Throughout the European Union, national income tax systems support charitable activities by way of preferential treatment. However, a number of Member States operate relief regimes which appear to trigger the question of compatibility with Union law with respect to the fundamental freedoms. In this first study to examine charity and donor taxation regimes across a wide range of Member States, the author focuses on compatibility with EU non-discrimination law. She examines twenty national regimes, both comparatively and from the perspective of overarching EU law.

The countries covered are Austria, Belgium, Bulgaria, Cyprus, Estonia, Finland, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Slovakia, Spain, Sweden, and the United Kingdom. Even in a fully harmonized scheme of charity and donor taxation, the Member States must observe primary Union law and grant non-discriminatory treatment where a fact pattern falls within the ambit of the fundamental freedoms. In the course of defining this framework, the study addresses issues such as the following:

• types of relief schemes maintained for charities and donors;
• administrative requirements;
• international aspects (both inbound and outbound);
• privileged donations and capital gains treatment of in-kind donations;
• eligible donors;
• whether and to what extent charitable entities and donors can actually rely on the fundamental freedoms;
• specific applicability of each of the relevant fundamental freedoms;
• the issue of comparability;
• justifications for restrictive measures in Member State practice; and
• the issue of proportionality.

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Dividend Withholding Tax Planning Techniques: Part 2

Paulus Merks* 

Although there is a confounding variety of cross-border dividend withholding tax planning techniques available to the modern corporate taxpayer, this study has sought to identify, analyse and categorize these techniques in abstracto and, unless stated otherwise, without linking these techniques to particular countries.

Whereas Part 1 of this two-part study focused on the so-called formal dividend withholding tax planning techniques, the underlying Part 2 identifies, analyses and categorizes the so-called substantive dividend withholding tax planning techniques. In addition, this Part 2 provides a framework whereby the various dividend withholding tax planning techniques can be categorized in a consistent and universal manner.

1. INTRODUCTION

Part 1 of this two-part study discusses formal dividend withholding tax planning techniques, defined as techniques that retain the substance of the activity however insert steps or transactions for the purpose of reducing the amount of dividend withholding tax due. As was discussed and analysed in Part 1, formal dividend withholding tax planning techniques typically include nothing more than one or more paper transactions. The underlying Part 2 discusses, analyses, and categorizes substantive dividend withholding tax planning techniques. Different from formal tax planning techniques, substantive tax planning techniques do alter the pattern of the economic activity. For example, if the dividend withholding tax rate is effectively high in a certain jurisdiction, a company may either leave that jurisdiction in response to the high tax rate and move its operations to an effectively low dividend withholding tax jurisdiction (e.g., Cyprus, Ireland, Malta, the United Kingdom) or, alternatively, it may not start operations in the high dividend tax jurisdiction in the first place.

In this regard, substantive dividend withholding tax planning will be sub-divided in planning that is and is not based on residency and the related migration of one or more entities. With regard to migration planning, the following four different forms of tax planning will be discussed: (1) the migration of the dividend payor, (2) the migration of the dividend recipient, (3) both the dividend payor and the dividend recipient migrated, and (4) neither the dividend payor nor the dividend recipient migrated (for tax reasons). Additional substantive dividend withholding tax planning techniques (that are not based on residency) that are discussed include cross-border mergers and divisions, dividend stripping, the sale of the shares in the dividend payor, and total return swaps used to avoid dividend withholding tax. In addition, Part 2 provides a framework whereby various dividend withholding tax planning techniques, both formal and substantive, may be categorized in a consistent and universal manner.

2. MIGRATION PLANNING

The categorization of substantive dividend withholding tax planning techniques makes clear that substantive dividend withholding tax planning may often entail the migration of one or more companies. For this reason, it is relevant to discuss in more detail the concepts and definition of corporate residency for tax purposes. Typically corporate residency is based on the concepts of ‘the place of effective management’, which is used in continental Europe and as a ‘tiebreaker’ in the Organization for Economic Cooperation and Development.
12 For example, in the Netherlands, the Under-Minister of Finance has repeatedly expressed that he considers the introduction of such an exit charge for dividend withholding tax purposes not desirable and that he does not intend to propose legislation to that effect. Therefore, it can be considered a deliberate choice of the legislature not to subject a

While the expression ‘central management and control’ is often used in common law jurisdictions, the expression is typically not defined by those countries. However, there are a number of court cases that provide guidance on how the place of central management and control should be determined. These decisions state that while determining a place of central management and control is a question of fact, it ordinarily coincides with the place where the directors of the company exercise their power and authority, which will typically be where they meet.

