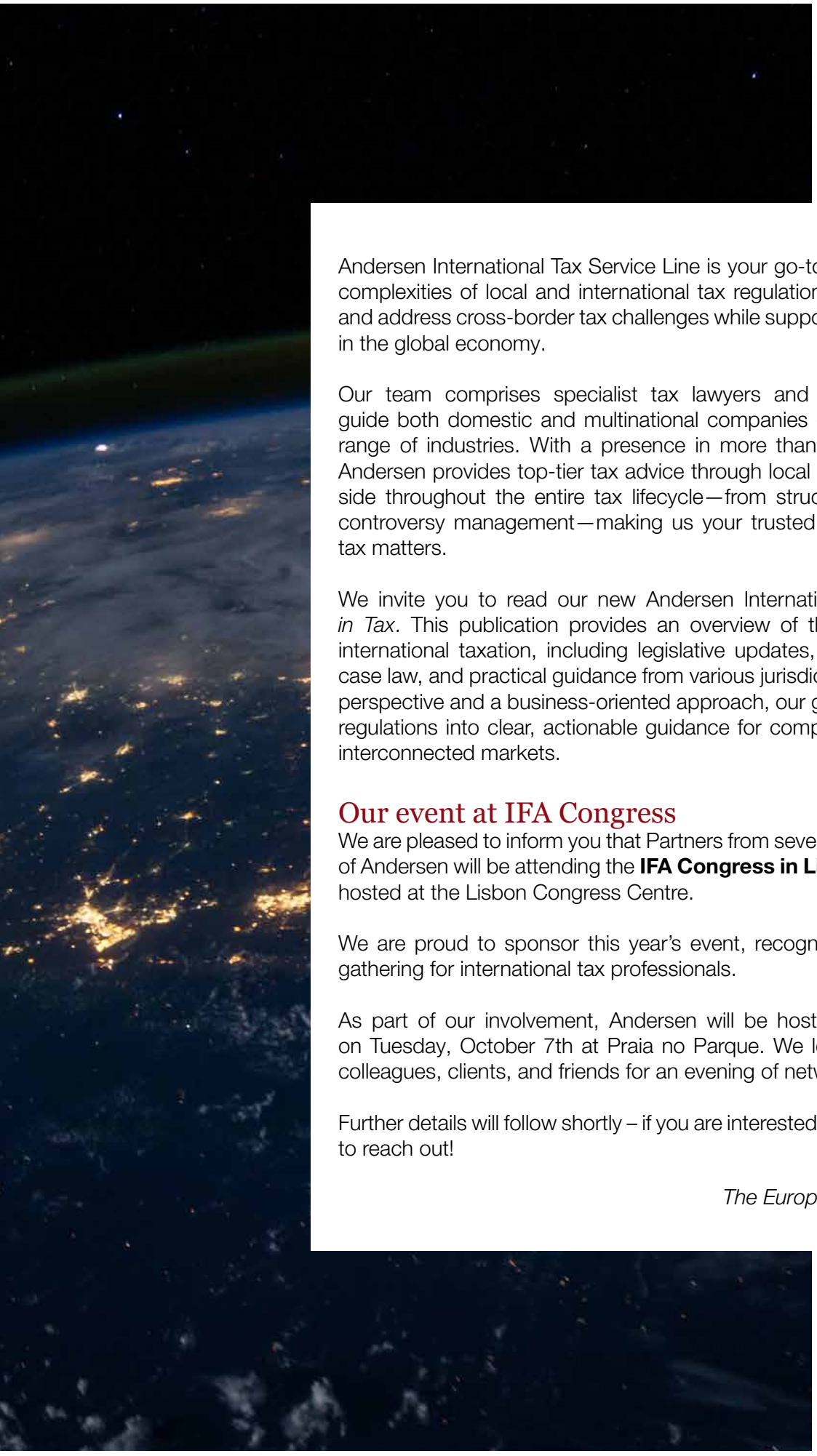
Step in Tax

No.1/2025

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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Our team comprises specialist tax lawyers and advisors who proactively guide both domestic and multinational companies of all sizes, across a wide range of industries. With a presence in more than 475 locations worldwide, Andersen provides top-tier tax advice through local experts. We stand by your side throughout the entire tax lifecycle—from structuring and compliance to controversy management—making us your trusted partner in all international tax matters.

