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CFE GAAR Survey:
Anti-Abuse and Aggressive Tax Planning Rules in European Countries
(2016 update)

This survey provides an overview on anti-abuse rules and rules against aggressive tax planning in EU law and the law of 19 European countries, including, for some countries, a selection of relevant case law: Section 1 deals with general anti abuse rules (GAARs). Section 2 lists specific anti-abuse rules, in the context of a) the Parent-Subsidiary Directive, b) the Interest & Royalties Directive, and c) the Tax Merger Directive. Section 3 deals with rules against Aggressive Tax Planning.

The information has been provided by the members of the CFE Fiscal Committee. This update reflects the situation of 1 January 2016. New information has been added for the EU, Belgium, Finland, France, Germany, Italy, Malta, the Netherlands, Poland, Romania and Slovakia. The validity of the information provided has been confirmed for the Czech Republic, Spain and Switzerland.

Translations into English are unofficial translations. Neither CFE, its representatives and staff, nor its member organisations accept any responsibility for the content of this overview. If you should encounter any inaccuracies, thank you for contacting Rudolf Reibel, CFE Fiscal and Professional Affairs Officer (link).
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1. General Anti Abuse Rule

Country	Provision, link	content / wording	Case-law / other remarks
EU	On 28 January 2016, the European Commission adopted a proposal for a Directive against tax avoidance, COM(2016)26.	Proposal for a Directive against Tax Avoidance: *"Article 7* *General anti-abuse rule* *1.Non-genuine arrangements or a series thereof carried out for the essential purpose of obtaining a tax advantage that defeats the object or purpose of the otherwise applicable tax provisions shall be ignored for the purposes of calculating the corporate tax liability. An arrangement may comprise more than one step or part.* *2.For the purposes of paragraph 1, an arrangement or a series thereof shall be regarded as non-genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.* *3.Where arrangements or a series thereof are ignored in accordance with paragraph 1, the tax liability shall be calculated by reference to economic substance in accordance with national law."* Recital 9: *"General anti-abuse rules (GAARs) feature in tax systems to tackle abusive tax practices that have not yet been dealt with through specifically targeted provisions. GAARs have therefore a function aimed to fill in gaps, which should not affect the applicability of specific anti-abuse rules. Within the Union, the application of GAARs should be limited to arrangements that are 'wholly artificial' (non-genuine); otherwise, the taxpayer should have the right to choose the most tax efficient structure for its commercial affairs. It is furthermore important to ensure that the GAARs apply in domestic situations, within the Union and vis-à-vis third countries in a uniform manner, so that their scope and results of application in domestic and cross-border situations do not differ."*	The proposed GAAR is designed as a minimum standard (Art.3 of the Directive proposal), allowing stricter rules for the protection of domestic tax bases. Commission´s explanatory memorandum: "*In compliance with the acquis, the proposed GAAR is designed to reflect the artificiality tests of the CJEU where this is applied within the Union."*

