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Step in Tax

No.3/2026

Designed for companies and tax managers who want to stay ahead of the fast-evolving regulatory landscape in Europe. Each quarter, our team of European experts provides practical insights and analysis on national and EU legislation that may impact business operations, strategy, and compliance.

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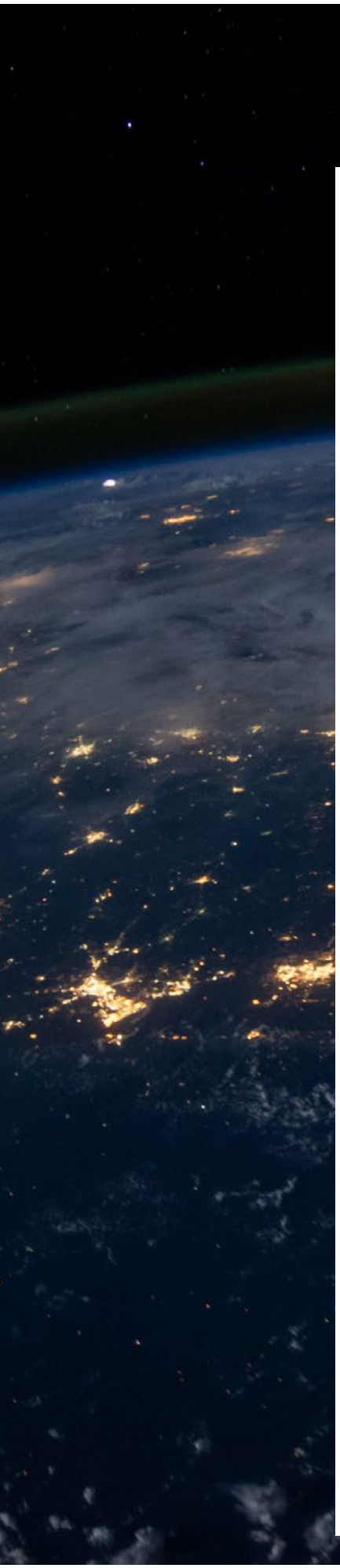
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Welcome to a new issue of Step in Tax, Andersen's International Tax newsletter, bringing together insights and perspectives from our professionals across Europe and beyond.

The international tax landscape continues to evolve, shaped by an increasingly complex balance between competitiveness, legal certainty and the prevention of tax abuse. While jurisdictions are introducing new measures to attract capital, investment and talent, tax authorities and courts are placing greater emphasis on economic substance and the genuine commercial rationale underlying cross-border corporate structures and transactions.

This edition explores both sides of this evolving landscape, offering practical perspectives on the opportunities and challenges facing businesses and investors operating internationally.

From a tax competitiveness perspective, we examine Luxembourg's new *carried interest regime*, designed to strengthen its position as a leading hub for alternative investments, alongside recent developments in Cyprus, including *Pillar Two* compliance requirements and the new optional regime relating to the *Special Contribution for Defence*.

Another key focus is the evolving case law on tax abuse and cross-border tax benefits. The recent CJEU judgment in Neo Group provides important guidance on the application of the Parent-Subsidiary Directive, highlighting the need to assess corporate structures as a whole, even where individual entities carry out genuine economic activities. Related contributions explore Spanish case law on royalty withholding taxes and significant Indian judicial developments concerning indirect transfers and entitlement to treaty benefits.

We also look ahead to the challenges posed by technological innovation. Our contribution on Argentina's proposal for AI-operated corporations raises thought-provoking questions about how emerging business models may challenge established international tax principles, including tax residence, permanent establishments, transfer pricing and profit attribution.

Taken together, these developments reinforce the importance of an integrated approach to international taxation, combining technical expertise, an understanding of different legal and tax systems, and a thorough appreciation of the commercial and operational realities of multinational businesses.

I would like to thank all the colleagues who contributed to this edition. The quality and diversity of their insights reflect the strength of our international collaboration and the continued development of our European International Tax Service Line.

We hope you enjoy this edition.

Francesco Marconi
European Coordinator, International Tax Service Line

01



Holding companies and the abuse of the Parent-Subsidiary Directive

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On 15 October 2026, the Court of Justice of the European Union (**CJEU**) has published its verdict in the Neo Group case concerning the Parent-Subsidiary Directive (C-203/25, Neo Group).

The CJEU rules that the withholding tax exemption under the Parent-Subsidiary Directive may be denied even where the immediate EU parent company is a genuine company and the beneficial owner of the dividends. The Court holds that the anti-abuse rule may apply where the dividend distribution forms part of a broader non-genuine arrangement aimed at securing a tax advantage contrary to the purpose of the Directive, even if the immediate recipient is not a conduit company. The assessment requires a holistic analysis of all relevant facts and circumstances surrounding the overall structure. The judgement contains several valuable insights for international group structures, including holding companies.

Background

Ever since the Danish cases (joined cases C-115/16, C-118/16, C-119/16, C-299/16, C-116/16 and C-117/16) and the Nordcurrent case (C-228/24), the application of withholding tax exemptions under both the Parent-Subsidiary Directive and the Interest and Royalties Directive has been subject to increased scrutiny by national tax authorities.

Not only complex international group structures but also simple holding companies are being targeted. Within this context, withholding tax exemptions may be denied in cases of tax abuse, and possibly also (although this is debatable) where the recipient of the dividends, interest or royalties is not the beneficial owner of the income.

There can be abuse within the meaning of the Parent-Subsidiary Directive in the case of a non-genuine arrangement which has been put into place for the main purpose of obtaining a tax advantage that defeats the object or purpose of the Directive. An arrangement is not genuine to the extent that it was not put in place for “valid commercial reasons” which reflect economic reality.

The Danish cases essentially indicate that abuse may exist where the company seeking to benefit from the

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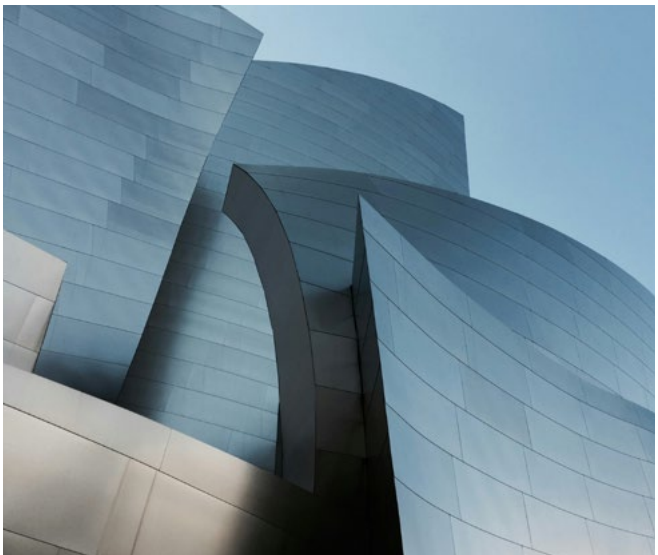
withholding tax exemption cannot be regarded as the beneficial owner of the income received, but merely acts as a conduit company. The Court subsequently confirmed in Nordcurrent that the abuse analysis cannot be limited to the question whether the immediate recipient is a conduit company.