As can be seen from the definitions and examples above, there are many similarities between the concepts of ‘place of effective management’ and place of ‘central management and control’. Both notions rely on separating the place of administrative or day-to-day management from the place of key decision making, usually by the board of directors, to determine where a company is resident. Furthermore, both ideas are based on questions of fact, and similar issues such as place of incorporation, place of residence of directors, and place where business operations are conducted are considered in both cases. For simplicity’s sake, the scenarios discussed below are based on the ‘place of effective management’ concept only.

2.1. Migration of the Dividend Payor

A dividend payor resident in a country that levies dividend withholding tax may be tempted to avoid being subject to this tax in its source country by moving its residence abroad altogether, for example, winding up of all attachment to the territory of a certain tax jurisdiction. Obviously, such shift of residence will be typically initiated by the shareholder(s) of the dividend payer since it is the shareholder that is liable to the dividend withholding tax. As most jurisdictions do not levy an ‘exit’ dividend withholding tax at the moment of a corporation migrating from the original country of source, this planning may prove to be tax efficient from a taxpayer’s perspective.

Notes

7 See also ‘The Impact of the Communications Revolution on the Application of “Place of Effective Management” as a Tie Breaker Rule’, a discussions paper from the OECD technical advisory group on monitoring the application of existing treaty norms for the taxation of business profits, OECD, February 2001.
9 A leading case establishing this is the UK case De Bures Consolidated Mines Ltd v. Hous. (Surveyor of Taxes), House of Lords, 30 Jul. 1906, AC 455. In this case, a company registered in South Africa had its head office and its activities in South Africa. In addition, it held all its general meetings of shareholders in South Africa. Its directors held meetings both in South Africa and the United Kingdom, but the directors’ meetings held in the United Kingdom were found to be those where real control of the company was exercised. Accordingly, the company was found to be UK resident.
12 For example, in the Netherlands, the Under-Minister of Finance has repeatedly expressed that he considers the introduction of such an exit charge for dividend withholding
For example, if the effective management of a company (company A) is moved from the Netherlands to a country with which the Netherlands has in effect a tax treaty modelled after the OECD Model Treaty 2010 for purposes of application of the tax treaty, company A will cease to be a resident of the Netherlands and be deemed to be a resident of the other contracting state. If company A subsequently distributes a dividend that is not paid to a resident of the Netherlands, Article 21 assigns the right to tax the dividend solely to the other contracting state. Consequently, the levy of Dutch dividend withholding tax is prevented. Moreover, if the country to which the company relocates does not levy a dividend withholding tax, possibly all dividend withholding tax with regard to future dividends is avoided.

In this respect, a Dutch Supreme Court case of the early 1990s (BNB 1992/379) is illustrative. The Supreme Court held that no Dutch dividend withholding tax was due on a dividend distribution by a company incorporated under Dutch law but resident in Ireland to its US shareholder. In that case, the dividend was derived entirely out of profits accrued in Ireland. Possibly, Dutch Revenue could argue that the Supreme Court’s decision would not hold for company A’s case, for example, because company A’s earnings accrued while company A was a Dutch resident. The Supreme Court case seems to indicate that it is irrelevant whether or not the dividend was paid out of profits accrued while company A was a Dutch resident.

Although most countries do not have an exit tax on dividends, the migration of an entity may have corporate income tax implications since most countries do have an exit tax for corporate income tax purposes. In this regard, the European Commission has recently requested Belgium, Denmark, and the Netherlands to change tax rules that impose an immediate exit tax when companies transfer their seat or assets to another Member State. The European Commission considers these provisions to be incompatible with the freedom of establishment provided for in Article 49 of the Treaty on the Functioning of the European Union and has decided to take the cases to the ECJ.