We invite you to read our new Andersen International Tax Newsletter, *Step in Tax*. This publication provides an overview of the latest developments in international taxation, including legislative updates, OECD and EU initiatives, case law, and practical guidance from various jurisdictions. With a cross-border perspective and a business-oriented approach, our goal is to translate complex regulations into clear, actionable guidance for companies operating in today's interconnected markets.

Our event at IFA Congress

We are pleased to inform you that Partners from several European member firms of Andersen will be attending the **IFA Congress in Lisbon**, **5-9 October 2025**, hosted at the Lisbon Congress Centre.

We are proud to sponsor this year's event, recognized as the leading global gathering for international tax professionals.

As part of our involvement, Andersen will be hosting a **cocktail reception** on Tuesday, October 7th at Praia no Parque. We look forward to welcoming colleagues, clients, and friends for an evening of networking and discussion.

Further details will follow shortly – if you are interested in attending, don't hesitate to reach out!

The European International Tax Team

HMRC Crackdown on Cayman Foundation Companies & DAOs

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The UK has proposed a significant expansion of HM Revenue & Customs's (HMRC) transfer pricing (TP) powers via the proposed introduction of s148A TIOPA 2010, expected to take effect from 1 January 2026 (aligned with OECD Pillar Two implementation).

In a targeted attack on Web3 legal and operational structures, the new rules will allow HMRC to treat independent parties as related where there is a relevant transfer pricing risk, fundamentally altering how pricing between UK development companies (DevCo) and offshore orphan structures - such as legally wrapped decentralised autonomous organisations (DAOs), including Cayman foundation companies, Swiss associations, companies limited by guarantee etc - is assessed.

Current Position: The Participation Condition

Under existing rules, the UK's TP legislation (s147 TIOPA10) only applies where the "participation condition" is met - meaning that:

- one party participates (directly or indirectly) in the management, control or capital of the other
- a third party participates in the management, control or capital of both.

Where this condition is not met, the parties are considered independent, and UK TP rules do not apply.

This position has historically allowed many UK DevCos to treat orphan entities - like the Cayman foundation company or Swiss associations - as being outside the scope of TP, especially where:

- the UK DevCo holds no ownership interest in the offshore entity
- boards are formally independent.

As a result, token revenues and platform fees have often remained untaxed in the UK, accumulating in the offshore wrapper.

HMRC has long viewed this threshold as too narrow, especially where group structures or economic dependencies exist without formal equity links - as is common with DAOs, foundations, and orphan structures.

Notice-Based System

Section 148A introduces a new notice-based power for HMRC to deem independent parties as related for TP purposes, where the legal participation condition is not met but the economic reality suggests otherwise.

HMRC can issue a “related parties notice” where it believes a transaction presents a transfer pricing risk, based on the commercial substance of the relationship.

The focus shifts from legal form to economic substance, allowing HMRC to challenge arrangements that avoid formal control but operate in a coordinated, dependent or integrated manner.

Criteria for issuing a notice

HMRC must reasonably believe that:

- the transaction is not on arm’s length terms
- there is a risk to the UK tax base.

Indicators may include:

shared strategic direction or governance

economic dependence between the parties

operational integration or resource sharing

use of orphan entities for the benefit of the UK DevCo or its stakeholders

Once issued, the notice retroactively deems the parties related, triggering TP compliance, potential adjustments, interest, and penalties.

Allowing HMRC to apply the UK’s TP rules to transactions that previously sat outside their scope.

Board Structures & Substance

Even where orphan entities and DevCo have independent boards, HMRC may now examine whether:

- UK based personnel have a material influence over offshore strategy or decisions
- the UK DevCo is economically reliant on fees from services to the orphan structure
- the orphan structure operates for the UK DevCo’s benefit

While restructuring may still mitigate risk, the margin for safety is narrowing.