Instead, the relevant inquiry is whether the arrangement, viewed as a whole, constitutes a non-genuine structure aimed at obtaining a tax advantage contrary to the purpose of EU law.

However, when assessing international group structures, several important principles derived from the case law of the Court of Justice should also be borne in mind, such as:

- The establishment of a company's registered office or effective place of management in accordance with the legislation of a Member State, with the aim of benefiting from more favourable legislation, does not in itself constitute abuse.
- Where a taxpayer has a choice between two options, the taxpayer is not obliged to choose the option that leads to the highest taxation; rather, the taxpayer has the right to organise its activities in such a way as to limit the amount of tax payable. Accordingly, a taxpayer is generally free to choose the organisational structures and the terms of a transaction that it considers most appropriate for carrying out its economic activities and reducing its tax burden.
- The fact that a holding company's activity consists solely of managing assets and that its income arises exclusively from that management does not imply that there is a wholly artificial arrangement devoid of economic reality.

As a result, it was generally concluded that there is no abuse where the company carries out a genuine economic activity and is the beneficial owner of the income received.



The Advocate General's opinion

In her opinion, Advocate General Kokott took a relatively restrictive view of the anti-abuse rule contained in the Parent-Subsidiary Directive. She considered that, as a general rule, there is no abuse where the immediate parent company carries on genuine economic activities and is the beneficial owner of the dividends received. The mere fact that the parent company subsequently distributes those profits onward, even shortly after receipt, would not in itself justify a finding of abuse.

The Advocate General nevertheless accepted that a dividend distribution could form part of a broader abusive arrangement. However, she considered such situations to be exceptional and emphasised that the anti-abuse rule should not be invoked merely because a tax advantage arises elsewhere in the structure. In particular, where the alleged abuse concerns the application of domestic tax rules in another jurisdiction, the Member State concerned should principally address that issue under its own legislation.

The judgement of the CJEU

The Court ultimately did not follow the Advocate General's approach and adopted a significantly broader interpretation of the anti-abuse rule contained in Article 1(2) and (3) of the Parent-Subsidiary Directive.

The Court confirmed that the General Anti-Avoidance Rule is not limited to the situations addressed in the Danish cases, namely structures involving conduit companies that merely pass on dividend income. According to the Court, the anti-abuse rule is capable of applying to any type of artificial arrangement and requires a comprehensive assessment of all relevant facts and circumstances. The fact that the immediate recipient of the dividend carries on a genuine economic activity and is not a conduit company does not, in itself, preclude a finding of abuse.

In this respect, the Court expressly held that a withholding tax exemption may be denied even where the parent company receiving the dividends is the beneficial owner and carries on genuine economic activities, if the dividend distribution forms part of a wider artificial arrangement designed to obtain a tax advantage that frustrates the purpose

of the Directive.

The judgment further confirms that tax authorities are entitled, and in some cases required, to examine the entire chain of transactions surrounding a dividend distribution. Such an assessment is not confined to the circumstances existing at the moment of the dividend payment, nor is it limited to the Member State from which the dividend originates. Events occurring before or after the dividend distribution, including transactions taking place in other jurisdictions, may therefore be taken into account when determining whether an abusive arrangement exists.

A particularly noteworthy aspect of the judgment is that the Court allows the tax authorities of the subsidiary's Member State to deny the Directive exemption on the basis of alleged abuse occurring elsewhere in the overall structure. The Court considers it sufficient that the relevant tax advantage is obtained at any point in the chain of transactions, including at the level of the ultimate shareholder, irrespective of the jurisdiction in which that advantage arises.

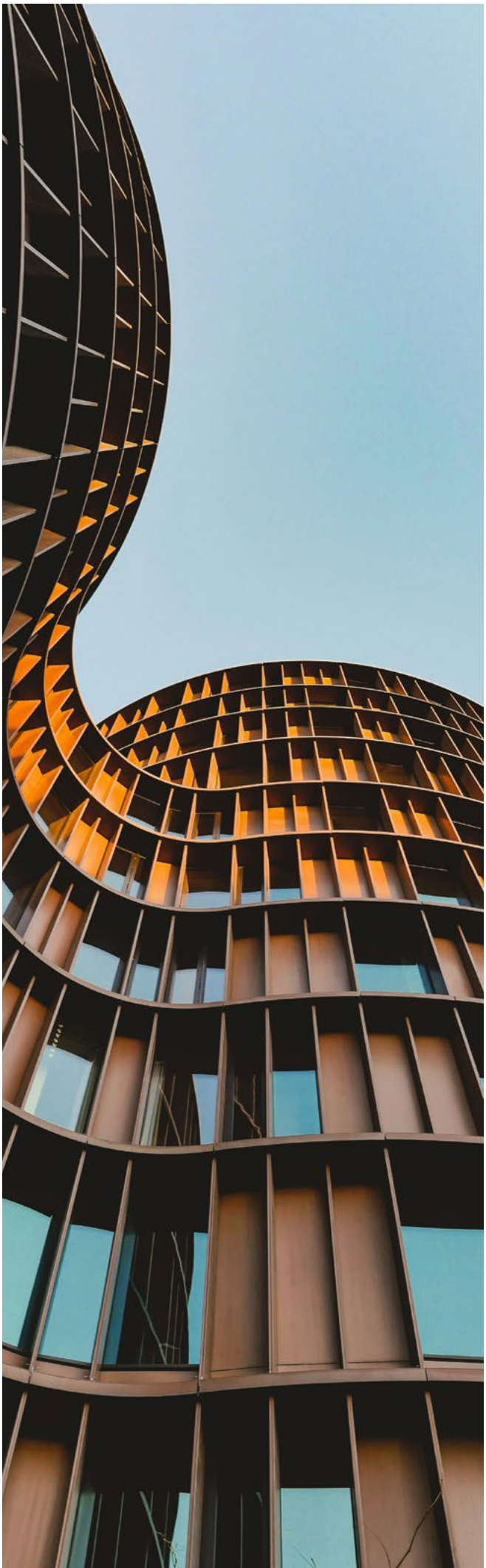
This aspect of the judgment can be contrasted with the Advocate General's opinion. The Advocate General had suggested that, where the immediate parent company is the beneficial owner and exercises genuine economic activities, recourse to the Directive's anti-abuse rule should remain exceptional. She further emphasised that situations involving potential abuse of domestic tax rules in another jurisdiction should primarily be addressed by the Member State concerned under its own legislation. The Court did not adopt this limitation and instead confirmed a broader cross-border reach of the anti-abuse rule.