Austria	Yes: § 22 Bundesabgabe nordnung (BAO) – Federal Fiscal Code). [(link)]()	*§ 21. (1) For the appraisal of tax questions, from an economic viewpoint, the true economic substance and not the outward appearance of the facts are decisive.* *§ 22(1) BAO provides that abuse of legal forms and arrangements under civil law cannot reduce or circumvent tax liability. If such abuse exists, under § 22(2) BAO taxes must be levied in accordance with a legal structure appropriate to the economic transactions, facts, and circumstances.*	There are dozens of court decisions and a huge amount of scholarly discussion. In the international area, the following cases may be mentioned: Outbound Investments: VwGH (Austrian Supreme Administrative Court), 9 December 2004, 2002/14/0074 (*Dublin Docks I*); VwGH, 10 August 2005, 2001/13/0018 (*Dublin Docks II*); VwGH, 19 January 2005, 2000/13/0176 (*Hong Kong*); VwGH, 22 September 2005, 2001/14/0188 (*Jersey I*); VwGH, 24 July 2007, 2007/14/0029 (*Jersey II*); VwGH, 18 October 2006, 2003/13/0031 (*Guernsey I*); VwGH, 3 September 2008, 2007/13/0031 (*Guernsey II*); VwGH, 29 November 2006, 2003/13/0026 (*Luxemburg*). – Inbound Investments: VwGH, 10 December 1997, 93/13/0185 (*Treaty Shopping I*); VwGH, 26 July 2000, 97/14/0070 (*Treaty Shopping II*). – All decisions by the Austrian Supreme Administrative Court are available at www.ris.bka.gv.at.
Belgium	Yes, Article 344, §1 WIB/CIR 1992 Article 344, §1 Belgian Income Tax Code 1992; link (French: p.382-)	*Legal acts cannot be opposed to the tax authorities, when the tax authorities demonstrate tax abuse based on objective circumstances.* *There will be tax abuse when the taxpayer through his legal acts* - *either puts himself outside the scope of a legal provision contrary to that provision's objectives* - *or claims a tax benefit offered by a legal provision and the granting of that benefit would be contrary to that provision's objectives and the taxpayer essentially wants to obtain that benefit* *The taxpayer can deliver counter-proof by demonstrating that the choice for his legal acts is justified by other motives than tax avoidance.* *If the taxpayer cannot deliver the counter proof, the taxable base and the tax calculation are restored in such a way that the transaction will be subject to taxation as if that abuse had not taken place.*	The constitutional court in a judgment of 30 October 2013 stated that the new GAAR provision does not violate, under certain conditions, the principles of the Belgian constitution.

Czech Rep.	Yes, Daňový řád, Administration of taxes, Article 8 (3)	*Substance over form*	Some case law exists, but the Czech Republic is not a case law country.
Finland	Yes. Section 28 of the Tax Procedure Act.	*If a circumstance or a measure has been presented in a legal form that does not correspond to the actual nature or the purpose of the matter, the tax assessment must be conducted as if the actual form of the transaction had been followed. If the sales price, other remuneration or the payment term in a sales or other agreement is determined, or other action entered into, clearly in the purpose of avoiding payable taxes, the taxable income and capital can be estimated.* *The general anti-avoidance provision explicitly states that this provision may only be applied if the taxpayer cannot prove that :* - *The form of the transactions corresponds to its substance ; or* - *The obvious purpose of the transactions has not been to avoid taxes* *Section 28 of the Tax Procedure Act provides for a general anti-avoidance / substance-over-form provision. The rule allows the Finnish tax authorities or administrative courts to re-characterize any transaction and assess tax consequenses as if the true and correct form would have been used, provided that it is evident that the transaction has been carried out in order to avoid Finnish tax. The provision also allows to re-characterize series of seemingly independent transactions as a whole or to decompose one transaction into several distinct steps.*	Due to the non-specific nature of the Finnish general anti-avoidance rule, principles of tax avoidance are based materially on legal practice. Conventionally, the general anti-avoidance rule has not been applied if the taxpayer has been able to prove that there is no inconsistency between the legal form and true nature of the transaction or if the taxpayer has demonstrated that the motive of the transaction has not been to avoid taxes. Tax avoidance allegation has been usually dismissed if a taxpayer has been able to demonstrate business reasons for the transaction. In the recent case law the demonstration of the business reasons by the taxpayer was not sufficient, but instead the SAC (Supreme Administrative Court) evaluated the applicability of the anti-avoidance rule by comparing validity and materiality of the business reasons presented with the tax avoidance motive. The approach taken in the decision can be seen to impair foreseeability and legal security in taxation.