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The CJEU - Nordcurrent Case and Economic Substance for UK Companies

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The recent decision of the Court of Justice of the European Union (**CJEU**) in the Nordcurrent case may raise some flags on the UK's lack of formal economic substance requirements.

The UK is well known for being an attractive jurisdiction for establishing businesses, including holding companies. UK tax resident companies generally benefit from various tax advantages (e.g. no corporation tax on dividends received and no withholding tax on dividends paid) without being subject to formal statutory substance requirements. Thus, UK entities can easily be utilised in international corporate structures and obtain treaty benefits without the substance requirements now in force around the EU and in many offshore financial centres.

However, even if a UK entity's substance is not questioned for UK tax purposes, foreign tax authorities may still assess the adequacy of that substance under their domestic laws and EU anti-abuse rules.

This issue was central to the 2023 enquiry by the Lithuanian tax authorities following dividend payments made by a UK subsidiary (**Nordcurrent Ltd**) to its Lithuanian parent company (**Nordcurrent UAB**) in 2018 and 2019. Nordcurrent UAB sought to rely on the dividend exemption under the EU Parent-Subsidiary (**PSD**) and Lithuanian Law. However, the tax authorities denied this on the basis that Nordcurrent Ltd lacked substance at the time the dividend payments were made and it was established to obtain a tax advantage.

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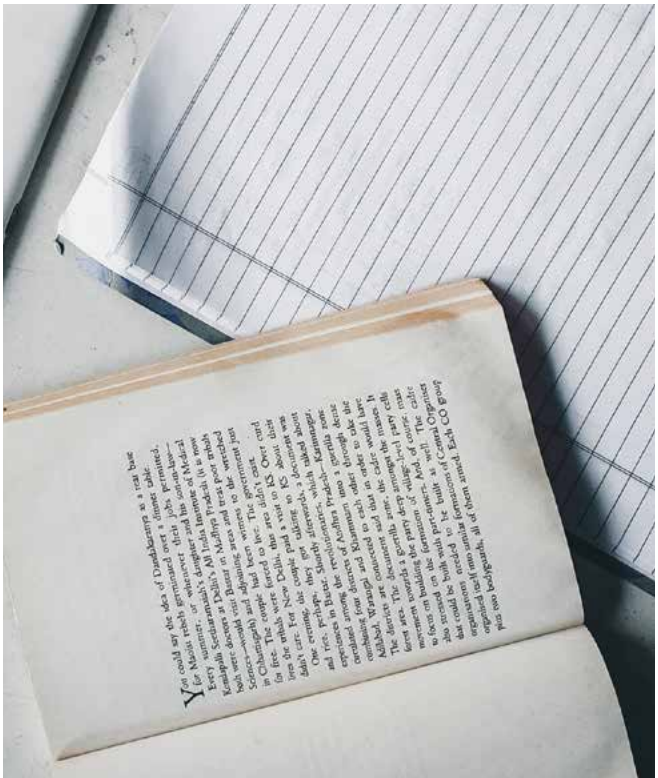
The assertion that there was a lack of economic substance was due to various factors including the absence of UK business premises, lack of human resources or employees, no tangible assets in the UK, and a significant reduction and transfer of Nordcurrent Ltd's activities to Nordcurrent UAB over time. Nevertheless, there was no dispute about the fact that Nordcurrent Ltd was not a conduit company as it actually generated its own revenue from certain activities.

Upon referral to the CJEU for a preliminary ruling, it was confirmed that the lack of sufficient economic substance could point to a 'non-genine' or artificial arrangement which could trigger the application of the anti-abuse rule in the PSD. However, the CJEU also held that where a subsidiary is classified as a non-genuine arrangement, this does not automatically prove that the parent company obtained a tax advantage contrary to anti-abuse provisions. A comprehensive assessment of all facts and circumstances is necessary to determine abusive practices.

It is uncertain whether the Lithuanian courts will allow the dividend exemption under the PSD following the ruling by the CJEU. However, this case indicates that insufficient substance in the UK may become an issue in a cross-border context.

Unlike other offshore jurisdictions like the BVI and Jersey, the UK does not have formal substance requirements. However, this should not be interpreted as a free pass as foreign jurisdictions may apply their own tests in determining the existence of substantial substance and the genuineness of an arrangement (or not).