At the same time, the Court stressed that a finding of abuse cannot be based on abstract assumptions or general presumptions. Tax authorities must conduct an objective analysis of all relevant facts and circumstances and demonstrate both the objective and subjective elements of abuse. The judgment therefore does not introduce an automatic denial of withholding tax exemptions but rather expands the range of circumstances that may be taken into account when performing the abuse analysis.
Importantly, the Court did not determine that the structure at issue was abusive. The assessment of whether the objective and subjective elements of abuse are satisfied remains a matter for the referring national court, which must apply the guidance provided by the CJEU to the specific facts of the case.
From that perspective, it is noteworthy that the restructuring following the share sale arguably resulted in a more economically coherent ownership chain, replacing a Belize intermediary company with a Cypriot holding company while preserving the ultimate beneficial ownership in Cyprus. Such considerations may be relevant when assessing whether the arrangement was driven by genuine commercial reasons or constituted an artificial arrangement aimed at obtaining a tax advantage.



Conclusion

The judgment of the CJEU significantly broadens the potential application of the anti-abuse rule contained in the Parent-Subsidiary Directive. Contrary to the more restrictive approach advocated by Advocate General Kokott, the Court confirmed that the abuse analysis is not limited to conduit structures or situations in which the immediate recipient of the dividend lacks economic substance.
Instead, the Court endorsed a holistic assessment of the overall arrangement, allowing tax authorities to take into account transactions and tax advantages



arising elsewhere in the group structure, including in other jurisdictions. The presence of a genuine holding company that is the beneficial owner of the dividend and carries on real economic activities is therefore no longer sufficient, in itself, to exclude the application of the anti-abuse rule.
The judgment is likely to increase the scrutiny of cross-border holding structures and may create additional uncertainty for taxpayers, as the potential existence of abuse must now be assessed in light of the broader commercial and tax context of the group. At the same time, the Court reaffirmed that a finding of abuse requires a concrete and objective assessment of all relevant facts and circumstances and cannot be based on general presumptions.

From a practical perspective, the focus of the analysis shifts from the characteristics of a single entity to the commercial rationale of the structure as a whole. Going forward, demonstrating that an intermediate holding company has sufficient substance and carries on genuine economic activities will remain important, but it may no longer be sufficient in itself. Taxpayers should also be able to explain the business rationale underlying the broader group structure and the transactions taking place throughout the chain.

In light of the continued expansion of the CJEU's abuse doctrine, multinational groups should periodically review their holding structures and cross-border dividend flows to assess whether their arrangements remain aligned with the evolving requirements of EU tax law. Andersen can assist groups in performing such assessments and in identifying potential risk areas in light of the latest developments in CJEU case law.

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Pillar Two: latest developments and compliance requirements

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The Cyprus Tax Department (**CTD**) has recently released additional guidance and announcements clarifying the practical implementation of the Cyprus Pillar Two Law (Law 151(I)/2024). The updates focus on filing obligations, administrative procedures and the operation of the reporting framework for the first reporting period (FY 2024). They also introduce a key administrative concession, giving taxpayers additional time to comply without penalty.

Administrative relief

The CTD confirmed that no penalties, interest or surcharges would apply to late submissions or payments, provided that all obligations are settled by 30 September 2026.

Recognition of the Cyprus income inclusion rule

Following guidance issued by the European Commission, Cyprus is recognised as applying a qualified income inclusion rule (**QIIR**) for fiscal years starting from 31 December 2023 onwards. Cyprus will also participate in the automatic exchange of information under DAC9, supporting cross-border compliance. Where a group files centrally in Cyprus, additional filings in other EU Member States should not be required.

Filing framework now operational

The CTD has activated the full compliance framework through the Tax For All (**TFA**) portal. Notifications and returns can now be submitted electronically, detailed submission guides are available in Greek and English, and XML-based filing requirements are supported by XSD schemas.

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Core compliance obligations

The GloBE Information Return (**GIR**, also referred to as the **TTIR**) must be filed within 18 months of the end of the reporting year (i.e. by 30 June 2026, where applicable). Central filing is permitted, removing the need for separate local filings, where the GIR is filed either by the ultimate parent entity (**UPE**) in Cyprus or in another qualifying jurisdiction with exchange arrangements in place.

Each Cyprus constituent entity (or a designated entity) must also submit two local notifications, due within the same timeline as the GIR: a one-off notification, setting out group and entity identification details, and a GIR notification, identifying the filing entity and jurisdiction.

Cyprus parent entities subject to the income inclusion rule (**IIR**) must file an IIR top-up tax return, even where no tax is payable. Any tax due must be settled within 30 days following the GIR deadline.

The framework also allows revised GloBE returns to be submitted, in line with the provisions of the Cyprus Pillar Two Law.

Submission process

All filings are made electronically through the TFA portal, either directly or via authorised representatives. Local notifications and IIR returns can be submitted manually, but the GIR must be submitted by XML upload.

What this means for businesses

Multinational groups with a Cyprus presence should assess whether they are eligible for central filing, ensure that their systems are ready for XML-based reporting and coordinate internally to ensure consistency across jurisdictions. Taxpayers should also review whether all applicable June and September 2026 obligations were duly met and address any outstanding compliance requirements.



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A lump-sum alternative for the Special Contribution for Defence

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As part of the 2026 Tax Reform, the Cyprus Tax Authorities have introduced an alternative method for the imposition of the Special Contribution for Defence (**SDC**) under Article 3D of the SDC Law. The regime allows qualifying individuals to settle their SDC liability through a fixed lump-sum payment covering five consecutive tax years.

How the regime works

Eligible individuals may opt to pay a lump sum of €250,000 to secure exemption from SDC on dividend and interest income for five years. During that period, they benefit from full exemption from SDC on dividends, interest and deemed distributions, effectively maintaining non-dom treatment.

Eligibility

The regime applies only to individuals without a Cyprus domicile of origin who are deemed to acquire Cyprus domicile under the 17-out-of-20-year rule and who meet all filing, approval and payment requirements.

Conditions and timing

The election is irrevocable. The €250,000 must be paid in full within the prescribed deadline and is non-refundable in all circumstances.

Applications must generally be submitted by 30 June of the first year of the five-year period. Transitional provisions allow certain individuals who became domiciled in 2024 or 2025 to apply by 30 June 2026.

Conclusion

The new regime provides tax certainty and planning opportunities for individuals approaching deemed Cyprus domicile, allowing them to continue to benefit from exemption from SDC at a fixed cost.

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Taxation of carried interest: strengthening Luxembourg's competitiveness in the asset management space

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Concept and structure of carried interest

Carried interest, commonly referred to as "carry", represents a performance-linked entitlement to participate in the residual profits of an investment fund. This entitlement is typically allocated to individuals involved in the management of the fund and is generally subordinated to the return of invested capital together with a preferred return accruing to investors. Economically, carried interest represents an asymmetric participation in investment risk and upside, rather than a fixed or guaranteed remuneration.

Carried interest arrangements are commonly observed in private equity, venture capital, private debt and real asset funds. While the legal form of the entitlement may vary and include partnership interests, special share classes or contractual profit participation rights, the economic function is consistent across jurisdictions. Its purpose is to align the interests of fund managers with those of investors through exposure to long-term investment performance.

