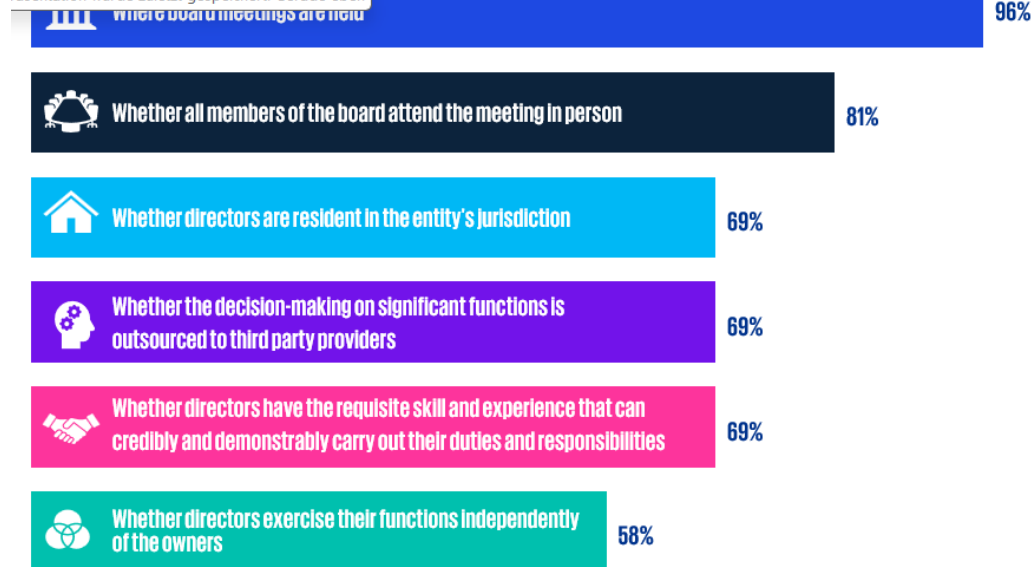
The starting point in most tax residency assessments is that the analysis should be performed on a case-by-case basis, considering all the facts and circumstances of a particular entity. Consequently, where guidance is provided by tax authorities regarding the list of factors deemed relevant when assessing tax residence, it is typically only indicative and non-exhaustive in nature. Nevertheless, the responses received revealed some common trends in the factors that could be examined or considered, when determining tax residence based on the POEM, CMC or other domestic principles.

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management and control is exercised outside board meetings (e.g., via a parent or by the executive management team). POEM can also be relevant to CMC jurisdictions in the context of a tie-breaker rule under a double tax treaty.

- The Commentary to the OECD Model Tax Convention refers to the place of effective management in solving dual residence problems that can arise where both contracting states consider an entity to be tax resident within their jurisdiction. Under the Commentary, the place of effective management is the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made.

<sup>21</sup> Please note that Bulgaria, Estonia, Latvia, Lithuania, and Sweden were not included when computing the percentages. The reasons are: for Bulgaria, relevant criteria are still unclear; in Estonia, local law provides no grounds to treat a non-resident entity as resident, and in Latvia, Lithuania, and Sweden, the place of establishment or registration is the sole relevant criterion for determining residence.



The location of board meetings was considered a relevant factor in 25 out of 26 relevant surveyed jurisdictions<sup>22</sup>. It is important, however, to bear in mind that the location of board meetings would not necessarily be determinative on its own. For example, guidance issued by the UK tax authority (HMRC)<sup>23</sup> clarifies that there is no assumption that the CMC of an entity must be found to be where board meetings are held. In such a case, it would be critical to verify that CMC is not actually exercised outside board meetings, for example, by (i) a parent or shareholder of the company in question, (ii) the CEO or executive management team, or (iii) an adviser or other third party to whom functions are outsourced.

As a final point on this matter, it should be noted that the weight given to each criterion, can vary depending on the jurisdiction. As such, understanding the relevance of each indicator remains essential for businesses operating internationally and typically requires a case-by-case analysis.