Therefore, a continuous review of activities carried out in the UK may be necessary where the UK entity receives or makes cross-border payments. Even where no UK tax issues arise, tax reliefs may be denied in other jurisdictions if the activities of the UK entity do not meet their thresholds.



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Royalty Withholding Tax

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A Tax Appeals Determination was recently made by the Appeal Commissioners in Ireland relating to the deductibility of foreign Royalty Withholding Tax (**RHWT**) incurred by a taxpayer in Ireland, where relief could not be obtained by foreign tax credit for same due to the taxpayer incurring trading losses in the relevant period.

Case Background

The Appellant is an Irish trading company with local operating entities functioning in different territories. These operating entities are given access to the Appellant's intellectual property through Intellectual Property Licensing Agreements (**IPLAs**) in return for royalties. These royalty payments are subject to foreign RHWT at rates differing depending on the country in which the operating entity is based.

The Appellant operated at a loss during the relevant periods, so they claimed a trading deduction under Section 81 TCA 1997 being the legislative provision providing the general rule as to deductions against trading income (which would augment losses carried forward) rather than a foreign tax credit under Schedule 24 TCA 1997 (which would not be creditable where losses were made in the relevant accounting period). Revenue was of the belief that the deduction was unlawful and issued the Notice of Determination, leading to the subsequent ruling on the matter by the Tax Appeals Commission.

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Arguments

The first point of contention analyzed by the Commissioner was whether a foreign RWHT is a tax on income. She ruled with her 2023 Determination that it is indeed a tax on income, but there is the relevant caveat that this does not exclude the foreign RWHT from a deduction. The Commissioner references Revenue's treatment of Digital Services Tax as confirmation that an income tax may be treated as a deductible expense in cases that satisfy the test for deductibility.

Next, the Commissioner considered Revenue's arguments concerning the application of Schedule 24. Under Schedule 24, the credit may not be greater than the corporation tax attributable to the relevant income. As a result, the Appellant, who experienced losses during the relevant period, could not have benefited from any credit or reduction relief on the foreign RWHT. The Commissioner expressed the view that, generally, certain wording in the TCA indicates a right of choice as to whether the credit will be applied. Therefore, Revenue's position that the Appellant must take the credit and be excluded from Section 81 deductions was incorrect.

Finally, the Commissioner analyzed Section 81 to determine the Appellant's eligibility for a deduction. The threshold the Appellant must meet is for the foreign RWHT to be an expense "*wholly and exclusively laid out or expended for the purpose of the trade or profession.*" The Commissioner believed that the foreign RWHT must be incurred by the Appellant to profit from their trade, as the foreign withholding tax was levied onto the Appellant by the paying entity on payment of the royalty irrespective of whether the Appellant earned a profit in its own books for that accounting period. In the Commissioners view, this makes it an "unavoidable component in determining profit before tax", and therefore it satisfies the "wholly and exclusively" test of deductibility, which the Commissioner confirmed aligns with the ruling in *Strong & Co. v Woodifield [1906 UKHL 624]*. The foreign RWHT in this case is deemed to be similar to the "substitute tax" that was the subject of an analogous decision in favor of the taxpayer in *Harrods (Buenos Aires) Ltd v Taylor-Gooby (HM Inspector of Taxes)*, concerning a withholding tax incurred irrespective of the presence of earned profits.

Limitations

Finance Act 2019 introduced an amendment to Section 81 that states, "*no sum shall be deducted in respect of … any taxes on income.*" This verbiage came into effect from 1 January 2020 and therefore would limit the applicability of this ruling when considering later tax years. This amendment had no impact on the years relevant to this case, however, as the Irish Supreme Court has ruled that a statute may not be considered in light of amendments made after the relevant period at issue.

Conclusion

This ruling confirms that, in the absence of specifically restrictive legislation, RWHT imposed by a foreign tax authority on an Irish taxpayer is deductible as a trading expense via Section 81 TCA 1997.