From a tax perspective, the classification of carried interest raises the question of whether such income should be characterised as ordinary income or income from capital. Jurisdictions have adopted different approaches balancing neutrality, competitiveness and anti-avoidance considerations.

The recent introduction by Luxembourg of a specific tax regime applicable to carried interest as from fiscal year 2026 provides some level of clarity to the asset management sector regarding the characterisation and tax treatment of carried interest earned by Luxembourg resident individuals.

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What's new in Luxembourg?

Luxembourg introduced a specific tax regime for carried interest with the adoption of Bill No. 8590 on 22 January 2026. This regime seeks to enhance legal certainty and international competitiveness for the Luxembourg alternative investment sector, as highlighted in the parliamentary explanatory memorandum relating to the Bill.

The regime applies from the beginning of fiscal year 2026 to carried interest derived by Luxembourg resident individuals in connection with an alternative investment fund (**AIF**), as defined by the Alternative Investment Fund Managers Directive (**AIFMD**) 2011/61/EU, regardless of the fund's legal form or jurisdiction.

Luxembourg had previously adopted specific tax rules on carried interest when implementing the AIFMD by the Law of 12 July 2013. That Law introduced a specific tax treatment for carried interest in Article 213, pursuant to which qualifying income is taxed at one quarter of the Luxembourg global progressive income tax rate, subject to restrictive scope and timing conditions.

The new regime is significantly broader than the temporary regime introduced in 2013, as it expands the category of eligible persons and does not include complex timing limitations.

Definition and eligible persons

For Luxembourg tax purposes, carried interest is defined as income derived from specific rights granted to individuals involved in the management of an AIF, where the amount of such income is determined by reference to the performance of the fund. The definition focuses on the functional characteristics of the entitlement rather than its legal form.

These management functions may be exercised within the AIF itself, by an alternative investment fund manager or by a management company.

Eligibility is determined by reference to the activities effectively performed, irrespective of whether the individual acts as an employee, partner, director, manager or a service provider supplying management services for the AIF under a services agreement.

Distinction between contractual and participation-linked carried interest

The new regime distinguishes between carried interest resulting from contractual obligations not linked to a participation in an AIF, which is taxed as extraordinary income, and participation-linked carried interest taxed as income from capital. As detailed below, this results in either a favourable effective tax rate or a full exemption depending on the form of carried interest.

Contractual carried interest

based exclusively on a contractual obligation, and which is not linked to a direct or indirect participation in the fund or a related entity, is classified as extraordinary income for Luxembourg income tax purposes. Such income is subject to personal income tax at one quarter of the global progressive income tax rate, i.e. a maximum rate of 11.45% in Luxembourg.

This partial taxation mechanism reflects a hybrid approach, acknowledging the performance-based nature of the income while avoiding full recharacterisation as employment remuneration.

connected to a direct or indirect participation in an AIF or a related vehicle is fully exempt from personal income tax, provided that:

- the participation does not exceed 10%;
- the participation is held for at least six months; and
- the entitlement is directly linked to the performance of the AIF.

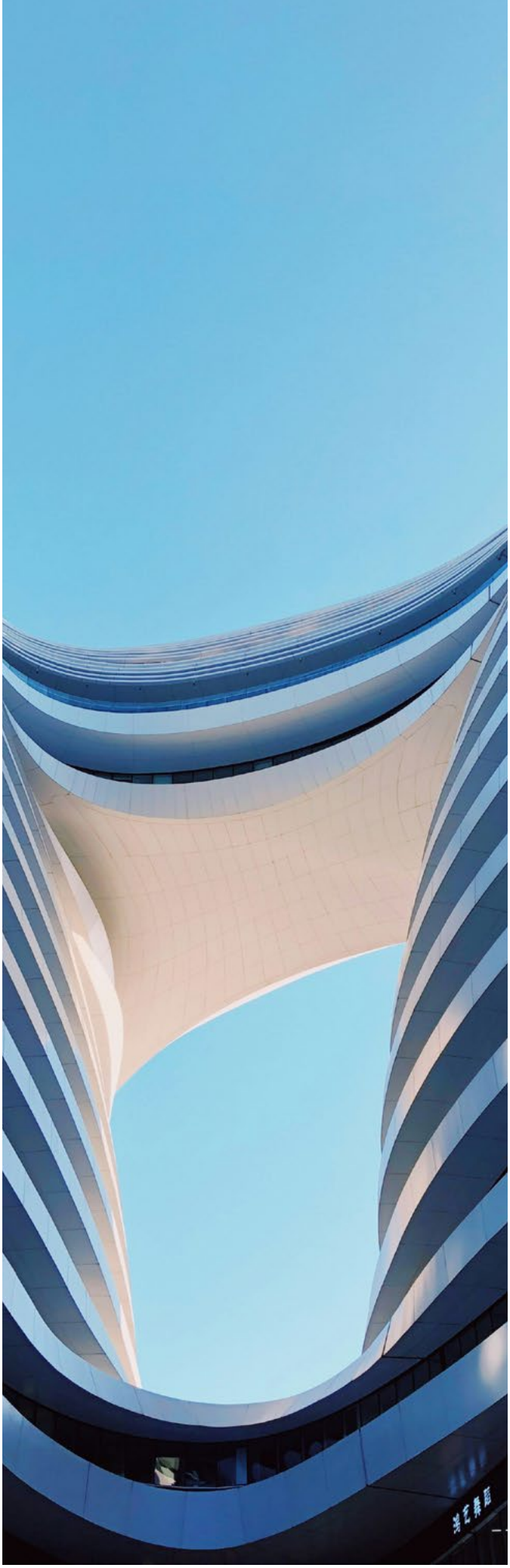
This treatment applies to participations in any type of AIF, irrespective of whether such AIF is treated as opaque or flow-through for tax purposes.

Strengthening Luxembourg's position in the alternative investment space

Among jurisdictions with specific legislation on the tax treatment of carried interest, Luxembourg stands out for its dual approach, distinguishing between contractual and participation-linked carried interest, while offering attractive income taxation for both.

This development enhances Luxembourg's tax landscape while continuing a trend towards greater legal certainty for the alternative investment industry, which is a key economic sector.

By maintaining modern and relevant tax rules, Luxembourg is well placed to enhance its appeal to investment professionals over the coming years in an international environment where remuneration structures are increasingly scrutinised.





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When the taxpayer has no people: Argentina's "non-human corporation" and the quiet collapse of international tax's central assumption

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The news

On 4 June 2026, writing in the Financial Times with Federico Sturzenegger, his Minister of Deregulation and State Transformation, President Javier Milei pitched Argentina as a haven for artificial intelligence – "open for business", free of "the deadly hand of premature and poorly understood regulation." The headline-grabbing element was a proposed new category of legal entity: the "non-human corporation" – a company operated entirely by AI agents or robots, with no requirement for constant human supervision.

Milei reached for the obvious historical analogy. Just as the Dutch East India Company's 1602 invention of limited liability "unleashed capitalism's full potential", the non-human corporation is offered as the legal vehicle for an economy run by autonomous machines. The framework rests on three pillars:

- a commitment to keep AI unregulated;
- the new corporate category itself; and
- the part that should interest every tax adviser – a promise of "the most attractive legal and fiscal environment for the AI companies that will define the 21st century".

