



Global Holding Company Strategy: Jurisdictional Optimisation & Best Practice

A definitive framework for senior financial decision-makers evaluating holding company architectures across legal, tax, regulatory and operational dimensions

Executive Summary: Five Board-Level Theses

1

Structure Follows Strategy

Optimal holding structures derive from clear strategic objectives rather than jurisdiction shopping. Tax efficiency remains important but increasingly secondary to governance clarity, operational flexibility and regulatory durability.

2

Substance Requirements Intensifying

Globally convergent economic substance rules now require demonstrable decision-making, qualified personnel, and physical presence—creating a compliance floor that renders certain jurisdictions prohibitively expensive for smaller structures.

3

Tax Harmony Accelerating

OECD Pillar Two implementation, EU Unshell Directive momentum, and proliferating anti-hybrid rules combine to diminish traditional arbitrage opportunities; comparative advantage increasingly derives from non-tax factors.

4

Transparency Inescapable

UBO registers, CbCR, mandatory disclosure regimes, and automated information exchange render holding structures increasingly visible. The reputational cost of aggressive structures now outweighs marginal tax savings for most public and family enterprises.

5

Banking Friction Rising

Account opening and KYC procedures impose material operational friction on holding structures, requiring sophisticated source-of-wealth/source-of-funds narratives and increasing the value of established banking relationships.

What a Holding Company Is

Legal Definition

A separate legal entity established primarily to own and control shares or other ownership interests in subsidiary corporations or similar entities, potentially including management of group resources such as intellectual property, financing, or treasury operations.

Core Functions

Centralisation of ownership, risk compartmentalisation, simplified governance, efficient capital allocation, optimised financing structures, and potential tax efficiency—all whilst maintaining separateness and limited liability between business units.

Common Misconceptions

Holding companies are not primarily tax avoidance vehicles, offshore shelters, or asset-protection shields. Modern structures must demonstrate genuine economic purpose, substantial activities, and alignment with commercial objectives beyond tax planning.

Common holding company models vary by complexity, ranging from simple parent-subsidary relationships to sophisticated multi-tiered structures with jurisdiction-specific entities serving specialised functions. The selection of model should align with strategic objectives rather than pursuing structural complexity for its own sake.¹

¹ International Fiscal Association, 'The Holding Company: An International Tax Planning Tool', IFA Cahiers 2022, Vol. 107B, accessed 15 September 2023.

Primary Holding Company Objectives

Commercial & Operational

- Centralised ownership and control of subsidiaries
- Efficient governance and consolidated oversight
- Simplified group management structure
- Clean segregation of business lines
- Risk compartmentalisation and liability protection
- Platform for effective group financing
- Centralised intellectual property management

Financial & Strategic

- Facilitation of acquisitions and disposals
- Efficient profit repatriation and cash deployment
- Optimised capital structure and debt placement
- Consolidated financial reporting
- Framework for staged exits or partial monetisation
- Tax-efficient ownership of appreciating assets
- Investor-friendly structure for capital raising

Success criteria vary based on business model, industry, and ultimate ownership, with appropriate weighting determined by specific strategic priorities. The trend is toward elevated governance, transparency, and substance requirements regardless of jurisdiction selection.²

² PwC, 'Holding Company Regimes in the Post-BEPS World', Global Tax Policy Outlook 2023, pp. 34-51, accessed 12 September 2023.

Design Choices: Pure vs Mixed Holding Companies

Pure Holding Company

- **Focused purpose:** Exclusively owns shares or debt instruments of subsidiaries
- **Limited activities:** No operational functions beyond administrative governance
- **Minimal substance:** Often requires only limited infrastructure and staffing
- **Clean separation:** Clear demarcation between holding and operating entities
- **Simplified governance:** Board focuses solely on ownership oversight

Pure structures face increasing scrutiny under substance and purpose tests, particularly for dividend exemption and treaty access.³

³ Court of Justice of the European Union, 'Judgment in Joined Cases C-116/16 and C-117/16 T Denmark and Y Denmark vs. the Danish Ministry of Taxation', 26 February 2019, accessed 10 September 2023.

⁴ Deloitte, 'The Future of Holding Company Structures in a Changing Tax Landscape', Global Tax Perspectives, June 2023, pp. 17-23, accessed 11 September 2023.

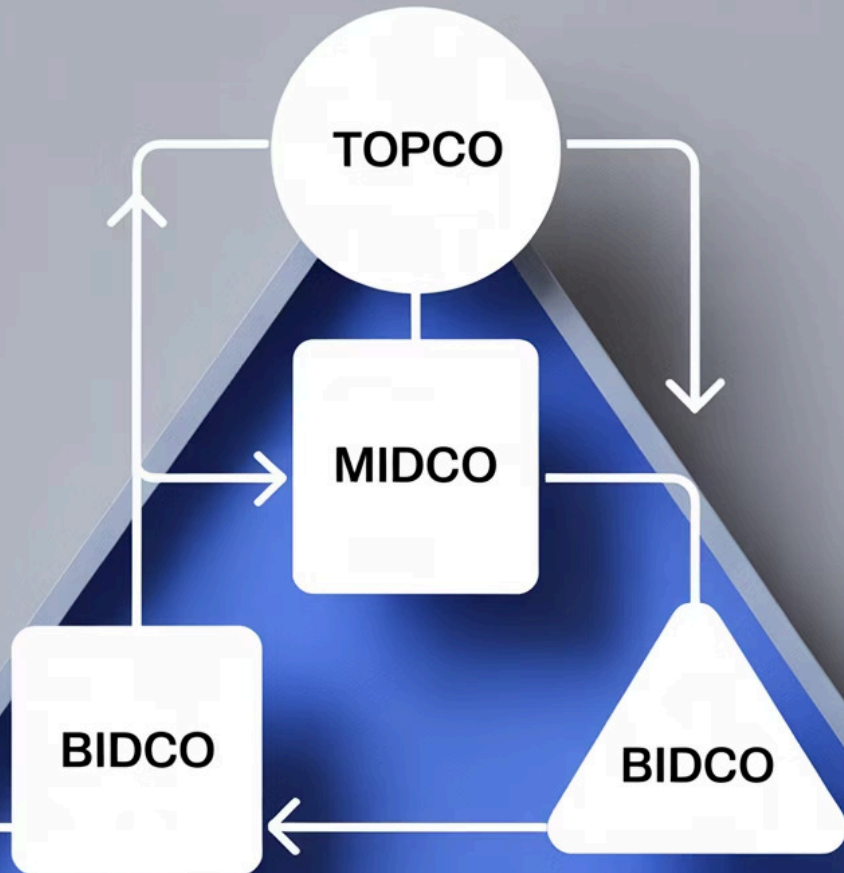
Mixed Holding Company

- **Dual function:** Combines shareholding with operational activities
- **Enhanced substance:** Maintains meaningful operational presence
- **Natural integration:** Often includes group-level functions (treasury, IP)
- **Greater control:** Closer operational oversight of subsidiaries
- **Stronger nexus:** Better withstands economic substance challenges

Mixed structures better align with contemporary regulatory expectations but introduce operational complexity and potential risk contagion.⁴

TopCo-MidCo-BidCo Structures

Strategic Rationale for Multi-Tiered Structures



TopCo



Ultimate parent entity, typically established in investor-friendly jurisdiction with robust shareholder protections; may be publicly listed or privately held

MidCo



Intermediate holding entity often placed in jurisdiction with favourable participation exemption and strong treaty network; may house group debt or intellectual property

BidCo



Acquisition vehicle positioned above operating companies; allows for debt push-down, localised financing, and ring-fencing of acquisition-specific risks

Multi-tiered structures provide flexibility but increase governance complexity and compliance obligations. The trend is toward flatter structures with fewer intermediary entities, particularly for structures with assets below £250 million.⁵

⁵ KPMG, 'Efficient Group Structures: Balancing Complexity and Compliance', International Tax Review, August 2023, pp. 42-47, accessed 8 September 2023.

SPV vs HoldCo: Purpose and Application

Special Purpose Vehicle (SPV)

Legal entity created for a specific, limited purpose with narrowly defined powers and activities; typically used for single transactions, specific asset isolation, or securitisation

- Ring-fences specific assets or liabilities
- Often bankruptcy-remote by design
- Usually has limited operational lifespan
- Frequently subject to rating agency criteria
- May employ orphan ownership structures

Holding Company (HoldCo)

Durable legal entity established primarily to own and control subsidiaries; typically has broader powers and more flexible governance arrangements

- Provides ongoing structural framework
- Usually maintains continuity of ownership
- Often serves multiple strategic purposes
- May evolve to accommodate growth
- Typically maintains conventional governance

The distinction between SPVs and HoldCos has regulatory significance, with SPVs often subject to specialised regulations (e.g., securitisation frameworks) while HoldCos more frequently encounter substance and beneficial ownership scrutiny. Selection between models depends on transaction permanence, financing requirements, and governance objectives.⁶

⁶ Clifford Chance, 'SPVs and Holding Companies: Structural Considerations for Financial Transactions', Client Briefing, July 2023, accessed 7 September 2023.

Governance Blueprint: Director Composition

Best Practice Principles

- **Independence:** Sufficient independent directors to ensure proper governance, typically 30-50% of board composition for significant structures
- **Expertise:** Directors with sector-specific knowledge and jurisdiction-specific regulatory understanding
- **Local substance:** Resident directors with demonstrable decision-making authority
- **Diversity:** Mix of backgrounds ensuring balanced perspective and thorough risk assessment
- **Documentation:** Comprehensive minute-taking and decision paper trails demonstrating genuine deliberation

Regulatory Considerations

Board composition must satisfy multiple overlapping requirements:

- Corporate governance standards in place of incorporation
- Economic substance requirements in relevant jurisdictions
- "Central management and control" tests for tax residence
- Treaty eligibility considerations including beneficial ownership
- Banking and financial services regulatory standards where applicable

Board composition significantly impacts regulatory assessments of substance and management-and-control location. For holding companies with assets exceeding £100 million, maintaining qualified resident directors with genuine authority has become a non-negotiable compliance requirement.⁷

⁷ Institute of Directors, 'Corporate Governance for Holding Companies', Governance Insights Report, May 2023, accessed 9 September 2023.