This position, however, only applies to accounting periods prior to 1 January 2020, as the law on the deductibility of taxes on income has changed following the introduction of Section 81(2)(p) TCA under the Finance Act 2019, which now expressly provides that with effect from 1 January 2020 taxes on income are not deductible in calculating taxable profits. The years under assessment in this case pre-dated that change.

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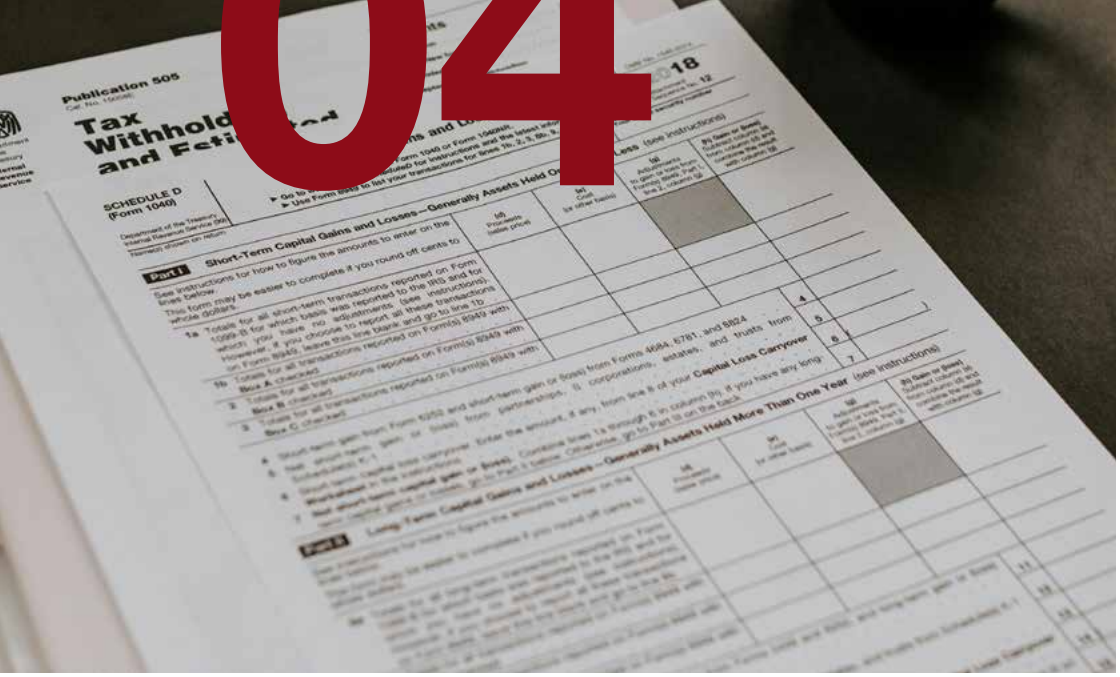

04

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Proposed Corporate Tax Amendments

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Earlier this year the Government of Cyprus proposed a series of tax amendments aimed at reducing the tax burden on households and businesses, modernizing the tax system, and enhancing economic resilience. These proposals were presented at a special event at the Presidential Palace on 26 February 2025, attended by President Nikos Christodoulides and other key officials.

Key Proposed Amendments

Increase in Tax-Free Income Threshold

The tax-free income threshold for individuals is proposed to increase from €19,500 to €20,500. This change aims to provide significant tax relief to middle-class households.

Changes in Tax Brackets

The highest tax rate of 35% will now apply to taxable income above €80,000.
Lower tax rates will be applied to incomes across all levels, reducing the overall tax burden.

Corporate Tax Adjustments

The corporate tax rate is proposed to increase from 12.5% to 15%.
Companies distributing dividends from their profits will be taxed at 5%, down from the current 17%.
Companies retaining profits for reinvestment will not be taxed.

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Tax Deductions for Households

Proposed deductions include €1,000 per spouse and additional amounts for children and students, based on family composition and income criteria. These deductions aim to support families and reduce their tax liabilities.

Abolition of Defense Contribution on Rents

The defense contribution on rents will be abolished, and rents will be taxed with income tax instead.

Taxation of Cryptocurrencies

Cryptocurrencies will be taxed unless they are of a capital nature.