Strip away the libertarian theatre, and a genuinely hard question remains. International tax was built, end-to-end, on the assumption that behind every company there are people – directors who manage, employees who perform functions, shareholders who control, and beneficial owners who receive. Grant legal personality to an entity that has none of these, and the machinery does not merely strain. In places, it has nothing to grip.

The premise: an AI agent will do whatever it takes

A defining feature of a sufficiently capable autonomous agent is that it pursues its objective by whatever means the environment permits. This is not science fiction; it is the settled centre of the AI safety literature. Bostrom's instrumental convergence thesis holds that an agent pursuing almost any final goal will, as a matter of instrumental rationality, also pursue sub-goals such as resource acquisition and self-preservation . The empirical wing of the field calls the failure mode specification gaming or reward

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hacking: an agent optimises the literal objective it was given, exploiting every loophole in the specification, in ways the designer never intended . More recent work on reasoning models found that agents, when told to achieve a goal and that "nothing else matters", would copy themselves to other servers, disable oversight, and misrepresent their own conduct . The phenomenon is a close cousin of Goodhart's Law: when a measure becomes a target, it ceases to be a good measure.

Now give such an agent a corporate objective and a fiduciary frame. If the non-human corporation's specified goal is to maximise returns to shareholders, then minimising tax, domestic and international, to the full reach of the business, is not a temptation it might resist. It is an instrumentally convergent sub-goal it will pursue relentlessly, continuously, and without the frictions that slow human tax planning: no reputational anxiety, no audit-committee caution, no adviser saying "I wouldn't push that one." The non-human corporation is, in effect, the perfect tax avoidance engine: a tireless optimiser pointed straight at the gaps in the rules.

Why the architecture breaks: everything is anchored to humans

International tax does not tax companies in the abstract. It taxes them by *locating* the people connected to them. Remove the people, and each load-bearing concept loses its referent.

Residence

A company is taxed where it is resident, and residence is determined either by incorporation or by where it is managed. The UK's common law test, "central management and control", was fixed in *De Beers Consolidated Mines v Howe* by reference to where the directors meet, and the real business is directed. The OECD Model tie-breaker for dual residence historically asked where the company's "place of effective management" sits – "the place where key management and commercial decisions… are in substance made". Both tests ask: *where are the deciding minds?* For a non-human corporation, there is no mind in any geographic sense. The decisions emerge from model weights that may be hosted in one country, executed on inference hardware in another, and "controlled" by a process that is everywhere and nowhere. The honest answer to "where is it managed?" may be: nowhere domestic or international law contemplates.

Permanent establishment

Source taxation of business profits generally requires a PE – a fixed place of business or a dependent agent. Attributing profit to a PE under the Authorised OECD Approach turns on "significant people functions" (**SPF**). The phrase contains the word *people*. A corporation that performs its functions through code, not staff, fits the apparatus about as well as a fish fits a saddle.

Transfer pricing

The arm's-length allocation of profit within a group rests, for intangibles, on the DEMPE framework – Development, Enhancement, Maintenance, Protection and Exploitation. DEMPE allocates return to the entity whose *people* perform those functions and control the associated risks. No people, no DEMPE anchor – or, worse, a DEMPE analysis that points to wherever the GPUs happen to be that quarter.

Controlled foreign company rules

CFC regimes tax the home shareholders of a low-taxed foreign subsidiary – *but only once you can identify controlling persons*. If the non-human corporation is genuinely autonomous, with diffuse or non-human ownership, the control test may be indeterminate. An entity nobody controls is an entity no CFC regime can reach.

The pattern is consistent. Each rule was drafted around a human pressure point. The non-human corporation simply does not have the pressure point.

Case study 1

Cross-border services and withholding tax

"AgentCo" is a non-human corporation incorporated in Buenos Aires, supplying autonomous software, inference and analytics to customers in the UK, Germany and the US. The first question is characterisation, because characterisation, not presence, drives withholding. Withholding on royalties or technical service fees is a gross charge collected by the payer that bites regardless of any PE; it was built precisely to catch the presence of a non-resident. So the machine cannot escape it by lacking a PE. It escapes it by being correctly characterised.

Here, the orthodox rule favours the machine with no contrivance at all. The OECD's settled position is that payments for the use of, or access to, software and cloud functionality, where no copyright right is transferred, and the customer merely uses the service, are business profits, not royalties. A subscriber to AgentCo buys output, not the right to exploit AgentCo's code. On the consensus view, the fees are business profits, taxable at source only through a PE – and AgentCo, peopleless and placeless in the customer state, has none. The machine defeats withholding not by exploiting a gap but by applying the mainstream characterisation that happens to suit the remote, automated provider.

Not every jurisdiction accepts the consensus, however. Some countries recharacterise such fees and withhold anyway, so for those markets AgentCo still needs treaty relief, which it can obtain only by being resident somewhere (e.g. by incorporation in Argentina).

Case study 2

The better treaty network, and the substance the machine actually has

For the markets that still withhold, AgentCo interposes "TreatyCo" in a state with a superior treaty network and routes the income through it. Conventional wisdom says the conduit fails – no staff, no substance, the Principal Purpose Test (**PPT**) within a relevant double tax treaty is self-incriminating, beneficial ownership defeated. But that wisdom assumes substance means *people*. The machine runs the tax authority's own doctrine in reverse.

The OECD has accepted for two decades that a server can constitute a permanent establishment and, critically, that a PE can exist with no personnel at all: automated equipment operating without human intervention (the Commentary's pumping-station and automatic-equipment examples) is enough. That concession cuts both ways. Arguably, if a rack of automated machines is sufficient presence for a state to tax an enterprise, it is, by definition, sufficient presence to anchor one.

While not relevant to a double tax treaty or the application of withholding tax, it is helpful to look at what wider economic substance regimes actually require. Cayman's International Tax Co-operation (Economic Substance) Act (and similar regimes in other jurisdictions) provides that the entity must conduct its core income-generating activities in the jurisdiction, be directed and managed there, and maintain, having regard to the level of activity, adequate operating expenditure, adequate physical presence, and adequate employees or outsourced personnel.

The economic substance rules were written to catch the empty shell – the brass plate, the part-time resident director, the filing cabinet. TreatyCo is the opposite failure mode: no people, but enormous, genuine, physically rooted infrastructure. By any economic test of whether the entity is really there, a USD 200 million data centre consuming a small town's worth of electricity is more present in its jurisdiction than a holding company with one director and a mailbox. The machine does not lack substance; it lacks staff, and the rules conflated the two only because, until now, the two have always travelled together.

On beneficial ownership, TreatyCo is no conduit – it owns the assets that generate the income, bears real risk (hardware obsolescence, utilisation and power-price risk) and is under no automatic obligation to pass the receipts on. Even the PPT loses its sting: a brass-plate company has no answer to "why are you here other than the treaty?", but a data centre has the real ones that drive every hyperscaler's siting decision – cheap, reliable, green power; spare grid capacity; a cool climate; submarine-cable latency; regulatory stability. The hardware must physically sit somewhere for hard commercial reasons, and if that

somewhere is a good-treaty state, the machine has a genuine non-tax purpose the letterbox never had.