## Substance

Survey responses also revealed the diversity of factors that tax authorities typically consider when evaluating economic substance, including (non-exhaustive):

- the company's management (i.e. whether the focus of decision-making authority is within the jurisdiction where the company is registered);
- where the company's bookkeeping is done;
- the structure of costs and expenditures (i.e. expenditures are expected to be proportionate to the operational scope of the entity);
- other factors such as the size of the workforce, and the ownership of premises and equipment.

In addition to general factors, there are also country-specific regulations. For example, in Germany, the economic activity of a foreign company must have a substantial connection to the German payer of income. Similarly, Italy requires proof that the resources and personnel of the foreign entity are involved in, or dedicated to, the activity

<sup>22</sup> For the purpose of this section, relevant surveyed jurisdictions refer only to the 26 jurisdictions (out of the 31 surveyed jurisdictions) in which companies could be deemed to be tax resident even in cases where they are incorporated in a foreign jurisdiction. Bulgaria was also excluded due to the fact that the criteria based on which a foreign company could be deemed as a tax resident of Bulgaria are uncertain.

<sup>23</sup> <https://www.gov.uk/hmrc-internal-manuals/international-manual/intm120130>

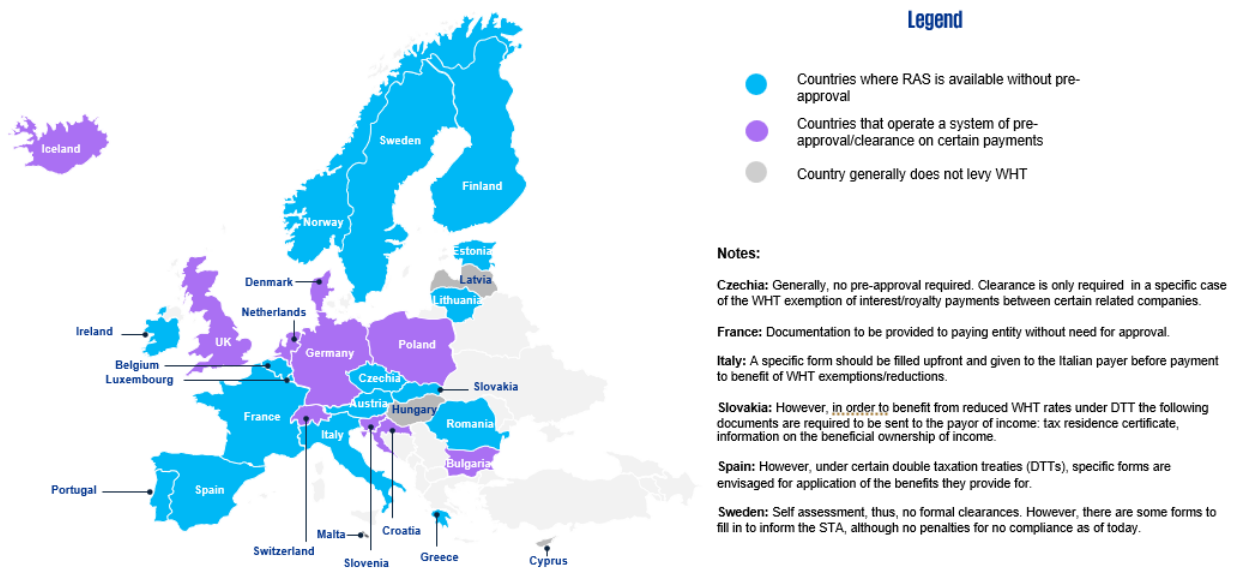
generating the relevant income. UK authorities focus on whether the recipient has the full privilege to directly benefit from the income, or if it is bound in legal, commercial, or practical terms to pass on the income. Icelandic tax authorities have indicated that their approach would be similar to that in the Danish cases.

Nevertheless, these are general considerations, and in most countries, a case-by-case analysis is necessary. As such, it is difficult to identify the most common factors used for assessing substance across jurisdictions.