Corporate Benefit and Fiduciary Duties

Distinct Fiduciary Frameworks by Jurisdiction

Common Law Jurisdictions

Directors owe fiduciary duties primarily to the company itself rather than its shareholders or the broader group; includes duties of loyalty, care, and good faith

Key requirement to demonstrate that transactions benefit the specific entity, not just the group as a whole

Civil Law Jurisdictions

Fiduciary framework typically codified in company law, often with specific group company provisions recognising legitimate group interests

May permit consideration of group benefit if the entity remains solvent and obligations are proportionate to its capacity

Practical Implications for Holding Structures

Directors of holding entities must maintain a careful balance between group directives and entity-specific interests, particularly when approving:

- Upstream guarantees or security for parent company debt
- Transfer of assets or liquidity between group entities
- Assumption of liabilities or obligations benefiting other group members

Corporate benefit considerations are especially acute during financial distress when director liability risk peaks. Comprehensive board papers documenting benefits to the specific entity—beyond group advantages—provide essential protection.⁸

⁸ Freshfields Bruckhaus Deringer, 'Directors' Duties in Complex Group Structures', Legal Briefing, April 2023, pp. 7-12, accessed 5 September 2023.

Governance Matrix: Decision Authority and Delegation

Effective holding company governance requires clearly documented decision authority with appropriate delegations balancing control and operational efficiency. The illustrative matrix above presents a balanced approach for a mid-sized holding structure, though specific allocations should be tailored to group complexity, risk profile, and stakeholder requirements.

Critical Decision Categories Requiring Board-Level Approval

- Capital structure changes and significant financing
- Acquisition or disposal of material subsidiaries or assets
- Establishment of new subsidiaries or entry into new jurisdictions
- Material intra-group transactions, particularly cross-border transfers
- Significant related-party arrangements and transfer pricing policies
- Appointment of senior management and key professional advisers

Documenting and consistently following governance protocols provides crucial evidence for management-and-control location, substance compliance, and defence against regulatory challenges to structural integrity.⁹

⁹ Allen & Overy, 'Governance Best Practices for Multinational Holding Structures', Corporate Governance Review, March 2023, accessed 3 September 2023.

Shareholder Agreements and Control Mechanisms

Common Provisions in HoldCo Shareholder Agreements

- **Reserved matters** requiring supermajority or unanimity
- **Board composition** rights and nomination procedures
- **Information access** protocols and reporting obligations
- **Dividend policy** including minimum distribution requirements
- **Exit mechanisms** such as drag-along and tag-along rights
- **Deadlock resolution** procedures and remedies
- **Transfer restrictions** including rights of first refusal
- **Non-compete** and confidentiality provisions

Alternative Control Structures

Dual-Class Shares

Separate share classes with differential voting rights, allowing control disproportionate to economic interest

Increasingly restricted by stock exchanges and investor guidelines, though still prevalent in technology and founder-led companies

Pyramidal Structures

Control maintained through cascading partial ownership, amplifying voting power through multiple tiers

Subject to growing transparency requirements and potential dividend tax inefficiencies

Shareholder agreement provisions must be carefully aligned with jurisdictional corporate law and regularly updated to reflect evolving case law on enforceability. Governance arrangements should balance control certainty with flexibility for future capital raising or strategic pivots.¹⁰

¹⁰ Linklaters, 'Shareholder Agreements in International Holding Structures', Private Equity Insights, June 2023, pp. 28-34, accessed 4 September 2023.

Jurisdiction Selection Criteria

Key Evaluation Factors for Holding Company Locations



Legal System

Quality, certainty and familiarity of legal framework; corporate flexibility; minority shareholder protections; enforceability of contracts; dispute resolution mechanisms



Tax Regime

Participation exemption scope; dividend withholding tax rates; capital gains treatment; interest deductibility; royalty withholding; tax treaty network; anti-avoidance provisions



Substance Requirements

Economic substance rules; minimum activity thresholds; staffing and premises expectations; director residency requirements; decision-making documentation standards



Banking Infrastructure

Sophistication of banking sector; ease of account opening; KYC/AML approach; availability of cash management solutions; lending environment; payment efficiency



Reputational Factors

International perception; transparency standards; compliance with international norms; inclusion on watchlists or monitoring; stakeholder and public perception



Stability & Predictability

Political and economic stability; rule of law; legislative predictability; treaty commitment history; regulatory consistency; approach to grandfathering provisions

Jurisdictional selection should employ weighted scoring across these dimensions based on specific enterprise priorities and risk tolerance. The relative importance of factors varies substantially between public companies, family enterprises, and financial sponsors.¹¹

¹¹ EY, 'Holding Company Location Strategy: A Multidimensional Framework', International Tax Review, July 2023, pp. 53-61, accessed 2 September 2023.

Weighted Decision Model: Jurisdiction Selection

This illustrative weighted decision matrix demonstrates a rigorous approach to jurisdiction selection, incorporating quantitative and qualitative factors tailored to client-specific priorities. The methodology enables systematic comparison while acknowledging that weights should reflect individual enterprise circumstances.

Application Guidelines

- Customise weights based on specific strategic objectives and risk tolerance
- Score each jurisdiction objectively using consistent criteria
- Consider both current conditions and projected policy trajectories
- Apply additional screens for industry-specific requirements
- Update scoring periodically to reflect regulatory developments

Proper weighting calibration is critical; weights shown above are illustrative only and should be adjusted based on group profile and objectives. For publicly listed companies, transparency and governance factors typically receive higher weighting; for private structures, flexibility and efficiency may take precedence.¹²

12 Deloitte, 'Jurisdiction Selection Methodology for International Structures', Tax Strategy Series, April 2023, accessed 1 September 2023.

Comparative Matrix: Leading Holding Company Jurisdictions

Jurisdiction	Participation Exemption	WHT - Dividends	WHT - Interest	Capital Gains	Substance Requirements	EU/OECD Compatibility
Netherlands	100% (5% holding, no minimum period)	0%/15% (EU/Non-EU)	0%	100% exempt with qualifying participation	Medium-High	High
Luxembourg	100% (10% or €1.2M, 12 months)	0%/15% (EU/Non-EU)	0%	100% exempt with qualifying participation	Medium	High
Ireland	None (but foreign dividends taxed at 12.5% if from trading)	0%/20% (EU/Non-EU)	0%/20%	33% (potential relief under treaties)	Medium-High	High
UK	100% for most foreign dividends	0%	0%/20%	100% exempt with substantial shareholding	High	High
Singapore	100% (foreign dividends meeting conditions)	0%	15%	0% (if held 24+ months with 20%+ shareholding)	Medium-High	High
Hong Kong	100% for foreign dividends	0%	0%	0%	Medium-High	Medium-High
UAE (ADGM/DIFC)	0% tax rate generally	0%	0%	0%	High (under ESR)	Medium
Switzerland	Participation reduction (10% or CHF 1M)	0%/35% (treaty relief)	0%/35% (treaty relief)	Participation reduction (10% or CHF 1M)	Medium	High
Mauritius	Exempt with GBL	0%	0%/15%	Exempt	Medium-High (post-reform)	Medium
BVI	0% tax rate generally	0%	0%	0%	Medium (under ESR)	Low-Medium

This comparative overview reflects primary features as of August 2023 and is subject to continuous change. Anti-avoidance provisions, substance requirements, and treaty access restrictions may significantly modify these baseline provisions.¹³

13 IBFD, 'Global Holding Company Analysis', Country Tax Guides, August 2023, accessed 30 August 2023.

EU-Based Holding Jurisdictions: Comparative Analysis

Netherlands

Strengths: Comprehensive participation exemption; extensive treaty network; developed case law; sophisticated financial infrastructure; respected business jurisdiction

Considerations: Increasingly stringent substance requirements; heightened scrutiny of conduit arrangements; conditional withholding tax on interest and royalties to low-tax jurisdictions

Luxembourg

Strengths: Flexible corporate vehicles including SOPARFI; strong participation exemption; financial sector expertise; political stability; pragmatic regulator engagement

Considerations: European Commission scrutiny of tax rulings; implementation of ATAD limitations; increased substance expectations; potential reputational concerns

Ireland

Strengths: 12.5% trading rate; common law system; English-speaking; established for IP holding; robust corporate flexibility; strong US connections

Considerations: Limited participation exemption; capital gains tax on share disposals; implementation of OECD/EU reforms; transfer pricing expansion

EU-based holding structures benefit from Parent-Subsidiary and Interest-Royalties Directives, though these advantages are increasingly qualified by anti-abuse provisions. The trend shows decreasing differentiation between EU jurisdictions as tax harmonisation proceeds, with substance and commercial rationale becoming the primary differentiators.¹⁴

¹⁴ PwC, 'European Holding Company Analysis: Post-ATAD Landscape', EU Tax Review, May 2023, pp. 18-24, accessed 29 August 2023.

UK as a Holding Company Jurisdiction

Key Advantages

- Extensive double tax treaty network (130+ treaties)
- No withholding tax on dividends paid
- Substantial shareholding exemption for capital gains
- Dividend exemption for most foreign dividends
- Respected and predictable legal system with extensive case law
- Political stability and rule of law tradition
- Sophisticated banking and professional services infrastructure

Considerations

- 19% corporate tax rate (projected 25% from April 2023)
- Withholding tax on interest (20%, subject to treaty relief)
- CFC regime with various exemptions and thresholds
- Diverted profits tax and transfer pricing focus
- No participation exemption for debt investments
- Higher operating costs compared to smaller jurisdictions
- Post-Brexit positioning still evolving

The UK offers a balanced holding company jurisdiction with strong legal protections and international credibility, particularly suitable for listed groups, private equity, and family offices prioritising governance certainty and reputational considerations over absolute tax efficiency.¹⁵

15 Herbert Smith Freehills, 'The UK as a Holding Company Jurisdiction Post-Brexit', Corporate Tax Review, July 2023, accessed 28 August 2023.

Non-EU/UK Holding Jurisdictions: Asian Financial Centres

Singapore

Corporate Structure: Private Limited Company

Tax Rate: 17% headline rate with potential incentives

Participation Exemption: Foreign-sourced income exemption with conditions

Withholding Tax: 0% on dividends; 15% on interest (reducible)

Substance Requirements: Increasing emphasis on local board control and genuine decision-making

Treaty Network: 80+ comprehensive treaties

Key Advantages: Political stability; legal certainty; financial infrastructure; strong regional hub status; respected business jurisdiction

Hong Kong

Corporate Structure: Private Limited Company

Tax Rate: 16.5% (8.25% on first HKD 2 million)

Participation Exemption: Dividend income generally not taxable

Withholding Tax: 0% on dividends and interest

Substance Requirements: Increasing focus on economic substance

Treaty Network: 40+ comprehensive treaties

Key Advantages: Financial centre infrastructure; gateway to mainland China; simple tax system; minimal foreign income taxation

Asian financial centres provide sophisticated alternatives to traditional Western holding jurisdictions, with growing treaty networks and established financial infrastructure. Their relative advantages are increasingly sector-specific, with Singapore particularly strong for regional headquarters with operational substance and Hong Kong advantageous for China-facing structures.¹⁶

¹⁶ KPMG, 'Asian Holding Company Locations: Comparative Analysis', Asia-Pacific Tax Review, August 2023, accessed 27 August 2023.