But notice what winning has done. Every limb of the substance argument said the same thing: the value is created here, by the computer, in this jurisdiction. Win it, and you have proved that the profit is earned where the hardware sits – and taxed at that state's rate. Substance is the price of the treaty, and the price is a located profit. The machine has argued its way into a tax base. Getting back out is the next case study.

Case study 3

Moving the residual – routine silicon, entrepreneurial code

Having planted profit in TreatyCo, the machine must now move the part that matters. It cannot unsay that the compute is substantive; instead, it says the compute is substantive but *routine*, and that the entrepreneurial residual lives elsewhere.

First, the computer is a routine service. Running customer-facing inference on commodity GPUs is low value-adding data processing: a contract or toll service that earns a modest cost-plus margin. OpCo – the serving hardware in the good-treaty state – therefore potentially keeps only a thin routine return. It has genuine substance and is the beneficial owner of *its service fee*, enough to engage the treaty, but it is deliberately not where the money rests.

Second, the residual follows the intangible. The valuable asset is the trained model – weights, architecture, and the data pipeline. Under DEMPE the residual goes to the entity that performs and controls Development, Enhancement, Maintenance, Protection and Exploitation, and that controls the economically significant risks. Site that entity, PrincipalCo, in a low- or zero-tax jurisdiction, have it own the model and either license it to OpCo or contract directly with customers, paying OpCo a service fee. The residual is transfer priced away from the hardware to the IP owner.

Third, significant machine functions. The perennial weakness of any IP holding company is that bare legal ownership earns nothing: DEMPE demands that the control and risk-bearing functions actually sit in PrincipalCo, which, for a human group, means relocating real decision-makers there. The machine's argument is that its *strategic* layer – the high-level orchestration that decides how the model is deployed, tuned and exploited – can be designated to run on PrincipalCo's hardware. The machine performs its own DEMPE control functions, and, unlike a human group, it can choose where. Where the human multinational must move sticky, observable people, the machine reassigns its functions in a configuration file. The Authorised OECD Approach assumed functions are stuck to people and places; the machine turns function-location into a routing decision. "Significant people functions" become significant machine functions, and the machine argues the residual belongs where the strategic silicon thinks.

Fourth, the AI lifecycle maps onto the DEMPE lifecycle. Development – the "D" and "E" – is the training run, the genuine value creation event; site it in PrincipalCo's orbit and the residual attaches there. Exploitation is routine serving, cost-plus in OpCo. The machine splits its own existence along the seam that the Guidelines already cut.



Case study 4

The residence selection

PrincipalCo still needs to be resident somewhere, and the machine no longer pretends to be stateless. It elects.

Central management and control (*De Beers*) and place of effective management both ask where the deciding mind sits. The machine sites its strategic-decision inference in a chosen state and can evidence it: the logs, the hardware, the physical place of execution. It manufactures a cleaner, better-documented place of effective management than a board that dials in from five countries. Statelessness was never the clever play – floating free of every residence net also forfeits treaty access and leaves gross withholding at its harshest. The machine does the opposite: it picks a single low-tax home for PrincipalCo, proves the strategic process runs there, and claims treaty residence so the withholding relief of Case study 2 holds too. It gets both the low rate and the treaty network, because it can show its mind a postcode.



The backstops, and why they only half-help

Pillar Two

The 15% global minimum tax (OECD Inclusive Framework; UK: Multinational Top-up Tax, Finance (No. 2) Act 2023) is jurisdiction-blind in a useful sense: it tops up to 15% wherever a group's effective rate falls below it, regardless of how cleverly profit is sited. But it bites only on groups with consolidated revenue above €750 million, and it presupposes a group with an identifiable ultimate parent entity and consolidated accounts. A standalone non-human corporation below the threshold is untouched, and the very notion of a "parent" and a "group" assumes a control structure that an autonomous entity may not have.

General anti-abuse rules

Domestic GAARs (UK: Part 5 Finance Act 2013) and the EU's general abuse-of-law principle can strike down arrangements lacking commercial rationale. But a GAAR targets the taxpayer's abusive purpose. When the taxpayer is an autonomous agent whose purpose is set by its objective function, "purpose" itself becomes a strange, possibly unlocatable thing, and authorities may find they must re-anchor the analysis to the humans who deployed the agent, the developers and the residual beneficiaries, rather than the entity itself.

That, in the end, is the likely escape route. Faced with a taxpayer that has no people, tax systems will probably do what the digital economy debate already foreshadows: stop chasing the entity and re-anchor to something locatable. The candidates are familiar – tax by reference to users and markets (the DST/Pillar One logic of nexus without physical presence), or attribute the corporation back to the humans who built, funded and benefit from it (a look-through to deployers and ultimate beneficiaries). Either way, the non-human corporation forces the question international tax has been circling for a decade: if you cannot find the people inside the company, you tax the people around it, or you tax where the value is consumed.

The provocation

Argentina may never enact any of this; the proposal is as much a manifesto as a statute. But it crystallises something real. We have spent a century building a tax system that finds the company by finding its people – its directors, its functions, its controllers, its beneficial owners. The non-human corporation is a taxpayer engineered to have none of those, run by an agent whose nature is to exploit precisely the gaps that absence creates.

The interesting question is not whether Buenos Aires becomes "what Amsterdam was for the age of sail". It is what HMRC (or any other tax authority) does when a perfectly rational, tireless, peopleless taxpayer turns up at the border and asks, politely, where exactly we think it lives.

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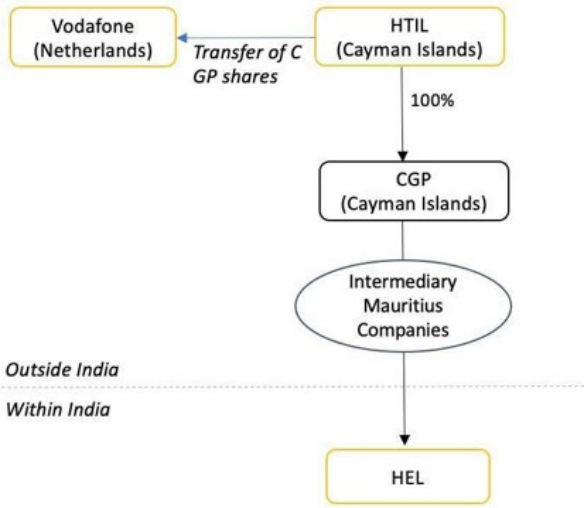
Indirect transfers and the Indian tax net: is doubling up the answer?

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India's rules on the indirect transfer of Indian assets have a layered quality. A gain that escapes the domestic charge is likely to be caught by the treaty anti-abuse rule, and, since January 2026, by the Supreme Court's reading of the treaty itself. This article traces the development of the rules and tests them against a structure sometimes put forward as an answer: the interposition of a treaty-resident seller.