## WHT procedures

There are two main methods for obtaining WHT relief for intra-group dividend distributions and payments of interest and royalties: relief at source (RAS) and the refund procedure.

Under the RAS system, the reduced or exempt WHT rate is applied directly at the time of payment, allowing the non-resident to receive the benefit of the relief from the outset. The process for accessing RAS varies across jurisdictions: in some, RAS is available automatically without prior approval, whereas in others, pre-approval or clearance from tax authorities is required for RAS to be applied. Additionally, certain countries do not levy WHT at all, making relief procedures unnecessary. The map below summarizes our findings in this area.



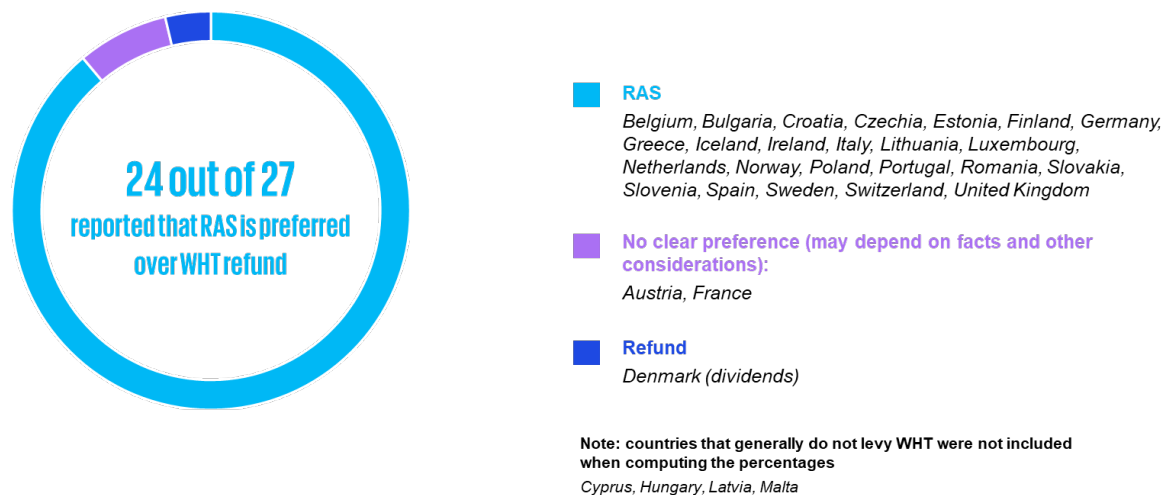
In contrast, the refund procedure requires the non-resident to pay the full WHT upfront and subsequently submit a claim to the tax authorities to recover any excess tax withheld. In most jurisdictions, both the RAS system and the refund procedure are available to non-residents seeking WHT relief.

### ***Insight: relief at source preferred by non-resident taxpayers in the vast majority of the surveyed jurisdictions***

The survey also explored whether non-resident taxpayers generally prefer the relief at source or the refund procedure when seeking relief from withholding tax, considering both procedural and practical aspects. As could be

expected, in the overwhelming majority (89 percent) of jurisdictions that levy a withholding tax on dividends, interest or royalties,<sup>24</sup> relief at source is the preferred method of relief for non-resident taxpayers.

Seven percent of surveyed jurisdictions report the foreign companies seeking relief in an intra-group context have no clear preference, noting that the choice may depend on specific circumstances or other considerations. Only one jurisdiction indicated a preference for refunds, in the specific case of dividends – i.e., Denmark. The preference is likely because Denmark requires an exemption certificate upfront for relief at source to be granted for dividends. This requirement often makes the process more administratively burdensome and time-consuming compared to the alternative refund procedure.