Middle Eastern Holding Jurisdictions: UAE Free Zones

Abu Dhabi Global Market (ADGM)

Legal System: Common law (English law directly applicable)

Corporate Vehicles: Private Company Limited by Shares

Tax Framework: 0% corporate tax with 9% UAE CT exemption

Key Features: Independent courts; sophisticated regulator; strong financial infrastructure; respected business environment

Dubai International Financial Centre (DIFC)

Legal System: Common law (based on English law)

Corporate Vehicles: Company Limited by Shares

Tax Framework: 0% corporate tax with 9% UAE CT exemption

Key Features: Established ecosystem; flexible corporate law; independent courts; central business district location

Ras Al Khaimah ICC (RAK ICC)

Legal System: Common law influences with civil law elements

Corporate Vehicles: International Business Company

Tax Framework: 0% corporate tax with 9% UAE CT exemption

Key Features: Cost-efficient; simplified administration; flexible governance arrangements

UAE free zones have emerged as significant holding jurisdictions, combining tax efficiency with increasingly robust substance frameworks. The introduction of UAE corporate tax (9% from June 2023) maintains exemptions for qualifying free zone entities while improving international tax standing. Economic substance regulations require demonstrable local activity proportionate to income type and volume.¹⁷

¹⁷ Al Tamimi & Company, 'UAE Free Zones as Holding Company Jurisdictions', Middle East Tax Review, June 2023, accessed 26 August 2023.

Offshore Holding Jurisdictions: Contemporary Viability

British Virgin Islands

Corporate Vehicle: BVI Business Company

Tax Framework: 0% on corporate profits

Substance Requirements: Economic Substance Act 2018 with activity-based tests

Treaty Network: Limited (primarily via UK extension)

Regulatory Standing: EU "grey list" status; OECD compliant

Cayman Islands

Corporate Vehicle: Exempted Company

Tax Framework: 0% on corporate profits

Substance Requirements: International Tax Co-operation Act with activity-based tests

Treaty Network: Minimal

Regulatory Standing: Periodic EU/OECD scrutiny; generally compliant status

Mauritius

Corporate Vehicle: Global Business Company

Tax Framework: 15% with 80% partial exemption available

Substance Requirements: Strengthened post-2019 with detailed activity criteria

Treaty Network: 40+ treaties (some recently renegotiated)

Regulatory Standing: OECD compliant; focused on treaty access integrity

Current Utility Assessment

Traditional offshore jurisdictions face diminished utility for mainstream holding structures due to substance requirements, limited treaty access, and reputational considerations. Their remaining advantages are primarily in specific contexts:

- Asset protection outside operating jurisdictions
- Bankruptcy remoteness for specific transactions
- Initial structuring vehicles prior to operational deployment

Probability of sustained viability for pure holding purposes without substantial local activity: 35-45%, with declining trajectory.¹⁸

¹⁸ Maples Group, 'Offshore Jurisdictions in International Structures', Private Client Review, May 2023, accessed 25 August 2023.

US-Based Holding Structures

Delaware Corporation Key Features: Well-developed corporate law; business court expertise; strong legal precedent; governance flexibility Tax Treatment: Federal corporate tax (21%) plus state income tax where applicable; limited treaty benefits for foreign-owned entities Best Application: US-headquartered groups; pre-IPO structures; venture capital platforms	Delaware LLC Key Features: Legal personality with tax transparency; flexible governance; operating agreement versatility Tax Treatment: Pass-through to members by default; can elect corporate treatment; complex for non-US members Best Application: Joint ventures; investment partnerships; private equity vehicles	Delaware Statutory Trust Key Features: Separate legal entity; contractual flexibility; limited liability; potential tax transparency Tax Treatment: Grantor trust treatment possible; potentially tax-transparent with proper structuring Best Application: Real estate holdings; securitization structures; certain asset protection contexts
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US-based holding structures offer exceptional governance certainty and asset protection but typically present tax inefficiencies for international groups. Implementation complexity increases substantially for non-US investors due to withholding requirements, FIRPTA provisions, and branch profits tax considerations. Maintaining US holdings under non-US ultimate ownership generally requires careful intermediary structuring.¹⁹

19 Skadden, Arps, Slate, Meagher & Flom LLP, 'US Holding Companies in International Structures', Tax Notes International, April 2023, accessed 24 August 2023.

Participation Exemption Mechanics

Comparing Dividend Exemption Systems

Jurisdiction	Minimum Ownership	Holding Period	Subsidiary Requirements	Exemption Percentage	Anti-Abuse Provisions
Netherlands	5%	None	Not "low-taxed portfolio investment"	100%	Non-artificial arrangement test
Luxembourg	10% or €1.2M acquisition cost	12 months	Subject to comparable tax	100%	General anti-abuse rule
UK	None (with exceptions)	None	Various technical conditions	100%	Anti-hybrid rules
Switzerland	10% or CHF 1M market value	None	None	Proportional reduction	Non-genuine arrangement test
Singapore	None	None	Subject to 15%+ tax or specified conditions	100%	Foreign jurisdiction headline tax test
Hong Kong	None	None	None specific	100%	Anti-avoidance provisions

Participation exemption systems vary significantly in technical implementation but share the common objective of preventing double taxation on corporate profits. The most comprehensive regimes (Netherlands, Luxembourg) typically accompany this relief with sophisticated anti-abuse frameworks and increasing substance expectations.²⁰

20 IBFD, 'Participation Exemption Regimes Worldwide', Global Tax Survey, July 2023, accessed 23 August 2023.

Capital Gains Exemption for Participations

Substantial Shareholding Exemption Models

Capital gains exemptions for corporate shareholders vary significantly across jurisdictions, with key dimensions including:

- **Threshold requirements:** Minimum ownership percentages (typically 5-25%)
- **Holding periods:** Minimum timeframes (typically 6-24 months)
- **Subsidiary activity tests:** Trading vs. investment classifications
- **Seller activity requirements:** Trading group status of the seller
- **Post-disposal conditions:** Continuing trading status requirements

Capital gains exemptions are particularly significant for corporate restructuring, where internal reorganisations should ideally proceed without crystallising tax charges. Planning typically focuses on meeting applicable holding periods and ensuring trading status requirements are satisfied before contemplated disposals.²¹

21 HMRC, 'Substantial Shareholding Exemption: Technical Guidance', April 2023, accessed 22 August 2023.

UK Substantial Shareholding Exemption

The UK offers a representative example with the following conditions:

- Minimum 10% ordinary share ownership
- Shares held for at least 12 months within a 6-year window
- Selling company must be part of a trading group or qualifying institutional investor
- Invested company must be a trading company or holding company of a trading group
- Exemption applies to full gain on qualifying disposal

Withholding Tax Map: Dividends

Illustrative Withholding Tax Rates on Outbound Dividends

From / To	UK Parent	US Parent	Luxembourg Parent	Singapore Parent	UAE Parent
UK Subsidiary	0%	0%/15%*	0%**	0%/15%*	0%/15%*
Netherlands Subsidiary	0%**	0%/15%*	0%**	0%/15%*	0%/15%*
Luxembourg Subsidiary	0%**	0%/15%*	0%	0%/15%*	0%/15%*
Singapore Subsidiary	0%	0%	0%	0%	0%
Hong Kong Subsidiary	0%	0%	0%	0%	0%

* Subject to meeting treaty LOB or PPT requirements
** Subject to meeting Parent-Subsidiary Directive and/or treaty requirements

Key Treaty Access Constraints

Treaty benefits are increasingly conditional upon satisfying specific requirements:

- Principal Purpose Test (PPT): No treaty benefit if one of the principal purposes was obtaining that benefit
- Limitation on Benefits (LOB): Specific objective tests including ownership, base erosion, and activity requirements
- Beneficial Ownership: Recipient must have substantive economic ownership, not merely legal title

Withholding tax strategy requires regular review as treaty interpretations evolve, particularly regarding beneficial ownership and the application of anti-abuse provisions. Probability of successful treaty access for entities without meaningful substance: 25-40%, with declining trajectory.²²

22 Deloitte, 'Global Withholding Tax Survey', August 2023, accessed 21 August 2023.

Withholding Tax Map: Interest and Royalties

Interest Withholding Tax Considerations

Interest payments from subsidiaries to holding companies frequently trigger withholding obligations, with potential relief mechanisms including:

- **Tax treaties:** Reduced rates (typically 0-15%) with qualifying recipients
- **EU Interest & Royalties Directive:** 0% between qualifying EU associated companies
- **Domestic exemptions:** Specific instruments or recipients may qualify for reduced rates
- **Notional relief:** Non-withholding regimes in certain jurisdictions

Conditional withholding tax regimes targeting "low-tax jurisdictions" are proliferating, e.g., Netherlands' conditional withholding tax on interest to low-tax jurisdictions (defined as <9% statutory rate).

Withholding tax planning requires comprehensive modelling of multiple scenarios incorporating substance requirements, anti-avoidance provisions, and evolving treaty interpretations. The sustainability of traditional "minimisation" structures has declined dramatically, with tax authority challenges increasing in frequency and success rate.²³

Royalty Withholding Tax Challenges

Royalty payments face intensifying scrutiny with considerations including:

- **IP substance requirements:** DEMPE functions must align with ownership
- **Anti-avoidance focus:** IP holding structures frequently targeted
- **Expanding definitions:** Digital services increasingly characterised as royalties
- **Treaty limitations:** Beneficial ownership requirements strictly applied

Royalty routes without substantial IP management functions face serious sustainability challenges under BEPS Action 5 and 6 implementation.

²³ Baker McKenzie, 'Global Withholding Tax Guide', June 2023, accessed 20 August 2023.

Beneficial Ownership and Treaty Access

The Evolving Beneficial Ownership Standard

Traditional Approach (Pre-2010)

Focus on legal ownership and control rights with minimal scrutiny of intermediate holding entities; formal compliance with treaty conditions generally sufficient for benefits

Transitional Period (2010-2018)

Increased emphasis on economic substance and decision-making authority; greater scrutiny of "conduit" or "flow-through" arrangements; inconsistent application across jurisdictions

Current Landscape (Post-2018)

Robust substance-focused interpretation following "Danish cases"; emphasis on economic risk-bearing and genuine authority; integration with Principal Purpose Test; systematic challenge of treaty shopping arrangements

The beneficial ownership concept has transitioned from a narrow technical requirement to a broad substantive standard. The Danish cases (C-116/16 and C-117/16) established that "beneficial owner" must be interpreted as the entity with genuine economic benefit, not merely formal legal title. The CJEU's approach has significantly influenced global treaty interpretation beyond EU borders.²⁴

²⁴ Court of Justice of the European Union, 'Judgment in Joined Cases C-116/16 and C-117/16', 26 February 2019, accessed 19 August 2023.