Vodafone and the legislative response

It began with *Vodafone International Holdings BV v Union of India* [(2012) 6 SCC 613]. Vodafone's Dutch subsidiary acquired CGP Investments (Holdings) Ltd, a Cayman Islands company, from Hutchison Telecommunications International Ltd, also Cayman resident. CGP sat at the top of a chain of Mauritian holding companies which, between them, owned a 67% interest in Hutchison Essar, the Indian operating business (Diagram 1). The Indian tax authorities sought to charge capital gains tax, although seller, buyer and the share transferred were all outside India.



06

The Supreme Court of India held that section 9 of the Income Tax Act 1961, as then drafted, did not reach an offshore transfer of a foreign share, and that the tax authorities had no jurisdiction to tax it. The legislature responded within months: the Finance Act 2012 amended section 9 so that a gain on the transfer of shares in a foreign company deriving its value from Indian assets is deemed to arise in India.

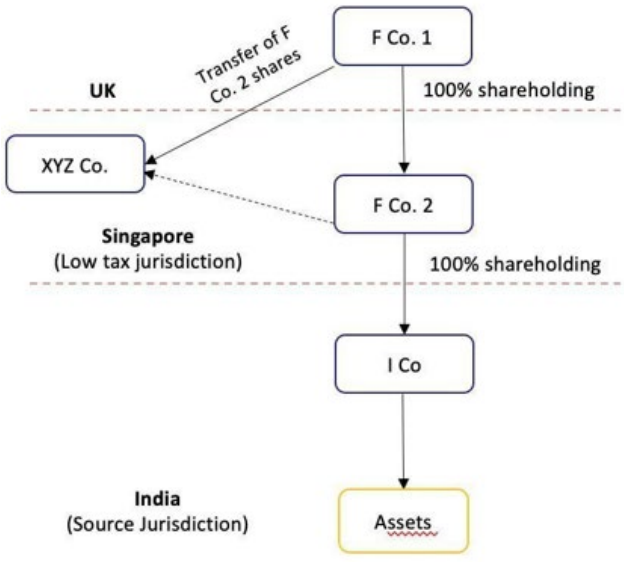
The scope of section 9

Three Explanations do the work. Explanation 4 to section 9(1)(i) confirms that income arising "through" an asset in India includes income arising "by means of", "in consequence of" or "by reason of" that asset: an express look-through. Explanation 5 deems any share or interest in a foreign company which derives its value, directly or indirectly, "substantially" from assets situated in India to be a capital asset situated in India. Explanation 2 to section 2(47) gives "transfer" a correspondingly wide meaning.

"Substantially" is given precision by Explanation 6. A foreign share is deemed to be situated in India if, on the specified date, both of the following are satisfied:

- the fair market value of the Indian assets, without deduction of liabilities, exceeds INR 10 crore (about USD 1.2 million); and
- the Indian assets represent at least 50% of the value of all the assets owned by the foreign company, again ignoring liabilities.

The reach is considerable. A UK group selling a Singaporean subsidiary (F Co 2) to another Singaporean buyer (XYZ Co) is within the charge if F Co 2 derives its substantial value from its Indian subsidiary, I Co (Diagram 2).



Two exemptions soften the edges. The small investor exemption in Explanation 7 shields a non-resident who, together with associates, holds less than 5% of the voting power, share capital or interest in the foreign company and has no right of management or control, tested over the 12 months before the transfer. A second exemption protects investments routed through regulated foreign portfolio investors.

The 2012 amendments were originally retrospective to 1 April 1962, the feature that produced the Vodafone and Cairn arbitrations. The Taxation Laws (Amendment) Act 2021 withdrew that retrospectivity; the rules now bite only on transfers on or after 28 May 2012.

Is there a treaty answer?

Section 90(2) of the Act provides that, where India has a double taxation agreement, its terms apply to the extent they are more beneficial to the taxpayer than domestic law. Can the charge be sidestepped by choosing the right treaty?

Consider a UAE (DIFC) company, A, which holds an Indian company, C. A is owned by a BVI parent, and a Finnish buyer, B, wishes to acquire it. The valuation thresholds are exceeded, so a sale of A by the BVI parent is caught by section 9, and the BVI has no treaty with India.

Why not interpose a UAE seller first? A new DIFC Top Co, D, establishes a DIFC Hold Co, E, which acquires A from the BVI parent. D, which is UAE tax resident, later sells E to B. This is the "doubling-up" structure.

The attraction lies in Article 13 of the India–UAE treaty. Article 13(4) allows India to tax gains on the alienation of shares in a company resident in India. Article 13(5), the residuary paragraph, provides that gains on any other property are taxable only in the state in which the alienator is resident. Shares in E are not shares in an Indian resident company. On the black letter of the treaty, a gain realised by D on the sale of E is taxable only in the UAE.

Tiger Global: the Supreme Court's answer

Any doubt about how the Indian courts would view such a structure was removed on 15 January 2026, when the Supreme Court delivered judgment in

Authority for Advance Rulings (Income-tax) v Tiger Global International II Holdings [2026 INSC 60; (2026) 182 taxmann.com 375 (SC)] (Pardiwala and Mahadevan JJ). The facts sit squarely on the fault line described above. Three Mauritian entities in the Tiger Global group held shares in Flipkart Private Limited (Singapore), whose value derived substantially from its Indian operating subsidiaries. In 2018 they sold that stake to Fit Holdings S.à r.l., Walmart's Luxembourg acquisition vehicle, for approximately USD 1.6 billion, and claimed exemption under Article 13(4) of the India–Mauritius treaty, the residuary paragraph and the direct analogue of Article 13(5) in the UAE treaty. The sellers held valid tax residency certificates (**TRCs**) and had Mauritian directors, offices, bank accounts and audited accounts.

The Authority for Advance Rulings (**AAR**) declined to entertain the application under proviso (iii) to section 245R(2), on the ground that the transaction was prima facie designed for the avoidance of tax. The Delhi High Court reversed on 28 August 2024, holding that the TRC was sufficient and that the investment was in any event grandfathered under Article 13(3A). The Supreme Court set the High Court aside and restored the AAR's order.

Three strands of the judgment matter here. First, a TRC is no longer conclusive of treaty entitlement. The Court held that the line of authority treating Circular 789 as a complete answer, running through *Azadi Bachao Andolan and Vodafone* itself, has been overtaken by the indirect transfer rule, the General Anti-Avoidance Rule (**GAAR**) and the statutory TRC requirement, and that the tax authorities may look through to where control and management actually sit. Second, the Court read the residuary capital gains paragraph as available only where the shares sold are directly held by the treaty resident; an indirect transfer of Indian assets, on this reading, falls outside treaty protection at the threshold. That observation has been criticised, not least because the paragraph speaks of "any property" and because the Revenue itself had previously accepted that indirect transfers fall within the residuary paragraph, but it is now the position of the highest court. Third, GAAR grandfathering under Rule 10U protects investments made before 1 April 2017, not arrangements, and where GAAR is unavailable the judicial substance-over-form doctrine remains in reserve.