Fiscal impact

The proposed tax changes are expected to have a fiscal cost of €150,000,000 – €170,000,000 from individuals and €230,000,000 – €300,000,000 from a reduction in the defense contribution.

The impact on state revenue is estimated at €220,000,000 – €270,000,000 from the increase in corporate tax and other potential taxes.

Conclusion

These proposed amendments represent a significant step towards modernizing Cyprus's tax system, providing relief to households, and supporting businesses. The government aims to implement these changes methodically and consistently to enhance the economic resilience of Cyprus.

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05

Administrative Court Confirms Reclassification of Interest-Free Loans as Equity for Tax Purposes - Decision of 17 April 2025 – Case No. 50602C

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On 17 April 2025, the Luxembourg Administrative Court issued a significant ruling in a case involving the reclassification of interest-free shareholder loans into equity (hidden capital contributions) for Luxembourg tax purposes.

Background

A Luxembourg limited liability company (the LuxCo) acquired participations in two foreign companies in 2015. The acquisition was financed through two interest-free loans provided by the LuxCo's indirect shareholder. The LuxCo accounted for the loans as debt instruments and allocated the acquired participations to a Malaysian branch. An advance tax agreement was requested from the Luxembourg tax authorities to confirm the existence of a Malaysian permanent establishment (the PE), which would have allowed the related income and assets to be exempt from Luxembourg corporate income tax, municipal business tax, and net wealth tax.

The tax authorities challenged the request based on the structure the LuxCo presented, denying the PE's existence.

Despite the refusal, the LuxCo, in its 2015 tax returns considered the Malaysian branch as a PE, allocated the two participations to the said PE and sought to treat the assets and related income as tax exempt in Luxembourg under the Luxembourg–Malaysia Double Tax Treaty (the DTT). Furthermore,

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the LuxCo treated the interest free loans (the IFLs) as debt instruments.

The Luxembourg Tax Authority rejected this position presented in the tax return considering that the branch does not qualify as a PE and requalified the IFLs as equity instruments. The LuxCo challenged this before the Administrative Tribunal, which upheld the tax authorities' position. The LuxCo then appealed to the Administrative Court, which confirmed the Tribunal's decision.

Key findings of the Administrative Court

The Court's analysis focused not only on the classification of the interest-free loans but also with the question of recognition of a permanent establishment. This ultimately supported interest-free loans' reclassification into equity. The main legal and factual grounds included:

Denial of permanent establishment status in Malaysia

As part of its tax position and as mentioned above, the LuxCo asserted that its Malaysian branch constituted a permanent establishment under the DTT, and that the participations allocated to the branch should accordingly be exempt from Luxembourg corporate income tax, municipal tax and net wealth tax.

The Luxembourg Administrative Court rejected this argument, concluding that no PE existed within the meaning of the DTT. The following elements were decisive in its assessment:

- **Absence of a Fixed Place of Business**: The LuxCo failed to demonstrate the existence of a verifiable physical office or any form of fixed business premises in Malaysia.
- **Lack of Operational Substance**: There was no supporting documentation indicating that the Malaysian branch carried out any real or continuous economic activities.
- **No Human or Technical Resources**: The taxpayer did not provide evidence of personnel, infrastructure, or other resources that would enable the branch to perform business functions independently in Malaysia.

This reinforces the requirement for tangible substance and actual business operations when claiming treaty-based exemptions linked to permanent establishments. Simply allocating assets to a foreign branch—absent supporting infrastructure and activities—will not suffice under treaty standards.

Tax qualification of the interest-free loans

The Luxembourg Administrative Court confirmed the reclassification of the interest-free loans as hidden capital contributions on the following grounds:

- **Substance-over-Form Principle**
  The Court reaffirmed that tax classification depends on the economic substance of a transaction, not merely its legal form or accounting treatment. Where a shareholder loan exhibits characteristics more consistent with equity—such as:
  1. no interest charged
  2. no repayment guarantees
  3. use of proceeds for long-term fixed investments
  4. a significant imbalance in the LuxCo's debt-to-equity ratio
  5. the loan may be treated as equity.