2.2. Migration of the Dividend Recipient

Similar to the tax planning mentioned under section 2.1, also the taxpayer that receives dividend income and therefore may be liable to dividend withholding tax may be tempted to avoid being subject to this tax in its home country by moving its residence abroad altogether. For example, the effective management of a parent company (company P) is moved to a country with which the source country has in effect a tax treaty that prevents the withholding tax on intercompany dividend payments (e.g. under Article 10, paragraph 2 or paragraph 3 of the tax treaty). Consequently, company P will be deemed to be a resident of the other contracting state. If P subsequently receives a dividend payment, Article 10 assigns the right to tax the dividend solely to the country of residence of P. Consequently, the levy of dividend withholding tax by the source country is prevented. Also in this scenario, possibly all dividend withholding tax with regard to future dividends is avoided.

Another example is the scenario whereby the parent company receives a loan from a group company resident in the parents’ company (original) jurisdiction. When this parent company is subsequently moved to the source country, the loan will become a cross-border loan. The repayment of a loan is typically tax free. In summary, the different tax treatments between a dividend payment and a loan repayment may form an incentive for a taxpayer to (step 1) increase debt financing, (step 2) migrate the dividend recipient to the source country, and (step 3) repay the loan.

2.3. Migration of Both the Dividend Payor and the Dividend Recipient

A combination of the tax planning mentioned under A and B is the scenario whereby both the dividend payor and the foreign dividend recipient migrated for dividend withholding tax reasons. As a consequence, a complete...
new holding structure may be created whereby both companies migrate to the same jurisdiction or, alternatively, to two different jurisdictions.

Example: both the dividend recipient and the dividend payor, resident in a high-tax country, migrate to a low-tax country that has a treaty with the exit country following the OECD Model Convention 2010.

Pursuant to the OECD Model Convention 2010, the treaty does not leave room for the high-tax country to levy dividend withholding tax. In the scenario that the tax authorities in the high-tax country are successful in challenging the place of residency of the dividend payor, the treaty still allocates the taxing right on dividend payments to the third, low-tax country, that is, the country of residence of the dividend recipient.

### 2.4. Neither the Dividend Payor nor the Dividend Recipient Migrated (for Dividend Withholding Tax Reasons)

Also the non-migration of a company into a certain jurisdiction that levies dividend withholding tax can be regarded as a form of substantive tax planning. For corporate bodies, the full dividend withholding tax liability is traditionally inferred by the criterion of the place of incorporation or the place of effective management.

Obviously, both tests offer some degree of flexibility to the taxpayer, who can choose the jurisdiction in which the full liability would arise. For example, a Japanese multinational company planning to set up a European holding company in a certain jurisdiction shall typically set up this company in a country that does (de facto) not levy dividend withholding tax. Consequently, there should be no dividend withholding tax liability to start with and therefore no dividend withholding tax to avoid.

### 3. Cross-Border Legal Merger and Legal Division

Prior to 26 October 2005, various European jurisdictions did not expressly allow for a cross-border legal merger between a domestic company and a foreign company in the absence of European guidance. As a result, cross-border legal mergers were relatively rare within Europe until after the ECJ decision in Sevic Systems AG on 13 December 2005.

In Sevic Systems AG, the ECJ held that if the laws of a Member State of the European Union allow for a merger between two companies incorporated in its jurisdiction (a domestic merger), a Member State must also permit a merger of a company incorporated in its jurisdiction with a company incorporated in another Member State unless compelling reasons of public interest exist to prohibit that particular merger.

After the implementation of the (Legal) Merger Directive 2005/56/EC of the European Parliament on 15 December 2007, cross-border mergers and divisions between EU companies obtained a European legal basis and became more frequent.

On the tax side, the European Council adopted Directive 90/434/EEC and on 23 July 1990, the European Council adopted a common system of taxation applicable to mergers, divisions, transfers of assets, and exchanges of shares concerning companies of different Member States (hereinafter 'the Merger...
The objective of the Merger Directive is to remove fiscal obstacles to cross-border reorganizations involving companies situated in two or more Member States. The Merger Directive provides for deferral of the corporate income tax that could be charged on the difference between the real value of such assets and liabilities and their value for tax purposes. The deferral is granted if the receiving company continues with its tax values and effectively connects them to its own permanent establishment in the Member State of the transferring company.

Pursuant to the implementation of the Merger Directive, both legal mergers and share-for-share mergers may take place tax-free. Under a legal merger, it might be possible for a company to be dissolved without going into liquidation and to transfer all its assets and liabilities to another existing company. The company will legally ‘disappear’, whereby the receiving company is the legal successor of the disappearing company. The Merger Directive provides for tax deferral of the corporate income tax and at the level of personal income taxes that could be charged on the income or capital gains derived by the shareholders of the dissolving company; in addition, it provides for a deferral of the corporate income tax at the level of the dissolving entity.