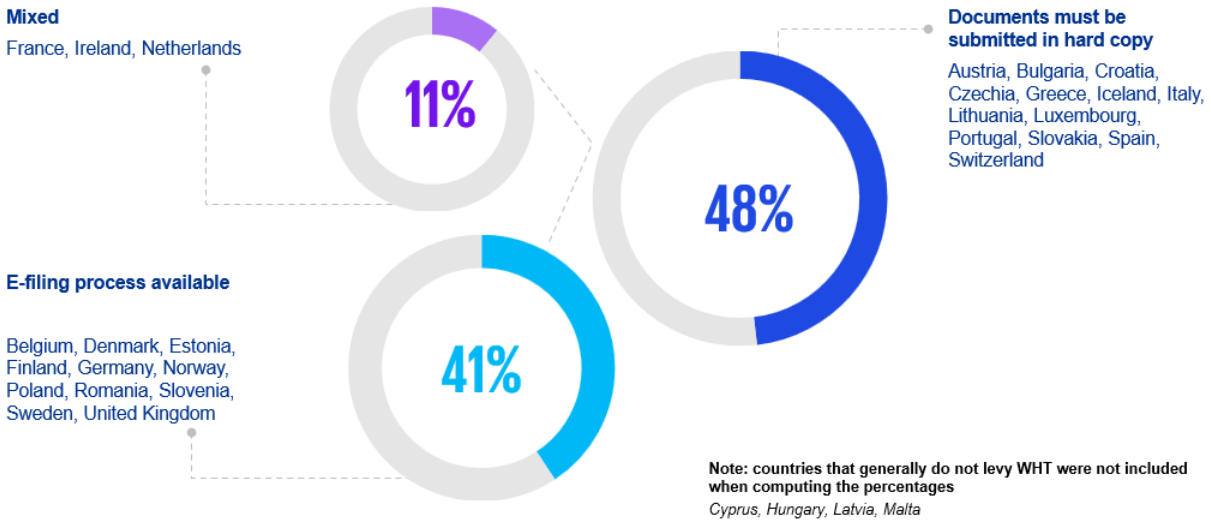
***Insight: Digitalization of WHT procedure remains limited – nearly half of the surveyed jurisdictions still require hard copy documentation***

The survey also explored the extent to which WHT procedures have been digitalized, focusing on the availability of e-filing processes and the use of electronic documentation. Among the countries that levy withholding tax, 41 percent<sup>25</sup> offer an e-filing process for WHT relief applications, allowing taxpayers to submit the necessary documents electronically. However, a slightly higher proportion—48 percent—still require documents to be submitted (at least partially) in hard copy.

In 11 percent of surveyed jurisdictions that apply a WHT, the approach often includes mixed practices. For example, in Iceland, applicants can send a certified application as a PDF by email, but a hard copy of the tax residency certificate is still required unless the certificate contains a QR code for verification. Similarly, in Ireland, the requirements differ depending on the type of payment: while e-filing is possible for interest and royalties, a hard copy may still be required, and dividend withholding tax forms must be submitted in paper. In the Netherlands, there is no strict legal rule on electronic signatures, and although some have been accepted in practice, tax authorities may still request a non-electronic signature. France, meanwhile, does not provide clear guidance on the use of e-filing or electronic documentation. Overall, the survey indicates that while digitalization is progressing, nearly half of the countries surveyed still require hard copy documentation for WHT procedures.

<sup>24</sup> Countries that do not generally levy withholding tax were excluded from these calculations - Cyprus, Hungary, Latvia, and Malta.

<sup>25</sup> Please note that Cyprus, Hungary, Latvia, Malta, which generally do not levy WHT, were not included when computing the percentages.



***Insight: Most surveyed jurisdictions take over six months to complete WHT refunds***

The survey also assessed the estimated time required for the completion of the WHT refund process across different jurisdictions that levy WHT<sup>26</sup>. The information gathered refers to actual timeframes experienced in practice, rather than legal deadlines.