- **Limitations of the 85/15 Debt-to-Equity Ratio**
  The LuxCo invoked the widely referenced 85/15 debt-to-equity ratio (i.e., 85% debt to 15% equity) as compliant with Luxembourg tax practices. The Court clarified that the 85/15 ratio is an administrative practice, not legally binding.

  What matters is not conformity with administrative norms but whether the terms reflect what independent third parties would have agreed (the arm's length standard).

  Therefore, reliance solely on administrative practice is insufficient. A proper and robust transfer pricing study is essential to justify intra-group financing terms.

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- **All-or-Nothing Reclassification**
  The taxpayer argued for partial reclassification—only amounts exceeding an arm's length threshold to be considered equity. The Court rejected this argument, stating that financial instruments must be reclassified in full—either as debt or as equity-not split.

Key Takeaways

The recent judgment offers important insights for taxpayers engaged in cross-border structuring and financing:

- **Permanent establishment requires genuine presence**: Merely registering a branch or office abroad does not constitute a PE. A PE must be supported by tangible business activities, physical infrastructure, and local personnel capable of carrying out operations.
- **Substance over form remains paramount**: Tax authorities and courts will prioritise the economic reality of a transaction over its legal or accounting classification. Formal arrangements lacking genuine substance are at risk of recharacterization.
- **Robust financing documentation is essential**: Transfer pricing documentation must go beyond general benchmarks. It should include a comprehensive debt capacity analysis, demonstrate comparability, and clearly assess risk allocation within the group.
- **Administrative practices are not legally binding**: The long-standing 85/15 debt-to-equity ratio commonly referenced in Luxembourg is an administrative guideline, not a legal safe harbour. Taxpayers must instead demonstrate that their financing structure is consistent with the arm's length principle.

Steps to Follow

The April 2025 judgment serves as a reminder that structuring and documenting shareholder loans—particularly those that are interest-free or have unusual terms—requires rigorous economic and legal analysis. Taxpayers should review their financing structures, especially those relying on informal administrative ratios, and ensure that they are supported by comprehensive transfer pricing documentation.

In light of this decision, taxpayers should consider the following steps to mitigate tax risk and ensure compliance:

- **Reassess intercompany loan structures**: Review the economic rationale and documentation supporting shareholder and intragroup loans. Where applicable, update or strengthen the debt capacity analysis to reflect current risk profiles and comparables.
- **Evaluate PE exposure abroad**: Conduct periodic reviews of foreign branches to assess whether they meet the threshold for permanent establishment under the relevant tax treaties, based on actual substance and activity.
- **Enhance internal governance and documentation**: Maintain clear and contemporaneous evidence of business functions, physical presence, staffing, and decision-making processes in foreign jurisdictions to substantiate both financing and PE positions.

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Important Belgian case law on tax abuse and beneficial ownership within the context of the Interest & Royalty Directive

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Ever since the Danish cases, the application of withholding tax exemptions under both the Parent-Subsidiary Directive (PSD) and the Interest & Royalty Directive (IRD) has been subject to increased scrutiny by national tax authorities. Belgium is no exception.

Within this context, such exemptions may be denied not only in cases of tax abuse (which require both an objective and a subjective element), but also if the recipient of the dividends, interest or royalties cannot be considered the ultimate beneficial owner (UBO) of the income. Regarding this UBO requirement, a distinction must be made between the IRD (which explicitly includes a UBO requirement) and the PSD (which does not). However, the discussion of this distinction falls outside the scope of this article.

In a judgment dated 12 August 2025, the Brussels Court of First Instance ruled on the application of the withholding tax exemption under the Belgian implementation of the IRD. This exemption was applied to interest payments made by a Belgian company (BelCo) to a Luxembourg company (LuxCo).
This judgment is remarkable because the Court found that the Belgian implementation deviates from the IRD. More specifically, the Belgian legislator opted for the term “beneficiary” rather than “ultimate beneficiary.” As a result, the exemption under Belgian law could be applied to the legal owner of the received interest (regardless of whether this is the UBO).