Moreover, in case the dissolving company has profit reserves that would typically result in a dividend withholding tax claim in the original source state, this claim may end in case the receiving company, the legal successor of the disappearing company, is resident of a European jurisdiction that does not – de jure or de facto – levy dividend withholding tax. There are three subtypes of this dividend withholding tax planning:

- an existing company that is resident of a jurisdiction that levies dividend withholding tax merges into another existing company that is resident of a jurisdiction that levies (de facto or de jure) no dividend withholding tax;
- two or more existing companies that are resident of jurisdictions that levy dividend withholding tax merge into a newly formed company in a jurisdiction that levies (de facto or de jure) no dividend withholding tax; and
- a wholly owned subsidiary, resident of a jurisdiction that levies dividend withholding tax, collapses into its parent company (quasi-liquidation) that is resident of jurisdiction that levies (de facto or de jure) no dividend withholding tax.

In the same line, a legal division takes place when an existing company transfers all of its assets and liabilities to two or more newly incorporated or existing companies, which become its legal successors. The transferring company thereupon ceases to exist and is dissolved without going into liquidation. Also in these transactions, the Merger Directive provides for tax deferral of the taxes that could be charged on the income or capital gains derived by the shareholders of the transferring or the acquired company from the exchange of such shares for shares in the receiving or the acquiring company.

In the scenario whereby the dissolving company has a dividend withholding tax claim, this claim may end in the case whereby its legal successors are resident companies in jurisdictions that do not levy dividend withholding tax. In all these transactions, the Merger Directive provides for planning opportunities with regard to dividend withholding tax. Although the aforementioned techniques relate in particular to cross-border EU scenarios, the same planning techniques may exist between entities in non-EU jurisdictions that allow for cross-border legal mergers or divisions.

4. **The Sale of the Dividend Payor to a Third Party**

The tax consequences of the sale of shares are generally different from those of the receipt of dividends, both in a purely domestic context and in an international level. A dividend is generally taxable as ordinary income, subject to intra-group exemptions and – in countries where one or another form of imputation of tax paid by the payor company exists – available tax credits. A capital gain realized in respect of the sale of shares is, in many countries, either exempt from tax or subject to a lower rate.

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**Notes**

26 On 17 Oct. 2003, the Commission adopted a proposal (COM(2003) 613) amending Council Directive 90/434/EEC on a common system of taxation applicable to mergers, divisions, transfer of assets, and exchanges of shares concerning companies of different Member States, which was subsequently adopted after negotiations by Council on 17 Feb. 2005, as Directive 2005/19/EC. 27 The Merger Directive includes a list of the legal forms to which it applies. The companies must be subject to corporate tax, without being exempted, and resident for tax purposes in a Member State.


29 To the extent the hidden reserve is attached to an asset at a permanent establishment left in the source country, tax on this asset may still occur on realization or exit.

30 See, for example, the recent ruling of the Indian Authority for Advance Rulings in the case of an Indian capital gain tax-free amalgamation of Star Television Entertainment Ltd., an Indian company, with other group entities and shareholders incorporated under the laws of the British Virgin Islands and the United Arab Emirates, 2010-TOL-01-ARA-IT.

31 See van Weeghel, 141.

than ordinary income. In addition, the tax treatment may also be dependent on whether the shares are owned in the course of a trade or business.53

Under tax treaties that follow the OECD Model Convention 2010, a capital gain can, pursuant to Article 13, paragraph 4, be taxed only in the country of residence of the shareholder. Dividends, however, pursuant to Article 10, paragraphs 1 and 2 of the OECD Model Convention 2010, can be taxed both in the source state and in the state of residence of the shareholder. Whatever the reason for the difference between the taxation of capital gains and dividends and the assignment of the right to tax them, taxpayers are using these differences to their advantage.54

Consequently, another form of substantive dividend withholding tax planning is the planning whereby the shares in the dividend payor are sold, either within the corporate group or to a third party.55 As a result, a dividend – typically free of dividend withholding tax – may be paid to the acquirer of the shares. In a case, the selling shareholder may be able to avoid dividend withholding tax altogether simply because the selling shareholder is not the recipient of a dividend. Whether or not the sale of the shares will result in the complete avoidance of tax on the dividends depends, inter alia, on the circumstances relevant to the other party of the transaction: the acquirer of the shares in the dividend payor.