The results show significant variation in processing times. In only a small number of jurisdictions – four percent of those surveyed – the refund process is likely to be completed within one month. A further 22 percent of relevant countries surveyed typically process refunds within two to four months, and another 22 percent within four to six months. The most common timeframe, however, is between six and twelve months, with 37 percent of the relevant surveyed jurisdictions falling into this category. Notably, in 15 percent of relevant jurisdictions surveyed, the refund process can take more than twelve months to complete.

Overall, the findings highlight that in most jurisdictions, obtaining a WHT refund is a lengthy process, with the majority of countries requiring at least six months or more to finalize the refund.

<sup>26</sup> Please note that Cyprus, Hungary, Latvia, and Malta, which generally do not levy WHT, were not included when computing the percentages.



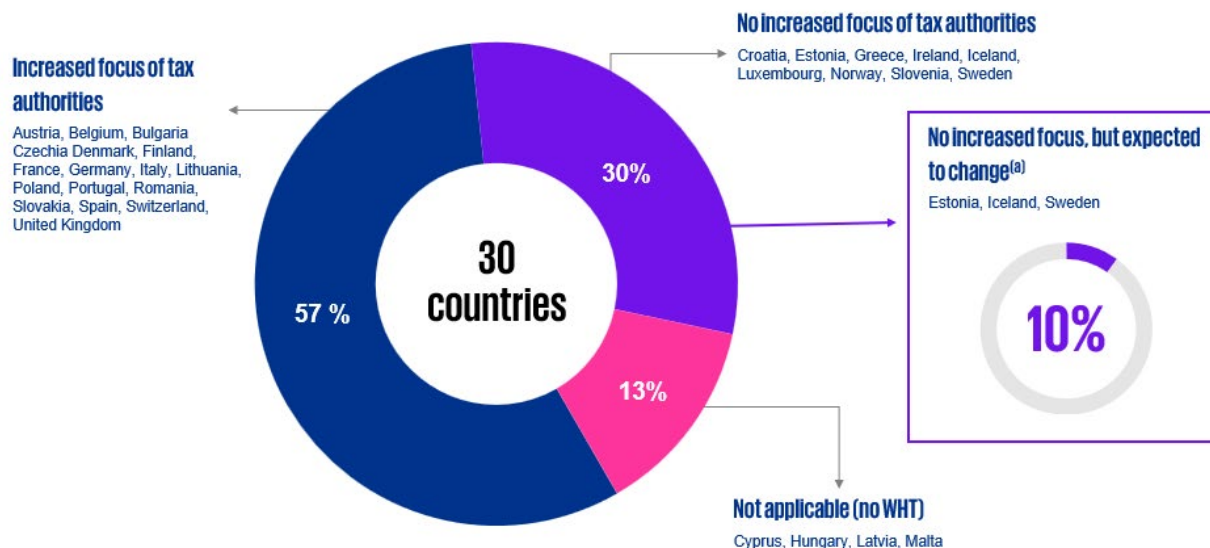
Note: countries that generally do not levy WHT were not included when computing the percentages  
Cyprus, Hungary, Latvia, Malta

## The practice of the tax authorities in beneficial ownership and substance matters

*Insight: the majority of surveyed jurisdictions are experiencing increased scrutiny of beneficial ownership and substance matters from the tax authorities*

The survey also examined whether tax authorities are placing increased emphasis on beneficial ownership and substance investigations. The responses reveal<sup>27</sup> that 57 percent of countries reported heightened scrutiny from tax authorities on these matters, whilst 30 percent observed no such increase. Among those jurisdictions that did not observe an increased scrutiny, three (representing 10 percent of surveyed jurisdictions) have not yet observed an increased focus, but anticipate that this may change in the future. These results align with earlier observations on the subject, indicating that investigations into beneficial ownership and substances remain prevalent across numerous European jurisdictions. For 13 percent of respondents, the question was not applicable, typically due to the absence of withholding tax regimes – such as in Cyprus, Hungary, Latvia, or Malta (although defensive measures may apply in some of these jurisdictions).

<sup>27</sup> Notably, responses from the Netherlands were marked as “Uncertain” and have been excluded from the percentage calculations.