Substance: Economic Substance Requirements



EU Substance Requirements

ATAD III ("Unshell") proposal targeting letterbox companies; objective gateway tests for minimum substance; potential denial of tax directive and treaty benefits



Offshore Economic Substance Rules

BEPS-aligned requirements implemented across former "zero-tax" jurisdictions; activity-specific tests with stringent documentation and reporting obligations



OECD Substance Standards

BEPS Action 5 (Harmful Tax Practices) minimum standards for IP regimes; Action 6 (Treaty Abuse) principal purpose test; increasing emphasis on genuine economic activities



Treaty-Based Substance Tests

Principal Purpose Test implementation via MLI; substance-focused beneficial ownership interpretation; increasingly restrictive Limitation on Benefits provisions

Core Substance Elements Required in Most Jurisdictions

Contemporary substance requirements converge around several common elements, though specific thresholds vary:

- Qualified local directors with demonstrable decision-making authority
- Appropriate premises suitable for declared activities
- Adequate personnel relative to functions and income
- Local expenditure commensurate with claimed activities
- Comprehensive documentation of genuine decision-making

Substance requirements have largely harmonised globally, creating a relatively consistent compliance floor that renders certain jurisdictions economically impractical for smaller structures.²⁵

²⁵ EY, 'Global Economic Substance Requirements', Tax Policy Outlook, March 2023, accessed 18 August 2023.

Substance Checklist and Documentation Standards

Core Documentation Requirements

Substance compliance necessitates maintaining comprehensive records across key dimensions:

- **Corporate governance:** Board minutes demonstrating genuine deliberation; director qualifications and engagement evidence; documentation of physical board meetings
- **Decision-making:** Contemporaneous records showing consideration of alternatives; evidence of information gathering and analysis; documentation of director contributions
- **Physical presence:** Office lease agreements; evidence of actual usage; staff contracts and payroll records; local operational expenditure
- **Financial control:** Local bank signatories; treasury management evidence; demonstration of non-automatic fund flows

Substance Risk Assessment Metrics

Key risk indicators used by tax authorities to evaluate substance:

- **Staff-to-income ratio:** Employee compensation relative to total income
- **Local expenditure proportion:** Operating costs in jurisdiction vs. total
- **Board composition analysis:** Proportion of qualified local directors
- **Decision location mapping:** Geographic distribution of significant decisions
- **Functional substance alignment:** Skills and resources proportionate to claimed functions (particularly for IP and financing)
- **Time and attention metrics:** Director hours dedicated to entity oversight

Compliance with contemporary substance standards requires a systematic approach to both creating genuine local presence and documenting it comprehensively. The burden is particularly high for IP and financing functions, where DEMPE analysis and control over risk concepts have created specific substance expectations tailored to these high-value activities.²⁶

²⁶ Deloitte, 'Economic Substance Compliance: Best Practices', International Tax Review, May 2023, accessed 17 August 2023.

Pillar Two: GloBE Overview

OECD Pillar Two Global Minimum Tax Framework

Key Parameters

- **Scope:** Multinational groups with annual revenue exceeding €750 million
- **Minimum Rate:** 15% effective tax rate
- **Calculation Basis:** Modified financial accounting income with limited adjustments
- **Jurisdictional Blending:** Country-by-country assessment
- **Implementation Timeline:** Phased from 2023/2024 with transitional rules

Primary Mechanisms

- **Income Inclusion Rule (IIR):** Parent entity taxes income of low-taxed subsidiaries
- **Undertaxed Payments Rule (UTPR):** Denial of deductions or equivalent adjustment to allocate top-up tax
- **Qualified Domestic Minimum Top-up Tax (QDMTT):** Local application of minimum tax to retain taxing rights
- **Subject to Tax Rule (STTR):** Treaty-based provision allowing source taxation on certain payments

Safe Harbours

- **Transitional CbCR Safe Harbour:** Simplified compliance based on existing Country-by-Country Reporting data
- **De Minimis Exclusion:** For jurisdictions with limited revenue and profit
- **Simplified Calculations:** For jurisdictions with average ETR exceeding 15% in recent years

Pillar Two fundamentally alters international tax planning by establishing a global minimum effective tax rate. The implications for holding company structures are profound, as traditional low-tax locations lose comparative advantage unless they provide non-tax benefits sufficient to justify their use.²⁷

27 OECD, 'Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)', December 2022, accessed 16 August 2023.

Pillar Two: Impact on Holding Structures

Diminished Tax Rate Arbitrage

Traditional holding jurisdictions selected primarily for low effective tax rates face reduced comparative advantage; minimum effective taxation of 15% creates a "floor" across the global group

Probability of significant continued tax rate arbitrage opportunities: 15-30%

Substance-Based Carve-Outs

Tangible asset and payroll carve-outs (initially 10%, declining to 5%) enhance the value of substantive local operations; "substance light" holding structures become less advantageous

Value of maximising substance-based carve-outs: High (70-85% probability of continued utility)

Implementation Complexity

Compliance burden includes complex calculations, country-by-country analysis, and interaction with local implementation; creates material fixed costs favouring larger structures

Predicted compliance cost premium for multi-jurisdictional structures: 15-25% increase

Strategic Response Options

Multinational groups have begun systematically reviewing holding structures with several emerging patterns:

- Consolidation of entities to reduce compliance burden
- Repatriation of functions to jurisdictions with sufficient substance
- Reconsideration of IP and financing locations based on substantive presence
- Increased focus on non-tax factors in jurisdiction selection

Pillar Two represents a paradigm shift in international tax planning, with implementation variations across jurisdictions creating both complexity and planning opportunities. The full impact remains contingent on finalisation of remaining technical guidance and jurisdiction-specific implementation.²⁸

²⁸ PwC, 'Pillar Two and the Future of Holding Company Structures', International Tax Review, July 2023, accessed 15 August 2023.

Anti-Hybrid Rules and Impact on Structures

OECD BEPS Action 2 and EU ATAD Implementation

Primary Anti-Hybrid Mechanisms

- **Hybrid Financial Instruments:** Denial of deduction for payments treated as exempt dividends by recipient
- **Hybrid Entity Payments:** Counteraction of arrangements exploiting entity classification differences
- **Reverse Hybrids:** Rules addressing entities transparent in establishment jurisdiction but opaque elsewhere
- **Imported Mismatches:** Extension to arrangements indirectly shifting hybrid outcomes
- **Dual Resident Entities:** Restrictions on deductions in multiple jurisdictions

Structural Implications

Anti-hybrid rules necessitate modifications to established holding structures:

- **Financing structures:** Reassessment of hybrid instruments previously providing debt treatment in payer jurisdiction and equity treatment in recipient jurisdiction
- **Entity selection:** Careful evaluation of entity classification across relevant jurisdictions
- **Ownership chains:** Review of transparent entities within holding structures
- **Reorganisation transactions:** Enhanced analysis of cross-border mergers and acquisitions

Anti-hybrid rules have fundamentally changed international tax planning by targeting arrangements previously considered standard practice. Implementation varies in technical detail but follows consistent principles across major jurisdictions. Holding structures must now maintain consistent treatment of instruments and entities across jurisdictions to avoid unexpected tax costs.²⁹

²⁹ KPMG, 'Global Anti-Hybrid Rules Survey', International Tax Review, June 2023, accessed 14 August 2023.

Interest Limitation Rules

OECD BEPS Action 4 and EU ATAD Article 4

Fixed Ratio Rule

Limits net interest deductions to fixed percentage of EBITDA (typically 30%) with implementation variations by jurisdiction

Most common approach adopted globally with some jurisdictions applying stricter or more generous ratios

Group Ratio Rule

Alternative allowing deductions based on group's overall net interest to EBITDA ratio

Beneficial for highly leveraged groups with consistent debt placement across entities

De Minimis Thresholds

Exclusions for interest below specified thresholds (e.g., €3 million in EU ATAD)

Provides relief for smaller entities and simplifies compliance

Holding Structure Implications

Interest limitation rules significantly impact traditional debt-push down structures and acquisition financing:

- Reduced interest capacity in operating subsidiaries impacts upstream funding
- Holding companies with primarily equity investments often have minimal EBITDA, severely limiting interest capacity
- Multiple entity acquisition structures may fragment available capacity
- Local EBITDA generation becomes a key factor in debt placement decisions

Interest limitation rules have fundamentally altered acquisition financing strategies, with increased focus on identifying and utilising jurisdictions with favourable implementation features such as generous grandfathering provisions, equity ratio escape clauses, or carrying forward of unused capacity.³⁰

³⁰ EY, 'Global Interest Limitation Survey', International Tax Review, May 2023, accessed 13 August 2023.

Management and Control: Tax Residence Risk

Management and Control Principles by Legal System

Common Law Jurisdictions

"Central management and control" test focuses on highest level of control:

- Where strategic decisions are actually made (not merely formally approved)
- Location of directors with real decision-making authority
- Substance over form approach emphasising actual practice
- Key cases include De Beers and Wood v. Holden

Civil Law Jurisdictions

"Place of effective management" typically considers multiple factors:

- Registered office and formal administrative headquarters
- Location of senior management activities
- Where board meetings are physically held
- Place where accounting records are maintained
- Greater emphasis on formal indications of management location

Risk Mitigation Protocols

Effective management and control practices require systematic protocols:

- Physical board meetings in jurisdiction of intended tax residence
- Documentation of genuine decision-making rather than rubber-stamping
- Careful separation of parent company guidance from subsidiary governance
- Management of informal decision-making and electronic communications
- Monitoring of director travel and decision patterns

Tax residence risks have intensified with remote working practices and virtual meetings, requiring more deliberate management of board processes and documentation. Dual residence scenarios have become increasingly problematic due to treaty tiebreaker provisions referring to objective factors rather than registration.³¹

31 Herbert Smith Freehills, 'Tax Residence in a Digital World', International Tax Review, April 2023, accessed 12 August 2023.

Transfer Pricing: Financing Structures

Arm's Length Pricing of Intra-Group Financing



Credit Rating Analysis

Determination of standalone or notched credit rating for borrowing entity; consideration of implicit support from group; potential use of specialised rating tools



Comparable Analysis

Identification of market transactions with similar terms, credit quality, and sector characteristics; database screening for appropriate benchmarks



Risk Adjustment

Calibration for term, security package, covenant structure, seniority, and other commercial terms; development of pricing range rather than single point

Functional Analysis Requirements

Beyond pricing, transfer pricing compliance for financing structures requires comprehensive functional analysis:

- **Decision-making capacity:** Demonstrable authority over lending decisions
- **Risk management functions:** Actual capability to assess and monitor credit risk
- **Financial capacity:** Sufficient capital to bear potential losses
- **Operational substance:** Personnel with appropriate expertise and authority

Transfer pricing for financial transactions has evolved significantly following the OECD's 2020 guidance on financial transactions, with tax authorities increasingly challenging both pricing and substance of intra-group financing arrangements. Defensible documentation requires both quantitative pricing analysis and qualitative functional assessment.³²

³² OECD, 'Transfer Pricing Guidance on Financial Transactions', February 2020, accessed 11 August 2023.