5. DIVIDEND STRIPPING

Dividend stripping entails a variety of techniques aimed at reducing or eliminating the burden of dividend withholding tax. In a dividend stripping scenario, the shareholder may transfer both his economic and legal interest in the shares and will therefore not benefit on future dividends or growth. However, this transfer is typically for a short period of time only, and the shareholder generally buys back his original shares.

In its simplest form, dividend stripping can be described in the following three steps:

1. the sale of the shares in a company with undistributed profits;
2. the dividend distribution to the recent acquirer, and
3. the re-sale of the shares to the original shareholder.

Different from the dividend withholding tax planning scenarios earlier discussed and essential to dividend stripping is the fact that the shares are ultimately sold back to the original shareholder.56-57

A specific dividend stripping technique is securities lending. Securities lending is the temporary transfer of securities on a collateralized basis from one party (the lender) to another (the borrower) for a fee.58 In this scenario, the borrower can typically receive dividends on the shares borrowed against a lower rate than the original lender. Or, alternatively, by borrowing additional shares, the borrower obtains a lower dividend withholding tax rate on the shares it already owns.59 Typically, the borrower must return the securities to the lender after an agreed period of time or on demand.

Most securities lending is collateralized using other securities, cash, or a letter of credit. When a security is loaned, the ownership title transfers from the lender to the borrower. This transfer gives the borrower the shareholder’s rights, such as voting rights and rights to dividends or interest payments. However, these coupon or dividend payments are normally transferred back to the lender through equivalent payments. The borrower is also able to loan or sell the securities.40

6. INTERNAL AND EXTERNAL DIVIDEND WITHHOLDING TAX PLANNING

Another distinction that one can make in dividend withholding tax planning techniques is the distinction between tax planning between associated entities (‘internal tax planning’) and tax planning involving a third party.

Notes

53 See the Commentary on Art. 13 of the OECD Model Convention (2010).
54 It can be agreed with Van Wreghel that it would not be illogical to give the source state a limited right to tax capital gains where it has a limited right to tax the dividends. See van Wreghel.
55 The third party acquirer is typically a so-called trust company or a banking institution.
56 Or, alternatively, the original shareholder buys back similar shares from another third party.
57 Since the shares are ultimately sold back to the original shareholder, this planning technique may be considered more aggressive than other techniques whereby shares are not sold back. For this reason, specific anti-dividend stripping rules have been implemented in various jurisdictions to counter this specific dividend withholding tax planning technique.
58 Third-party security lenders are primarily asset managers, custodian banks, or other third-party lenders. Examples of substantial US-based securities lenders include Bank of New York, Charles Schwab Corporation, Citibank, and JP Morgan Chase.
59 For example, because the borrower now obtains a certain percentage that results in a better tax treaty threshold.
60 As explained, one of the reasons for transferring ownership by securities lending is tax arbitrage. Other reasons include ways to (1) cover a short position, (2) finance – when the lender receives cash in exchange for lending the securities, and (3) increase the voting power in a corporation.
An example of an internal dividend withholding tax planning technique may include an intra-group transfer of the dividend payor or, alternatively, the migration of the dividend payor to a dividend withholding tax-free jurisdiction.

In turn, *external* dividend withholding tax planning techniques include the techniques whereby the underlying shares in the dividend payor are transferred to a third party. This technique can be divided into planning whereby the underlying shares or dividend coupon rights will be transferred to a third party indefinitely and planning whereby the underlying shares or dividend coupon rights will be transferred for a certain period of time and eventually transferred back to the original shareholder, typically after the distribution of one or more dividend payments.

The US Internal Revenue Service (IRS) discusses various sorts of dividend withholding tax planning techniques—whereby the underlying shares are transferred for a certain period of time only—in its industry directive on total return swaps used to avoid US dividend withholding tax. Illustrative is the so-called cross-in/cross-out period of time only—in its industry directive on total return swaps used to avoid US dividend withholding tax.

In this regard, the industry directive states that in the event that the field examines a transaction in which the share is an equity interest in a publicly traded partnership as defined in § 7704(c) of the Internal Revenue Code, the field should seek the assistance of counsel.