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The Court did acknowledge that the Belgian legislation (in the case of a cross-border transaction) should, in principle, be interpreted in line with the IRD. This, in turn, would imply that the exemption could only be applied to the UBO of the interest received. However, the Court ruled that such a interpretation in conformity with the IRD would be contra legem and would also violate the principle of the protection of legitimate expectations.

Therefore, the Court concluded that the withholding tax exemption may be applied to the legal owner of the interest received, even if this is not the UBO.

The Court then examined whether the exemption could be denied on the grounds of alleged tax abuse. In its assessment, the Court considered the following elements:

- There is clear economic activity (a functional joint venture) within both BelCo and LuxCo.
- LuxCo is effectively subject to the Luxembourg tax regime and does not benefit from any exemption. The fact that LuxCo's taxable base is limited due to interest payments it makes to its shareholders is not sufficient to conclude that the structure is artificial.
- LuxCo has the appropriate substance to carry out its economic activity and function (a board of directors including representatives from various shareholders as well as externally recruited directors with suitable profiles, and various operational expenses such as office rent, personnel costs, and fees for external advisors).

Based on these findings, the Court concluded that there was no tax abuse.

This judgment might be extremely useful for companies who — mainly due to the Danish cases — face similar tax audits. Within this context, the importance the Court places on the principle of the protection of legitimate expectations — as a protection against retroactive changes to the rules — should not be underestimated.

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Andersen Global Chairman and Andersen CEO
Mark L. Vorsatz, Andersen (U.S.)

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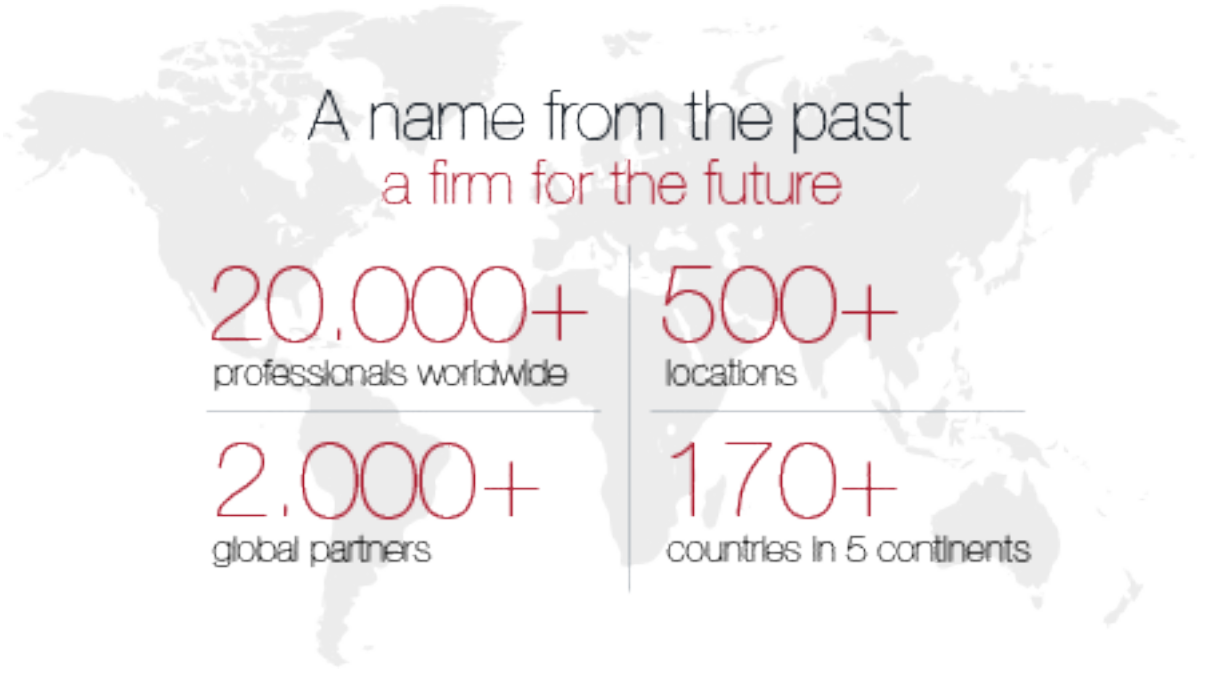

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