Transfer Pricing: IP Structures and DEMPE Analysis

DEMPE Framework

OECD BEPS Actions 8-10 established the DEMPE framework requiring alignment between economic returns and substantive functions related to intangibles:

- **Development:** Creation and enhancement of IP
- **Enhancement:** Improvement and value addition
- **Maintenance:** Protection and preservation
- **Protection:** Legal defence and safeguarding
- **Exploitation:** Commercial utilisation and monetisation

Legal ownership alone insufficient to justify economic returns without corresponding functions, assets, and risks

The DEMPE framework has fundamentally altered IP holding structures, rendering "IP box" regimes with minimal substance largely obsolete. Viable IP structures now require genuine strategic functions within the IP-holding jurisdiction, with corresponding personnel, expertise, and demonstrable decision-making. This functional substance threshold has increased fixed costs, making IP centralisation economically viable primarily for larger groups.³³

Implementation Challenges

IP holding structures face intensifying scrutiny with significant implementation challenges:

- **Substance threshold:** Increasing expectations for local expertise and decision-making
- **Cost-sharing arrangements:** Closer examination of contribution alignment with benefits
- **Hard-to-value intangibles:** Ex-post outcomes potentially used to assess ex-ante pricing
- **Documentation burden:** Comprehensive evidence of strategic control required
- **Market premium isolation:** Greater challenges in separating market-specific returns

³³ OECD, 'Revised Guidance on the Application of the Transactional Profit Split Method', June 2018, accessed 10 August 2023.

Banking and Treasury: Account Opening Challenges

Banking Due Diligence Expectations

Holding company structures face intensifying scrutiny in the banking sector with extensive due diligence requirements:

Corporate Governance Review

Assessment of board composition, director qualifications, governance documentation, and decision-making protocols

Banks increasingly require evidence of genuine board authority and proper governance implementation

Ownership Structure Analysis

Comprehensive UBO identification throughout structure; verification of ownership percentages; assessment of control arrangements

Particular focus on complex structures, nominee arrangements, and jurisdictions with secrecy provisions

Source of Wealth/Funds Verification

Documentation of ultimate source of wealth; transaction tracing; explanation of fund flows; business rationale validation

Heightened expectations for corroborating evidence beyond self-certification

Banking relationships represent an increasingly significant friction point for holding structures, with account opening timeframes extending to 3-6 months in complex cases. Banks apply risk-based approaches with intensified scrutiny for structures involving high-risk jurisdictions or politically exposed persons. The operational impact of banking constraints now frequently outweighs tax considerations in jurisdiction selection.³⁴

³⁴ Wolfsberg Group, 'Guidance on a Risk-Based Approach for Managing Money Laundering Risks', July 2023, accessed 9 August 2023.

Cash Pooling and In-House Banking

Treasury Centralisation Models

Notional Cash Pooling

Structure: Bank-managed offset arrangement without physical transfer of funds

Advantages: Reduced fund movement; preservation of local liquidity; simplified legal structure; potential interest benefits without physical transfers

Challenges: Limited to certain jurisdictions; bank-specific offerings; potential deemed loan characterisation; right of offset requirements

Physical Cash Pooling

Structure: Actual movement of cash to header account with intercompany positions created

Advantages: Broader jurisdictional availability; genuine centralisation of funds; potentially greater interest optimisation

Challenges: Intercompany loan documentation; withholding tax considerations; transfer pricing compliance; potential thin capitalisation issues

In-House Banking

Structure: Comprehensive treasury function including deposits, loans, FX and payment factory

Advantages: Maximised efficiency; enhanced visibility and control; reduced external banking costs; potential value capture

Challenges: Substantial substance requirements; complex transfer pricing; potential regulatory implications; significant implementation investment

Treasury centralisation delivers operational benefits but creates regulatory complexities that must be carefully managed. Key challenges include withholding tax on interest flows, potential permanent establishment risk from treasury functions, transfer pricing of financial services, and banking regulation considerations where activities approach regulated financial services.³⁵

35 Association of Corporate Treasurers, 'Treasury Centralisation Best Practices', Treasury Management International, June 2023, accessed 8 August 2023.

Accounting and Consolidation: IFRS 10

Consolidation Principles Under IFRS 10

IFRS 10 establishes a control-based model for consolidation requiring assessment of:

- **Power over investee:** Ability to direct relevant activities
- **Exposure to variable returns:** Rights to financial benefits
- **Ability to affect returns:** Link between power and benefits

Control assessment examines voting rights, contractual arrangements, and practical ability to direct activities, potentially extending beyond majority ownership situations.

Consolidation Boundaries

Key consolidation scenarios for holding structures:

- **Full consolidation:** Line-by-line incorporation of controlled entities
- **Equity method:** Single-line recognition of share in associates (significant influence)
- **Fair value accounting:** Mark-to-market for passive investments
- **Special purpose entities:** Substance-based assessment regardless of legal ownership percentage

IFRS 10 emphasises substance over form, potentially requiring consolidation despite ownership below 50% where effective control exists.

Holding Structure Implications

Accounting considerations significantly impact holding structure design, particularly regarding:

- Public company reporting requirements and investor expectations
- Banking covenant compliance and financial ratio management
- Balance sheet presentation and potential off-balance sheet arrangements
- Management reporting and performance evaluation frameworks

Consolidation boundaries under IFRS 10 may differ from legal ownership or tax group definitions, creating potential disconnects between legal structure, tax planning, and financial reporting outcomes that require careful management.³⁶

³⁶ IFRS Foundation, 'IFRS 10 Consolidated Financial Statements', application guidance updated March 2023, accessed 7 August 2023.

Dividend Capacity and Distributable Reserves

Distributable Reserve Constraints by Jurisdiction

UK/Common Law Approach

Distributions generally limited to "realised profits" less "realised losses"

Realisation principle focuses on completed transactions rather than accounting valuations

Detailed guidance from ICAEW Technical Release 02/17BL

Continental European Approach

Typically combines minimum capital maintenance with balance sheet tests

Often requires allocation to legal reserves before distribution permitted

May incorporate solvency tests or board certification requirements

US Approach

Varies by state with either balance sheet tests (assets exceeding liabilities and preferential rights) or insolvency tests

Delaware permits distributions from surplus or current profits

Board certification of permissibility typically required

Distributable reserve constraints significantly impact holding structures, particularly for acquisition vehicles using debt financing. Common challenges include dividend blocks arising from acquisition accounting, goodwill impairment effects on distributable reserves, and coordination of distributable capacity across multiple tiers. Strategic solutions include capital reductions, share premium reclassifications, and merger accounting to create distributable capacity.³⁷

³⁷ Institute of Chartered Accountants in England and Wales, 'Guidance on Realised and Distributable Profits Under the Companies Act 2006', TECH 02/17BL, accessed 6 August 2023.

IP HoldCo Playbook

Strategic Design Principles for IP Holding Structures

Location Selection Factors

- Protective legal environment
- Strong IP enforcement framework
- Robust treaty network
- Favourable exit taxation
- Sophisticated IP litigation capability
- Ability to support required substance

Substance Implementation

- Strategic IP management functions
- Qualified personnel with relevant expertise
- Demonstrable decision-making authority
- Documented development contributions
- Active protection management
- Exploitation strategy control

Documentation Requirements

- Comprehensive IP register
- DEMPE function mapping
- Strategic development roadmaps
- Protection strategy documentation
- Licensing policy framework
- Valuation and transfer pricing support

Implementation Complexity Assessment

Robust IP holding structures now require substantial investment in genuine functions, with implementation complexity varying by scale:

£150K+	6-12	3-5
Annual Operating Cost	Months to Implement	Qualified Staff
Minimum viable substance for mid-sized IP portfolio, including qualified staff, premises, and support services	Typical timeframe for establishing credible IP management functions with proper governance and documentation	Minimum headcount to demonstrate genuine DEMPE functions for a substantial IP portfolio

The viability threshold for IP holding structures has increased substantially, making centralisation economically sensible primarily for larger IP portfolios where efficiency gains outweigh implementation and maintenance costs.³⁸

38 Baker McKenzie, 'Global IP Holding Company Survey', Intellectual Property Review, May 2023, accessed 5 August 2023.

Finance HoldCo Playbook

Strategic Design Principles for Financing Structures

Financing Entity Location Factors

Optimal financing entity jurisdictions combine multiple favourable elements:

- Extensive treaty network reducing withholding taxes
- Domestic exemptions for interest and/or dividend income
- Robust banking infrastructure with access to capital markets
- Stable currency with developed hedging markets
- Sophisticated financial services ecosystem
- Feasibility of maintaining required substance

Substance Implementation Requirements

Contemporary financing entities require significant functional substance:

- Treasury personnel with demonstrable expertise
- Capital allocation and risk management capability
- Financial analysis and credit assessment functions
- Documented decision-making processes
- Board members with financial services backgrounds
- Systems and controls appropriate to activities

Risk Management Framework

Financing entities must establish and document comprehensive risk frameworks:

- Counterparty credit risk assessment methodology
- Interest rate risk management strategy
- Currency risk hedging policies
- Liquidity management parameters
- Concentration limits and diversification policies
- Regular risk reporting and monitoring

Financing structures face intensifying scrutiny of both pricing and substance elements. The most sustainable models involve genuine treasury centres with comprehensive functionality rather than single-purpose financing conduits. Viability depends on maintaining the appropriate functional profile for the specific financing role, with more complex activities requiring correspondingly greater substance.³⁹

³⁹ Deloitte, 'Treasury and Financing Structures: Regulatory Developments', International Tax Review, April 2023, accessed 4 August 2023.

M&A Choreography: Acquisition Structures

Typical Acquisition Structure Components



TopCo/InvestCo Level

Ultimate parent entity typically positioned in investor-friendly jurisdiction; houses equity investment; often serves as management incentive plan platform; may be publicly listed or privately held

MidCo/FinanceCo Level

Intermediate entity often positioned for financing efficiency; may issue bonds or raise senior debt; typically in jurisdiction with favourable interest treatment and withholding tax position; may provide structural subordination

BidCo/AcquisitionCo Level

Immediate acquisition vehicle positioned directly above target; typically established in target jurisdiction or compatible treaty jurisdiction; enables debt push-down; may implement squeeze-out procedures

Target Level

Acquired operating business; post-acquisition integration may involve structural simplification, divisional reorganisation, or carve-out of non-core assets

Acquisition structures must balance multiple objectives including transaction certainty, financing efficiency, tax optimisation, and governance clarity. Contemporary structures increasingly emphasise commercial rationale and operational efficiency over complex tax planning. Implementation timing is critical, with pre-acquisition structuring generally offering greater flexibility than post-acquisition reorganisation.⁴⁰

40 Allen & Overy, 'M&A Structuring in the Current Regulatory Environment', M&A Review, June 2023, accessed 3 August 2023.