France	Yes, Abuse of law principle Article L 64 of the tax procedural code	*The tax authorities have, in general, the authority to disregard or recast transactions which although formally valid are exclusively intended to procure a tax advantage as compared with the liability that would normally arise from the substance of the agreement. The tax authorities have to demonstrate (i) either that the deeds entered into by the taxpayer are fictitious or (ii) that the deeds, by pursuing the benefit of a literal application of applicable rules or decisions against the objectives pursued by the authors of those rules or decisions, have been exclusively inspired by the purpose of avoiding or reducing the tax charges that the taxpayer would have normally suffered, had it not entered into such deeds and taking into account its situation and real activities. A penalty of 80% of the tax adjustment is applicable in addition to the tax adjustment itself.* *If the taxpayer disagrees with the tax authorities, the issue may be submitted, at the request of the tax authorities or the taxpayer, to the Committee on Abuse of Law; the tax authorities may however maintain the adjustment even if the Committee opines in favour of the taxpayer. The advice given by the Committee are made public on a no name's basis.* *The taxpayer remains free to choose the most favorable legal framework, even from a tax viewpoint, provided that there is no illegal dissimulation and no artificial legal creation of a construction which disguises a situation under which taxes are legally due notwithstanding the legal appearances created.*	Too many court rulings impossible to be quoted here. What may simply be noted is that the case law insists on the fact that in order to successfully demonstrate that an abuse of law has been committed the tax authorities have to show that the sole purpose of the taxpayer was to get an undue tax advantage and that showing that it was its main purpose is not enough.
Germany	Yes, Abuse of tax planning schemes; § 42 AO (General Fiscal Code); link § 50d Abs. 3 EStG (Income Tax Act)	*(1) It shall not be possible to circumvent tax legislation by abusing legal options for tax planning schemes. Where the element of an individual tax law's provision to prevent circumventions of tax has been fulfilled, the legal consequences shall be determined pursuant to that provision. Where this is not the case, the tax claim shall in the event of an abuse within the meaning of subsection (2) below arise in the same manner as it arises through the use of legal options appropriate to the economic transactions concerned.* *(2) An abuse shall be deemed to exist where an inappropriate legal option is selected which, in comparison with an appropriate option, leads to tax advantages unintended by law for the taxpayer or a third party. This shall not apply where the taxpayer provides evidence of non-tax reasons for the selected option which are relevant when viewed from an overall perspective.*	Some case law exists. However, Germany is not a case law jurisdiction.

Ireland	Yes, Section 811 and Section 811A Taxes Consolidation Act 1997; Online version is not consolidated; consolidated version available to CFE as pdf.	*811* *[…]* *(2) For the purposes of this section and subject to subsection (3), a transaction shall be a "tax avoidance transaction" if having regard to any one or more of the following-* *(a) the results of the transaction,* *(b) its use as a means of achieving those results, and* *(c) any other means by which the results or any part of the results could have been achieved,* *the Revenue Commissioners form the opinion that-* *(i) the transaction gives rise to, or but for this section would give rise to, a tax advantage, and* *(ii) the transaction was not undertaken or arranged primarily for purposes other than to give rise to a tax advantage, […].* *(3) (a) Without prejudice to the generality of subsection (2), in forming an opinion in accordance with that subsection and subsection (4) as to whether or not a transaction is a tax avoidance transaction, the Revenue Commissioners shall not regard the transaction as being a tax avoidance transaction if they are satisfied that-* *(i) notwithstanding that the purpose or purposes of the transaction could have been achieved by some other transaction which would have given rise to a greater amount of tax being payable by the person, the transaction-* *(I) was undertaken or arranged by a person with a view, directly or indirectly, to the realisation of profits in the course of the business activities of a business carried on by the person, and* *(II) was not undertaken or arranged primarily to give rise to a tax advantage, or* *(ii) the transaction was undertaken or arranged for the purpose of obtaining the benefit of any relief, allowance or other abatement provided by any provision of the Acts and that the transaction would not result directly or indirectly in a misuse of the provision or an abuse of the provision having regard to the purposes for which it was provided.* *(b) In forming an opinion referred to in paragraph (a) in relation to any transaction, the Revenue Commissioners shall have regard to-* *(i) the form of that transaction,* *(ii) the substance of that transaction,* *(iii) the substance of any other transaction or transactions which that transaction may reasonably be regarded as being directly or indirectly related to or connected with, and* *(iv) the final outcome and result of that transaction and any combination of those other transactions which are so related or connected.*	- Revenue v O'Flynn Construction Company Limited [2011] IESC 47 (link) - High Court case of *Revenue Commissioners -v- Droog* [2011] IEHC 142 (link) - High Court case of *McNamee -v- The Revenue Commissioners* [2012] IEHC 500 (link) Further cases available to CFE as pdf document