## Methods to increase legal certainty

*Insight: Advanced certainty on beneficial ownership and level of substance in an entity remains a limited option across jurisdictions*

One of the recurring challenges highlighted in the survey relates to the availability of advanced certainty regarding beneficial ownership status. The results reveal that only half of the surveyed jurisdictions allow taxpayers to obtain advance tax rulings to confirm their BO position.

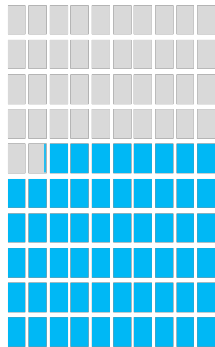
This finding implies a significant degree of uncertainty for businesses operating in Europe, with respect to how tax authorities may interpret their structures and transactions. The lack of consistent access to advance certainty highlights the need for companies to develop a good understanding of the specific tax rules and administrative practices in each jurisdiction where they operate. It also highlights the importance of maintaining robust documentation to support the taxpayer’s position. In practice, the burden of proof often rests with the taxpayer, meaning that insufficient records or unclear governance structures could expose businesses to denial of WHT benefits.

To enhance legal certainty in beneficial ownership, businesses should focus on maintaining comprehensive and up-to-date documentation of transactions and ownership structures, while understanding jurisdiction-specific tax laws through local expert consultation. Additionally, seeking advance tax rulings where available and conducting regular compliance audits can help confirm beneficial ownership status and reduce the risk of disputes.

Another option to be considered is the so-called “pay and reclaim” strategy. This approach involves initially paying the full withholding tax at the standard domestic rate and subsequently reclaiming the difference up to any favorable rate under a DTT or domestic tax law. However, while this method can potentially affirm a taxpayer’s entitlement to a reduced rate, it is important to be aware of the associated risks, such as cost and cash flow disadvantages. These challenges are particularly pronounced in jurisdictions where reclaim processes are lengthy and expensive, requiring careful consideration and planning.

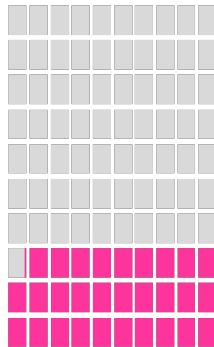
Lastly, exploring insurance policies to cover withholding tax exposures can provide an extra layer of certainty.

**Yes - 58%**



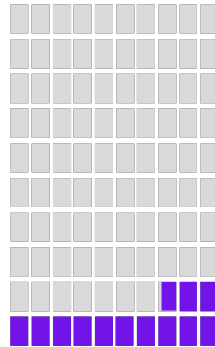
Austria, Belgium, Croatia, Denmark, Estonia, Finland, France, Iceland, Italy, Lithuania, Luxembourg, Netherlands, Portugal, Romania, Slovenia, Spain, Sweden, Switzerland

**No - 29%**



Bulgaria, Czechia, Germany, Greece, Ireland, Norway, Poland, Slovakia, United Kingdom,

**N/A - 13%**



Cyprus, Hungary, Latvia, Malta

## Conclusion

The findings of the survey highlight the continued fragmentation in the approach European jurisdictions have with regards to beneficial ownership (BO), substance, and governance. As was the case in previous iterations of the survey, we find that most countries continue to regard BO as a critical element for accessing reduced WHT rates. The survey also highlights that the interpretation and enforcement of this concept remain fragmented. What we also observe is a continuation of the trend toward increased scrutiny by tax authorities.

The survey also highlights that, despite some convergence around key indicators such as the place of effective management and the importance of board meetings, there remains considerable variation in the criteria used to assess economic substance.

As scrutiny from tax authorities continues, the ability to secure advance certainty on BO matters and substance matters is likely to become an increasingly valuable tool for risk management. Taxpayers should remain proactive – by monitoring local developments, gaining an early understanding of positions adopted locally, and ensuring that their internal structures and documentation are sufficiently robust to withstand review.

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