Debt Push-Down Mechanics

Common Implementation Approaches

Structural Approaches

- **BidCo Debt + Target Merger:** Acquisition debt at BidCo level followed by upstream merger with target
- **Post-Acquisition Dividend:** Target declares dividend creating receivable, followed by debt-funded settlement
- **Target Refinancing:** Target raises debt post-acquisition to fund distribution to new shareholders
- **Debt-Funded Share Buyback:** Target repurchases shares from certain shareholders using debt financing

Key Constraints

- **Financial assistance prohibitions:** Restrictions on target providing security or financial support for acquisition of its own shares
- **Corporate benefit requirements:** Necessity to demonstrate transaction benefits target entity itself
- **Distributable reserves limitations:** Capacity constraints for dividend-based approaches
- **Interest deductibility restrictions:** EBITDA-based limitations and potential anti-avoidance provisions

Jurisdiction-Specific Considerations

Implementation approaches vary significantly by jurisdiction with specific challenges:

- **UK:** Whitewash procedure for financial assistance; SSE requirements for merger approaches
- **Netherlands:** Fiscal unity advantages but strict financial assistance rules
- **Germany:** Balance sheet tests and restrictive financial assistance interpretation
- **US:** Debt-equity characterisation risk; interest expense limitation under IRC §163(j)

Debt push-down strategies face increasing scrutiny, with tax authorities regularly challenging arrangements lacking clear commercial rationale beyond tax advantages. Successful implementation requires careful coordination of corporate, accounting, and tax considerations.⁴¹

⁴¹ Slaughter and May, 'Acquisition Financing Structures: International Comparison', Banking and Finance Review, July 2023, accessed 2 August 2023.

LBO Case Study: HoldCo-BidCo Stack

Illustrative Transaction Structure

Sources and Uses (£ millions)

Sources	
Equity investment	400
Senior debt	500
Mezzanine debt	100
Total	1,000
Uses	
Purchase consideration	950
Transaction costs	30
Working capital	20
Total	1,000

Key Transaction Parameters

- **Target:** UK manufacturing business with £100M EBITDA
- **Enterprise value:** £950M (9.5x EBITDA)
- **Equity contribution:** 40% of total funding
- **Leverage:** Senior debt at 5.0x EBITDA; total debt at 6.0x EBITDA
- **Projected deleveraging:** Reduction to 3.0x EBITDA within 5 years
- **Exit strategy:** Strategic sale or IPO with 5-7 year horizon

Implementation Sequence

1. Establish Luxembourg HoldCo with UK tax resident BidCo subsidiary
2. Equity investment into HoldCo with downstream loan to BidCo
3. BidCo raises acquisition facilities with target guarantee implemented post-acquisition
4. Post-acquisition refinancing of target debt and implementation of group-wide facilities
5. Establishment of covenant monitoring and compliance reporting framework

This structure balances financing efficiency with governance clarity and exit flexibility. The approach is illustrative only - actual structures require tailoring to specific circumstances and ongoing review against evolving regulatory standards.⁴²

42 PwC, 'Private Equity Acquisition Structures', Deal Advisory Publication, July 2023, pp. 12-19, accessed 1 August 2023.

Family HoldCo: Governance Considerations

Key Governance Elements

- **Board composition:** Balancing family representatives, independent directors, and subject-matter experts
- **Family council interface:** Clear delineation between family forum and corporate governance
- **Succession planning:** Transparent framework for leadership transition and next-generation involvement
- **Decision authority:** Explicit delegation matrix specifying approvals required for various actions
- **Conflict resolution:** Predetermined mechanisms for addressing disagreements
- **Information rights:** Clear protocols for shareholder reporting and transparency

Shareholder Agreement Provisions

Family holding structures typically require robust shareholder agreements addressing:

- **Transfer restrictions:** Right of first refusal, tag-along and drag-along provisions
- **Liquidity mechanisms:** Structured exit opportunities or redemption rights
- **Dividend policy:** Predictable distribution framework balancing reinvestment and income
- **Family employment:** Clear criteria for family member roles within the business
- **Dispute resolution:** Mediation and arbitration protocols to avoid public litigation
- **Pre-emptive rights:** Parameters for new capital raises and share issuances

Valuation Policy Framework

Family holding structures require predetermined valuation methodologies for various scenarios:

- Regular reporting to family shareholders
- Share transfers between family members
- Redemptions or partial liquidity events
- Estate planning and intergenerational transfers
- New investment opportunities

Family holding structures present unique governance challenges requiring careful balance between family dynamics and commercial imperatives. The most successful structures combine clear corporate discipline with mechanisms accommodating family values and long-term perspective.⁴³

⁴³ KPMG, 'Family Business Governance Frameworks', Private Client Advisory, May 2023, accessed 31 July 2023.

Risk Register: Legal, Tax and Operational

Key Risk Categories for Holding Structures

1 Legal and Regulatory Risks

High Impact, High Probability:

- Beneficial ownership register expansion (85-95%)
- EU Unshell Directive implementation (65-80%)
- Financial assistance rule enforcement (50-65%)

High Impact, Lower Probability:

- Directors' liability expansion (25-40%)
- Capital control introduction (15-30%)

3 Operational Constraints

High Impact, High Probability:

- Banking relationship friction (80-95%)
- Compliance cost escalation (75-90%)
- Substance requirement increases (70-85%)

High Impact, Lower Probability:

- Group financing disruption (25-40%)
- Service provider withdrawal (20-35%)

2 Tax Authority Challenges

High Impact, High Probability:

- Transfer pricing adjustments (75-90%)
- Beneficial ownership challenges (70-85%)
- Substance-based treaty denials (65-80%)

High Impact, Lower Probability:

- Retroactive tax law changes (20-35%)
- General anti-avoidance application (30-45%)

4 Reputational Concerns

High Impact, High Probability:

- Media scrutiny of structures (65-80%)
- ESG-driven investor pressure (60-75%)
- Transparency expectation increases (75-90%)

High Impact, Lower Probability:

- Data leaks/exposures (15-30%)
- Advocacy group targeting (20-35%)

Risk assessment should be continuously updated to reflect evolving regulatory developments and emerging trends. The most significant emerging risks involve substance requirements, banking relationship friction, and reputational considerations.⁴⁴

⁴⁴ EY, 'Global Tax Risk Survey', June 2023, accessed 30 July 2023.

Scenario Analysis: Regulatory Trajectories

Alternative Policy Trajectories and Structural Implications

Base Case: Incremental Harmonisation

Probability: 60-75%

Continued implementation of BEPS measures; gradual Pillar Two adoption; increasing substance requirements; enhanced transparency; stable but elevated compliance burden

Structural Implications: Migration toward substantive regional hubs; simplified two-tier structures; focus on operational alignment rather than tax minimisation

Accelerated Integration

Probability: 15-30%

Rapid EU Unshell implementation; expanded minimum tax regimes; coordinated substance enforcement; multilateral beneficial ownership access; substantially elevated compliance requirements

Structural Implications: Consolidation into single-jurisdiction structures; prioritisation of administrative efficiency over tax planning; direct holding models with minimal layering

Fragmentation and Competition

Probability: 10-25%

Uneven implementation of global standards; renewed jurisdiction competition; divergent substance interpretations; selective information exchange; variable compliance frameworks

Structural Implications: Selective use of differentiated regimes; increased structural complexity; jurisdiction-specific optimisation strategies; heightened adaptability requirements

Regulatory trajectory analysis suggests the most probable scenario involves continued incremental harmonisation with targeted enforcement of substance requirements. This environment favours structures with genuine operational alignment, regional consolidation, and demonstrable economic purpose beyond tax considerations. The probability of sustained viability for pure tax-driven structures continues to decline regardless of specific trajectory.⁴⁵

45 Oxford University Centre for Business Taxation, 'The Future of International Corporate Taxation', Policy Paper Series, June 2023, accessed 29 July 2023.

Cost Model: Set-Up and Maintenance

Establishment Costs by Jurisdiction Type

£15K-25K

Simplified Offshore Structure

Basic incorporation in offshore jurisdiction with standard services and minimal substance; suitable primarily for asset-holding with limited activity

£35K-50K

Mid-Tier Holding Structure

Establishment in mainstream international financial centre with moderate substance implementation; appropriate for standard holding functions

£75K-150K+

Full-Substance Structure

Comprehensive implementation in premium jurisdiction with complete substance provision; necessary for financing or IP holding structures

Annual Maintenance Cost Components

Core Compliance Costs

- **Corporate secretarial:** £3K-8K annually
- **Accounting and audit:** £5K-25K+ depending on complexity
- **Tax compliance:** £5K-20K+ based on activity
- **Legal maintenance:** £3K-10K for routine matters
- **Regulatory filings:** £2K-7K including economic substance reporting

Substance Provision Costs

- **Director services:** £10K-40K+ depending on involvement
- **Office facilities:** £10K-50K+ based on jurisdiction
- **Staff costs:** £50K-200K+ for qualified personnel
- **Technology infrastructure:** £5K-15K for systems
- **Travel and meetings:** £5K-20K for governance activities

Cost considerations have become increasingly significant as substance requirements elevate the fixed costs of maintaining compliant structures. This cost trajectory has made simplified structures economically advantageous for many mid-sized groups, with full multi-tiered structures increasingly viable only for larger enterprises where scale justifies the compliance investment.⁴⁶

⁴⁶ TMF Group, 'Global Business Complexity Index', July 2023, accessed 28 July 2023.

Red Flags and Failure Modes

Critical Diagnostic Questions

Substance and Governance Concerns

- Are board meetings conducted physically in the jurisdiction of incorporation with proper documentation of genuine deliberation?
- Do directors possess appropriate qualifications and demonstrable decision-making authority rather than merely rubber-stamping parent company directives?
- Does the entity maintain physical premises commensurate with claimed activities and sufficient qualified staff to perform its functions?
- Are corporate benefit considerations explicitly documented for guarantees, loans, and other related-party transactions?

Financial and Operational Issues

- Does the capital structure align with the entity's functional profile, with adequate equity to support claimed risk-bearing?
- Are all related-party transactions governed by proper documentation executed contemporaneously rather than retrospectively?
- Is there demonstrable commercial rationale for the structure beyond tax benefits, with clear operational purpose?
- Are banking relationships established with proper KYC/AML compliance and documented source of funds/wealth narratives?