		(5) (a) Where the opinion of the Revenue Commissioners that a transaction is a tax avoidance transaction becomes final and conclusive, they may, notwithstanding any other provision of the Acts, make all such adjustments and do all such acts as are just and reasonable […] in order that the tax advantage resulting from a tax avoidance transaction shall be withdrawn from or denied to any person concerned. *(b) Subject to but without prejudice to the generality of paragraph (a), the Revenue Commissioners may-* *(i) allow or disallow in whole or in part any deduction or other amount which is relevant in computing tax payable, or any part of such deduction or other amount,* *(ii) allocate or deny to any person any deduction, loss, abatement, relief, allowance, exemption, income or other amount, or any part thereof, or* *(iii) recharacterise for tax purposes the nature of any payment or other amount.* *[811 A deals, i.a., with the notification of arrangements to the tax authorities]*	

Italy	With effect of 1 January 2016, the previous GAAR (Art. 37-bis) is abolished. The new set of rules are Art. 10-bis L. 212/2000 ("Statuto del Contribuente"). The former Article 37-bis of Presidential Decree No. 600/1973 sets forth a general principle of artificiality in tax arrangements; however its application only regarded specific transactions. In addition, Italy has an abuse of law principle, based on the	*It will be deemed "abuse of law", one or more operations having no economic substance that, even if formally respecting tax law provisions, essentially produces an undue tax advantage. Such operations are not valid towards tax authorities, who can deny those advantages and recalculate tax obligations according to the avoided provisions, net of tax payments made by the taxpayer.* *For those purposes:* *a) By operation having no economic substance we mean facts, acts/ transactions and contracts, even if connected, unable to result in significant effects other than tax advantages. The non-coherence of the qualification of the single operations with their juridical legal qualification of them wholly considered, and the non-conformity of the use of such legal instruments with respect to the standard logic of market are evidence of the absence of economic substance;* *b) By undue tax advantages we mean those benefits, even if not immediately available, obtained against the real purpose of the tax rules or of the general principles of the tax system.* *The operations that are justified by valid and non marginal "non fiscal" reason, there included organizational or managerial reasons, are not deemed abusive, if they are aimed at a*	Some key decisions (relating to the previous Art.37-bis; no case law yet on the new provision): • Supreme Court decision No. 30055 of 23.12.2008. The Italian Supreme Court for the first time held that a general anti-avoidance principle derives directly from the Constitution, pursuant to which a transaction entered into for no actual economic reasons but with the sole aim of obtaining a tax advantage, can be disregarded by the competent tax authorities. • Supreme Court decision No. 25537 of 30.11.2011. The case considered the applicability of administrative penalties in case of application of Article 37-bis. • Supreme Court decision No. 2193 dated 16.2.2012: The Supreme Court has reiterated that the Tax Administration can legitimately challenge to the taxpayers any avoiding conduct, implemented prior to the entry into force of art. 37-bis of the Presidential Decree 600/1973, based on a general anti-avoidance principle inherent in national law, which is grounded in the principles of the Italian Constitution. • Criminal Supreme Court decision No. 7739 dated 28.2.2012: The Supreme Court has preliminarily claimed that the general anti-avoidance principle, identified by the national law cases, is consistent with the Community principle of abuse of law - defined by the ECJ (for example, in the judgments: 10.11.2011, C-126/10, "Foggia" id. 9.3.1999, C-212/97, "Centros", 21.2.2006, C-255/02, "Halifax", 5.7.2007, C-321/05 Kofoed, id. 21.2. 2008, C-425/06, "Part Service") - accepted in art. 54 of the Charter of Fundamental Rights of the European Union signed at Nice on 7 December 2000 (which, following the entry into force of the Lisbon Treaty, has acquired the same legal value as the Treaties).. As a result, according to the Supreme Court, the avoiding behaviour can be subject to prosecution as the scope of criminal laws, aimed at the correct reception of the tax, include any conduct that results in a reduction or exclusion of the tax base. • Supreme Court decision No. 7393 of 11.05.2012. The Supreme Court ruled on the interaction of Article 37-bis with the abuse of law principle. • Supreme Court decision No 2234 dated 30.1.2013 The Supreme Court ruled that the taxpayer, in the case of a transaction carried out in conflict with the prohibition of the abuse of law (general principle transposed at national level in art. 37-bis of Presidential Decree 600/1973), may be sanctioned by the Tax Administration, as for the purposes of the application of the penalties, it is irrelevant whether the lowest payment of taxes derives either from an infringement of tax laws or from a circumvention (avoidance) of the same standards. • Supreme Court decision No 24739 dated 5.11.2013 The Supreme Court has asked the Constitutional Court to determine whether Article. 37-bis, paragraph 4 of Presidential