Notes

41 A similar distinction can be made for corporate income tax planning purposes. For example, the distinction between a tax-efficient sale and lease back transaction within a corporate group and a tax-efficient sale and lease back transaction with a third-party bank.


43 In this regard, the industry directive states that in the event that the field examines a transaction in which the share is an equity interest in a publicly traded partnership as defined in § 7704(c) of the Internal Revenue Code, the field should seek the assistance of counsel.

44 Pursuant to the terms of the total return swap, the foreign person is required to make payments to the US financial institution based on an interest component (e.g., a LIBOR-based payment) and any depreciation with respect to the notional investment in the US shares. The US financial institution is required to make payments to the foreign person in an amount equal to any appreciation with respect to the notional investment in the US shares and any dividend paid with respect to the US shares (a so-called synthetic issuer position). Payment obligations with respect to the equity equivalent and synthetic issuer positions may be netted against each other.

45 In this regard, the industry directive states that the record date is the ‘date on which a firm’s books are closed during the process of identifying the owners of a certain class of securities for purposes of transmitting dividends.’ The directive continues: ‘For example, only the common stockholders who are listed on the record date will receive the dividends that are to be mailed on the payment date’ and makes reference to David L. Scott, *Wall Street Words*, 3rd edn (2003).

46 The fair market value of the US shares on the cross-in and the repurchase price on the cross-out are likely to be determined in such a manner that ensures the foreign person has no pricing risk on the cross-in and the cross-out but retains the overall ownership risk in the US shares. To determine the notional principal amount of the total return swap, the documents may reference the same pricing mechanism (e.g., market on close) or may require the use of a single interdealer broker or the circumstances may show that the parties are likely to be in the market together upon a cross, particularly where the volume is typically low and the number of market participants is limited based upon a pattern of dealing or other relevant facts. See the recent US IRS ‘Industry Directive on Total Return Swaps (“TRSs”) Used to Avoid Dividend Withholding Tax’.

47 In case a liquidation of the company for dividend withholding tax planning purposes is more than a pure paper transaction, for example, because the liquidated entity owns different sorts of assets (other than cash or a note receivable), this planning technique may be considered a substantive tax planning technique instead of a formal tax planning technique.
In turn, substantive dividend withholding tax planning can be sub-divided in planning that is and planning that is not based on residency and the related migration of one or more entities. With regard to migration planning, the following four different forms of tax planning may be distinguished: (1) the migration of the dividend payor, (2) the migration of the dividend recipient, (3) both the dividend payor and the dividend recipient migrated, and (4) neither the dividend payor nor the dividend recipient migrated (for tax reasons). Additional substantive dividend withholding tax planning techniques that are discussed include cross-border mergers and divisions, dividend stripping, sale of the shares in the dividend payor, and total return swaps used to avoid dividend withholding tax.

Benchmarking certain dividend withholding tax planning against the aforementioned framework may result in a universal tax planning product code, a sort of tax planning barcode that can be used to categorize each tax planning technique worldwide. Although a tax planning technique is typically, in its final form, custom-made and therefore dependent on the specifics of the taxpayer involved, the tax planning barcode helps in determining what shelf in the tax-planning supermarket the respective tax planning technique can be found.

8. Conclusion

This study has sought to identify, analyse, and categorize various cross-border corporate dividend withholding tax planning techniques in abstracto and without linking these techniques to particular countries. Based on this study, one can conclude that it is possible to distinguish and categorize these dividend withholding tax planning techniques in cross-border scenarios in a universal, comprehensive, and consistent manner. In addition, as a result of the aforementioned, it is possible to set up a high-level framework, whereby dividend withholding tax planning techniques that are available to today’s taxpayers can be categorized. Such framework may have more than a purely academic value. It may be of benefit for the corporate taxpayer and his advisors since the framework can make clear what sorts of dividend withholding tax planning are available worldwide and what planning technique the respective taxpayer may suit best. In addition, the framework can also be of benefit to governments. It may prove to be a tool to categorize and administer what planning techniques are used by what sort of taxpayer and at what frequency. Moreover, it may perfectly show what dividend withholding tax loopholes in domestic legislation are still clear and present.

Notes

Vice versa, in case a cross-border legal merger or division is merely a pure paper transaction, such transaction may be considered a formal tax planning technique instead of a substantive tax planning technique.