Tax and Regulatory Red Flags

- Has beneficial ownership been properly disclosed to relevant registries and financial institutions without reliance on nominee arrangements?
- Do intercompany agreements contain economic terms defensible under transfer pricing principles with proper functional analysis support?
- Has treaty access been assessed under current interpretations of beneficial ownership and principal purpose tests rather than historical standards?
- Is the structure appropriately disclosed under applicable mandatory disclosure regimes and reportable arrangement frameworks?

Early identification of these red flags enables remedial action before regulatory challenges arise. The most common failure modes involve substance deficiencies, inadequate governance documentation, and misalignment between contractual allocations and functional reality. Regulatory scrutiny typically focuses on these vulnerabilities rather than technical compliance with specific provisions.⁴⁷

⁴⁷ Deloitte, 'Tax Governance in a Transparent World', Global Tax Risk Survey, May 2023, accessed 27 July 2023.

Implementation Roadmap: 90-180-365 Day Plan

Phased Implementation Approach



Effective implementation requires disciplined project management with clear milestones and accountable owners for each workstream. The most successful implementations maintain flexibility to adapt to evolving requirements while ensuring core compliance obligations are met from inception. Particular attention should be paid to banking relationship establishment, which frequently becomes a critical path constraint due to extended due diligence timeframes.⁴⁸

48 PwC, 'International Structuring Implementation Guide', Global Tax Structuring, April 2023, accessed 26 July 2023.

Alternatives and Complements: Foundations

Key Characteristics of Foundations

- **Legal structure:** Self-owned entity without shareholders or equivalent owners
- **Governance:** Administered by board or council according to founder's wishes
- **Purpose:** Can be established for private benefit rather than charitable aims
- **Assets:** Owns assets directly rather than through trust arrangement
- **Duration:** Can exist in perpetuity without rule against perpetuities constraints
- **Recognition:** Civil law concept with variable common law treatment

Strategic Applications

Foundations offer distinctive advantages in specific contexts:

- **Estate planning:** Succession vehicle with potential perpetual duration
- **Asset protection:** Segregation of assets with proprietary rather than contractual basis
- **Governance frameworks:** Institutional structure for family or business governance
- **Orphan structures:** Entity without beneficial ownership for specific purposes
- **Impact initiatives:** Framework for philanthropic or social objectives

Foundations provide viable alternatives to corporate holding structures in specific contexts, particularly for family governance, succession planning, and long-term asset preservation. They generally require careful consideration of recognition issues in common law jurisdictions and potential classification challenges for tax purposes.⁴⁹

Leading Foundation Jurisdictions

European Models

- **Liechtenstein:** Stiftung with extensive jurisprudence and flexibility
- **Austria:** Privatstiftung with detailed statutory framework
- **Netherlands:** Stichting with strong governance tradition

Common Law Adaptations

- **Malta:** Private Foundation legislation with hybrid elements
- **Jersey:** Foundations Law with common law recognition
- **Isle of Man:** Foundation Act incorporating trust concepts

⁴⁹ STEP Journal, 'Private Foundations in Wealth Structuring', Special Report, May 2023, accessed 25 July 2023.

Alternatives and Complements: Trusts with Private Trust Companies

Trust Structure Elements

- **Settlement/indenture:** Document establishing trust terms and powers
- **Trustee:** Legal owner with fiduciary obligations to beneficiaries
- **Beneficiaries:** Individuals or classes entitled to benefit
- **Protector:** Optional oversight role with specified powers
- **Letter of wishes:** Non-binding guidance from settlor
- **Governing law:** Determines interpretation and enforceability

Private Trust Company Model

A Private Trust Company (PTC) is a purpose-formed entity that serves as trustee of family trusts, offering several advantages:

- **Governance control:** Family influence over trustee decisions
- **Continuity:** Institutional framework without individual trustee limitations
- **Consolidated oversight:** Unified administration of multiple trusts
- **Flexibility:** Ability to hold diverse assets including operating businesses
- **Privacy:** Confidential structure without commercial trustee involvement

Application in Holding Structures

Trust and PTC arrangements complement corporate holding structures in several contexts:

- **Ownership tier:** Trust holding shares in TopCo to address succession and governance
- **Asset protection:** Trust ownership of holding structure to provide additional ring-fencing
- **Family governance:** PTC board serving as family council with professional integration
- **Succession planning:** Gradual transition of control through PTC board composition
- **Beneficial ownership:** Thoughtful structuring to address transparency requirements

Trust structures with PTCs offer complementary planning opportunities when integrated with corporate holding structures, particularly for family enterprises with multi-generational objectives. Implementation requires careful consideration of tax implications in relevant jurisdictions and compliance with expanding beneficial ownership disclosure regimes.⁵⁰

⁵⁰ Society of Trust and Estate Practitioners, 'Private Trust Companies: Global Best Practices', STEP Handbook, April 2023, accessed 24 July 2023.

Alternatives and Complements: Partnerships and LLPs

Partnership Structures for Holding Functions

Limited Partnerships

Key features: Limited liability for limited partners; full liability for general partners; typically tax-transparent; flexible governance and economic arrangements

Applications: Investment holding vehicles; family office structures; private equity and venture capital platforms; carried interest planning

Leading jurisdictions: Delaware, Cayman Islands, Luxembourg, Scotland, Jersey

Limited Liability Partnerships

Key features: Limited liability for all partners; typically tax-transparent; more regulated governance framework; separate legal personality

Applications: Professional service firm structures; joint ventures; investment consortiums; certain regulated activities

Leading jurisdictions: UK, Singapore, US (state-specific), UAE (DIFC/ADGM)

Partnership Limited by Shares

Key features: Hybrid structure combining partnership and corporate elements; limited partners hold shares; general partner manages operations

Applications: Listed investment structures; regulated investment funds; family holding vehicles with public components

Leading jurisdictions: Luxembourg (SCSp), France (SCA), Germany (KGaA)

Strategic Advantages in Holding Structures

Partnership structures offer distinct advantages for specific holding applications:

- **Tax efficiency:** Single layer of taxation with potential for allocational flexibility
- **Governance flexibility:** Customisable management structures through partnership agreements
- **Economic versatility:** Ability to create bespoke economic arrangements between stakeholders
- **Privacy:** Generally reduced public disclosure requirements (jurisdiction-dependent)
- **Accommodating regulatory treatment:** Often exempt from certain corporate regulations

Partnership structures can either complement traditional corporate holding structures or serve as alternatives for specific functions, particularly in investment contexts. Their utility is highly dependent on stakeholder tax profiles and specific objectives.⁵¹

⁵¹ Maples Group, 'Partnership Structures in International Planning', Legal Guide, May 2023, accessed 23 July 2023.

Alternatives and Complements: Protected Cell Companies

Segregated Portfolio Models

Protected Cell Companies (PCCs)

Key features: Single legal entity with statutorily segregated cells; each cell's assets protected from liabilities of other cells; unified governance structure

Applications: Captive insurance; investment funds; asset holding; structured products

Leading jurisdictions: Guernsey, Jersey, Isle of Man, Malta, Cayman Islands

Segregated Portfolio Companies (SPCs)

Key features: Functionally equivalent to PCCs with jurisdictional terminology variations; statutory asset segregation; single corporate umbrella

Applications: Multi-class investment funds; family office structures; risk segregation

Leading jurisdictions: Cayman Islands, BVI, Bermuda, Mauritius

Incorporated Cell Companies (ICCs)

Key features: Parent company with separately incorporated cells, each with distinct legal personality; stronger segregation than PCCs; unified administration

Applications: Enhanced risk isolation; structures requiring distinct legal personality; regulated financial services

Leading jurisdictions: Jersey, Guernsey, Isle of Man, Malta

Strategic Applications in Holding Structures

Cell company structures offer valuable features for specific holding contexts:

- **Asset class segregation:** Isolation of different investment categories with unified management
- **Family branch separation:** Distinct pools for different family units under common governance
- **Risk compartmentalisation:** Isolation of high-risk assets or activities
- **Operational efficiency:** Single administrative framework with legal segregation

Cell structures provide unique statutory asset segregation that can complement traditional holding structures in specific contexts. Recognition in jurisdictions without equivalent legislation requires careful analysis.⁵²

⁵² Walkers, 'Protected Cell Companies: Applications and Limitations', Offshore Legal Review, June 2023, accessed 22 July 2023.

Policy Trajectory: Wealth Tax Revival

Emerging Wealth Tax Initiatives

Net Wealth Taxes

Current implementation: Switzerland, Norway, Spain (limited)

Emerging proposals: Renewed discussion in multiple OECD jurisdictions

Typical structure: Annual levy on net assets above threshold, often with rate progression

Implementation probability: Moderate (35-50%) with limited jurisdictional scope

Unrealised Gains Taxation

Current implementation: Limited application in specific contexts

Emerging proposals: US "Billionaire Income Tax" concept; academic proposals elsewhere

Typical structure: Taxation of asset appreciation without disposition

Implementation probability: Low-moderate (15-35%) with experimental approach likely

Enhanced Property Taxation

Current implementation: Various jurisdictions with increasing rates

Emerging proposals: Higher rates for corporate/trust ownership; lookthrough provisions

Typical structure: Surcharges on non-individual ownership structures

Implementation probability: High (65-80%) with continued expansion

Implications for Holding Structures

Wealth tax initiatives potentially impact holding structures in several dimensions:

- **Lookthrough provisions:** Increasing attribution of underlying assets to ultimate beneficial owners
- **Valuation requirements:** More frequent and rigorous valuation of private assets
- **Liquidity planning:** Need for liquid resources to satisfy tax obligations on illiquid holdings
- **Jurisdiction selection:** Consideration of wealth tax treaties and double taxation relief

While comprehensive wealth taxation remains politically challenging, targeted measures focused on specific asset classes or ownership structures show higher implementation probability. Prudent structuring increasingly requires consideration of these emerging risks.⁵³

⁵³ London School of Economics, 'Wealth Tax Commission Final Report', December 2020, with 2023 Policy Update, accessed 21 July 2023.