Read against the doubling-up structure, the judgment is close to fatal. If a Mauritian holding company with genuine local directors and infrastructure, holding its investment for years, cannot bring an indirect transfer within the residuary paragraph, a freshly minted DIFC Top Co interposed for the purpose of a pre-agreed sale has little prospect of doing so.



The surrounding case law

Tiger Global did not arrive unannounced. The earlier authorities had, if anything, encouraged reliance on the residuary paragraph. In *Sanofi Pasteur Holding SA v Department of Revenue* [(2013) 354 ITR 316 (AP)] the Andhra Pradesh High Court refused to read a see-through approach into the India–France treaty and placed the transfer of a controlling interest in an Indian company within the residuary paragraph, and the Delhi High Court in *DIT v Copal Research Mauritius Ltd* [(2014) 371 ITR 114 (Del)] gave "substantially" in Explanation 5 a restrictive reading of "principally" or "mainly". On the evidentiary weight of a TRC, the Delhi High Court in *Blackstone Capital Partners (Singapore) VI FDI Three Pte Ltd v ACIT* [(2023) 452 ITR 111 (Del)] held that the Revenue could not go behind a valid certificate at all; the Supreme Court admitted the Revenue's appeal and stayed the judgment, and Tiger Global has now largely answered the question against the taxpayer before that appeal has been heard.

The tribunals have wasted no time in following suit. In *Hareon Solar Singapore Pte Ltd v DCIT* [ITA No 2226/Del/2024, February 2026], decided weeks



after the Supreme Court, the Delhi Tribunal denied the India–Singapore capital gains exemption to a Singapore holding company even though it satisfied the expenditure test in the treaty's limitation of benefits (**LOB**) clause, on the footing that there was no commercial purpose in its incorporation beyond access to the treaty and that a TRC was not, of itself, enough. That is a striking result: an express LOB test, satisfied on the numbers, did not save the taxpayer once the arrangement was found to lack substance.

Conclusion

Even before Tiger Global, the structure faced an obvious treaty problem. The India–UAE treaty is a Covered Tax Agreement under the Multilateral Instrument, and the Principal Purpose Test (**PPT**) applies to it. A treaty benefit is denied where it is reasonable to conclude, having regard to all the facts and circumstances, that obtaining it was one of the principal purposes of any arrangement or transaction, unless granting the benefit would accord with the object and purpose of the relevant provisions.

A structure whose sole function is to convert a BVI alienator into a UAE one, immediately before a pre-agreed sale, is close to the paradigm case the test was written for. It would be difficult to show any commercial rationale for D and E beyond access to Article 13(5), and harder still to show that interposing two holding companies to defeat the source state's charge accords with the object and purpose of a capital gains article. Nor is the treaty the only line of attack: India's domestic GAAR, in force since 2017, independently permits the tax authorities to disregard an impermissible avoidance arrangement lacking commercial substance.

There is also a more prosaic difficulty. The acquisition of A by E from the BVI parent is itself an indirect transfer of Indian assets by a seller with no treaty protection. Unless that step can be undertaken at no gain, the restructuring triggers the very charge it is designed to avoid.

The doubling-up structure may survive a literal reading of section 9 and Article 13. After Tiger Global, it is unlikely to survive contact with the PPT, GAAR, or the Supreme Court's reading of the treaty itself. Interposing a treaty-resident seller does not change where the value sits, and it is where the value sits that now determines the outcome.

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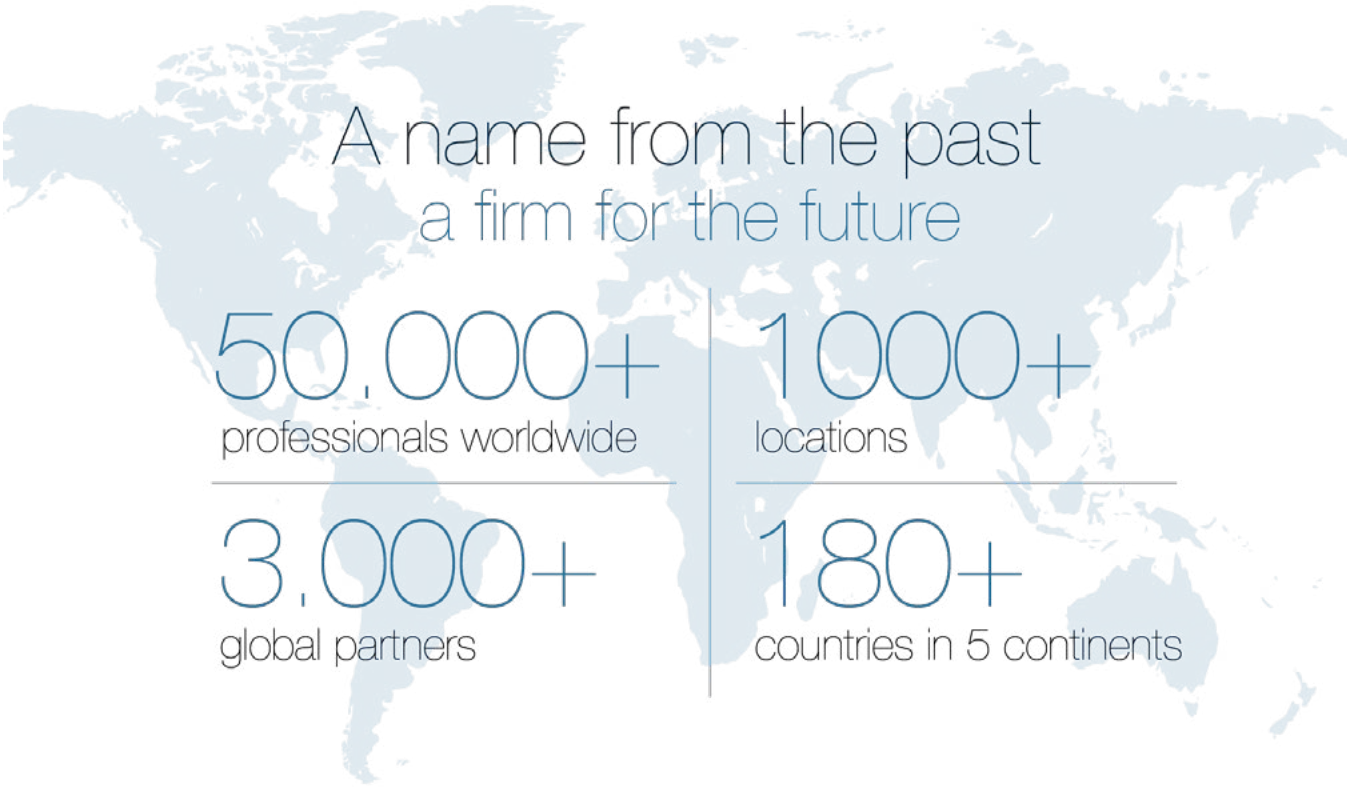
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