Policy Trajectory: Minimum Tax Expansion

Global Minimum Tax Evolution

Current Framework

- **Scope:** MNEs with €750 million+ revenue
- **Rate:** 15% minimum effective tax rate
- **Mechanism:** Income Inclusion Rule with top-up tax
- **Implementation:** Phased from 2023/2024
- **Carve-outs:** Substance-based exclusions for tangible assets and payroll

Projected Developments

- **Scope expansion:** Potential reduction in revenue threshold
- **Rate adjustment:** Possible increase from initial 15% level
- **Carve-out reduction:** Diminishing substance-based exclusions
- **Implementation uniformity:** Convergence of national approaches
- **Administrative streamlining:** Standardised compliance frameworks

Probability Assessment of Future Developments

75-90%

Implementation Expansion

Adoption by additional jurisdictions beyond initial implementing countries

40-55%

Threshold Reduction

Lowering of €750 million revenue threshold within 5-7 years

25-40%

Rate Increase

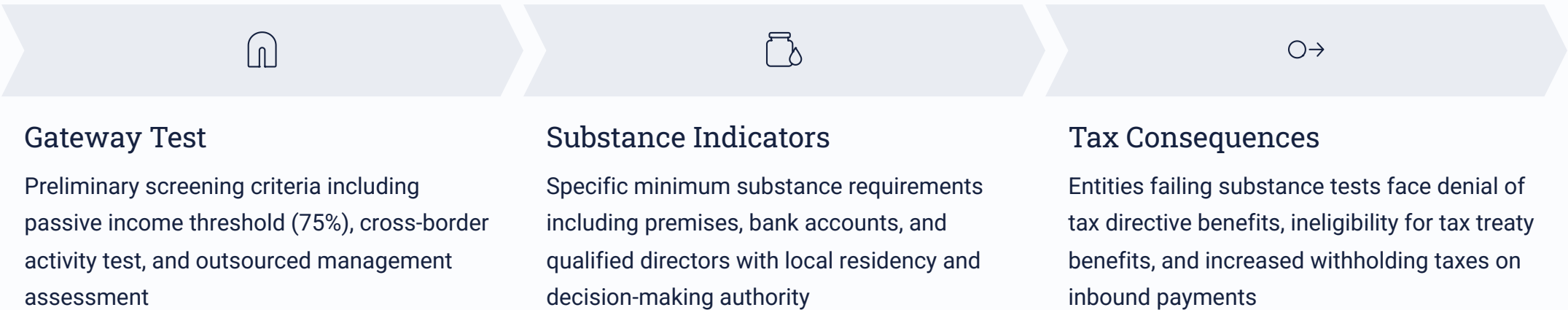
Minimum rate increase above 15% within 5-7 years

The global minimum tax framework represents a fundamental shift in international tax architecture with significant implications for holding structures. The initial implementation phase will likely be followed by refinement and potential expansion, reducing tax rate differentials as a primary driver of holding company location decisions. This reinforces the importance of non-tax factors in jurisdiction selection.⁵⁴

54 OECD, 'Pillar Two Implementation Progress Report', July 2023, accessed 20 July 2023.

Policy Trajectory: Unshell Enforcement

EU Unshell Directive Overview



Implementation Trajectory Analysis

Current Status (as of August 2023)

- Initial proposal published December 2021
- Significant modifications through legislative process
- Implementation delayed from original timeline
- Ongoing technical discussions on implementation details
- Member state concerns regarding administrative burden

Projected Developments

- **Revised timeline:** Implementation likely 2024/2025
- **Scope adjustments:** Potential threshold modifications
- **Substance definition:** Ongoing refinement of requirements
- **Carve-outs:** Additional exemptions for legitimate structures
- **Enforcement approach:** Phased implementation with initial focus on egregious cases

The Unshell Directive represents the most comprehensive EU-level approach to substance requirements, with significant implications extending beyond EU-based structures. Even if implementation is delayed or modified, the directive establishes a reference framework likely to influence substance expectations globally. Probability of implementation in substantively similar form: 65-80%, with initial enforcement focused on clear shell entities.⁵⁵

⁵⁵ European Commission, 'Unshell Directive Implementation Progress Report', June 2023, accessed 19 July 2023.

Policy Trajectory: Transparency Standards

Evolving Transparency Framework

Beneficial Ownership Registers

Current status: Widely implemented with variable access models; EU public access partially curtailed by ECJ ruling (Nov 2022)

Trajectory: Continued expansion of registers with increasing verification requirements; enhanced information exchange between authorities

Probability of significant expansion: 80-95% with focus on verification rather than public access

Automatic Exchange of Information

Current status: CRS fully operational with 100+ participating jurisdictions; FATCA compliance embedded; DAC6/MDR implemented in major jurisdictions

Trajectory: Expansion of reportable information categories; enhanced verification protocols; increased focus on data utilisation

Probability of enhanced standards: 70-85% with expanded scope rather than fundamental changes

Country-by-Country Reporting

Current status: BEPS Action 13 implemented by 90+ jurisdictions; public CbCR expanding for certain sectors

Trajectory: Lower reporting thresholds; increased public disclosure requirements; enhanced standardisation

Probability of scope expansion: 65-80% with sector-specific approach likely

Transparency standards continue to evolve toward greater information collection, verification, and exchange between authorities, though public access has faced certain legal constraints. The aggregate effect creates an environment where holding structures must be designed with the assumption of full visibility to tax authorities across all relevant jurisdictions. This transparency foundation substantially increases the risk associated with aggressive tax planning.⁵⁶

⁵⁶ OECD, 'Transparency and Exchange of Information for Tax Purposes: 2023 Consolidated Progress Report', accessed 18 July 2023.

Q&A Appendix: Likely Board Questions

Strategic Questions and Responses

"How vulnerable are our existing structures to regulatory changes?"

Vulnerability assessment requires evaluation across multiple dimensions including substance adequacy, commercial rationale, documentation quality, and governance implementation. The most significant near-term risks involve substance challenges to treaty access and potential application of principal purpose tests. Structures established primarily for tax advantages without operational substance face significantly elevated risk profiles, while those with demonstrable commercial purposes aligned with actual activities remain defensible.

"What is the optimal balance between tax efficiency and compliance certainty?"

The risk-reward balance has shifted decisively toward compliance certainty for most enterprises. Marginal tax savings rarely justify material compliance or reputational risks, particularly for public companies or regulated entities. We recommend prioritising operational alignment, substance adequacy, and governance clarity, with tax efficiency as a secondary consideration within these parameters. For most groups, simplified structures with clear commercial rationale now deliver superior risk-adjusted outcomes.

"Should we consider restructuring proactively or wait for further clarity?"

Proactive restructuring merits consideration where existing arrangements exhibit clear vulnerability, particularly regarding substance deficiencies, treaty access risks, or documentation inadequacies. Conversely, well-designed structures with appropriate substance may benefit from stability during evolving implementation. The optimal approach typically involves targeted enhancement of vulnerable elements rather than wholesale restructuring, focusing particularly on governance implementation, substance reinforcement, and documentation quality.

"What substance level is truly required for our structure to be defensible?"

Substance requirements scale with complexity and value of functions performed. For pure holding activities, minimum requirements typically include qualified resident directors, appropriate premises, local board meetings with documented decision-making, and dedicated bank accounts with local signatories. For financing or IP functions, substantially higher substance thresholds apply, including qualified personnel performing DEMPE functions or financial risk management. The appropriate level is determined by specific activities rather than uniform standards.

"How does Pillar Two impact our holding structure strategy?"

Pillar Two fundamentally alters the holding structure calculus by establishing a 15% effective tax rate floor for large multinational groups. This diminishes traditional tax rate arbitrage opportunities and elevates the importance of non-tax factors in jurisdiction selection. For in-scope groups, we recommend evaluating structures primarily on operational efficiency, substance alignment, governance quality, and exit flexibility, with tax rate advantages becoming secondary and potentially temporary. Substance-based carve-outs reinforce the value of genuine local activity.

Board-level discussions should focus on strategic principles and risk appetite rather than technical details. The most productive approach emphasises alignment between structure and genuine business objectives, with appropriate balance between efficiency and compliance certainty.⁵⁷

57 Institute of Directors, 'Board-Level Tax Governance: Best Practices', Governance Insight Series, April 2023, accessed 17 July 2023.

Glossary of Key Terms

ATAD (Anti-Tax Avoidance Directive): EU directives implementing BEPS measures including interest limitation, CFC rules, anti-hybrid provisions, and exit taxation requirements.

Beneficial Ownership: Substantive economic ownership concept determining eligibility for treaty benefits, requiring genuine economic interest beyond mere legal title or conduit function.

BEPS (Base Erosion and Profit Shifting): OECD initiative addressing tax planning strategies exploiting gaps in tax rules to artificially shift profits to low-tax jurisdictions.

CFC (Controlled Foreign Corporation): Foreign subsidiary whose income may be attributed to parent company under anti-deferral regimes when certain ownership and passive income thresholds are met.

DEMPE: Development, Enhancement, Maintenance, Protection, and Exploitation functions related to intangible assets, used to determine appropriate allocation of returns in transfer pricing analysis.

Economic Substance: Requirements for entities to demonstrate genuine economic activities and local presence proportionate to the income earned, with specific tests varying by jurisdiction.

GloBE (Global Anti-Base Erosion): OECD Pillar Two rules establishing global minimum effective tax rate of 15% for large multinational enterprises.

IIR (Income Inclusion Rule): Pillar Two mechanism requiring parent entity to pay top-up tax when subsidiaries are subject to effective tax rate below 15%.

Limitation on Benefits (LOB): Treaty provisions restricting benefits to entities meeting specific objective criteria regarding ownership, activities, and connection to treaty jurisdiction.

MLI (Multilateral Instrument): Treaty modifying more than 1,400 bilateral tax agreements simultaneously to implement BEPS measures without individual renegotiation.

Participation Exemption: Tax regime providing partial or full exemption for dividends and/or capital gains received from qualifying subsidiaries to prevent double taxation.

Principal Purpose Test (PPT): Treaty anti-abuse provision denying benefits if obtaining those benefits was one of the principal purposes of an arrangement or transaction.

QDMTT (Qualified Domestic Minimum Top-up Tax): Pillar Two-compliant domestic minimum tax allowing source jurisdiction to impose top-up tax before parent jurisdiction.

Substantial Shareholding Exemption (SSE): Tax relief for capital gains on disposal of qualifying business shareholdings, with specific requirements varying by jurisdiction.

TopCo-MidCo-BidCo: Multi-tiered holding structure with ultimate parent (TopCo), intermediate entity (MidCo), and acquisition vehicle (BidCo).

UTPR (Undertaxed Payments Rule): Secondary Pillar Two rule denying deductions or requiring equivalent adjustment to allocate top-up tax when IIR doesn't apply.

This glossary provides simplified explanations of complex concepts. Precise technical definitions may vary based on specific jurisdictional implementation and continue to evolve through ongoing international developments and case law interpretation.⁵⁸

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Always consult qualified legal, tax, and financial advisers in relevant jurisdictions before implementing any holding structure or related arrangements. Local advice is essential given the complexity and rapid evolution of international tax and regulatory requirements.⁵⁹

⁵⁹ Professional Standards Committee, 'Guidance on Disclaimer Requirements for Tax Advisory Materials', International Fiscal Association, March 2023, accessed 15 July 2023.