	Supreme Court case law.	*structural or functional improvement of the undertaking.* *Taxpayer is free to choose between different optional regimes offered by the law and between [form of] operations having different tax burden.* *[…. Omissis – procedural rules based on the right of the ADVERSARIAL PRINCIPLE”]* *An abusive scheme can be contested only if tax advantages can not be challenged as a violation of specific tax rules.* *Abuse of law has no relevance for criminal law purposes.*	Decree 600/1973 is inconsistent with the principle of abuse of law (which is sourced by Articles 3 and 53 of the Italian Constitution): only the residual hypothesis of avoidance, introduced by Article 37-bis ("special" case compared to general principle of abuse of law), the lack of preliminary cross-examination between taxpayers and Tax Administration is sanctioned by the invalidity of the subsequent notice of assessment. Conversely, in other cases of abusive and / or avoiding conducts, there is no such rule of invalidity. • Supreme Court decision No. 27683 dated 11.12.2013 The Supreme Court excluded from the concept of abuse of law, tax matters, falling within the definition of abuse the only conducts that not violating the laws, legally allow to reach the final result expected by the taxpayer, through a distorted use of legal instruments. In addition, the Supreme Court has ruled that to qualify a transaction as abusive - aimed solely at preventing the less favorable tax treatment for taxpayers - two conditions should be met: the lack of economic justification and the obtainment of tax savings. • The Constitutional Court with judgment n.132 dated 07/07/2015, stated that article 37 bis paragraph 4 of Presidential Decree 600/1973 complies with European and Constitutional principles finding the position of the Supreme Cort with no legal ground.

Latvia	No, except for the “substance over form” principle and a definition of “evasion of tax or fee payments” which may create criminal liability – the non-submission of declarations, accounts or tax assessments, the deliberate provision of false information in tax declarations, the unlawful application of tax relief or rebates or any other deliberate action the result of which the assessment and payment of taxes and fees in conformity with regulatory enactments is not ensured; as well specific rules such as transfer pricing provisions: all transactions between related parties should follow the arm’s length principle and have supporting documentation to prove it. Thin capitalization: companies may not deduct interest derived from loans (except for loans from credit institutions) that result in indebtedness exceeding a ratio to their shareholders’ equity of 4 to 1. Controlled foreign corporation rules for individual’s owned foreign companies; - Law on taxes and duties - Enterprise income tax law - Personal income tax law; Link	n/a	no

Luxembourg	Yes: - Steueranpassungsgesetz vom 16. Oktober 1934 « StAnpG » (Adaptation Law), §§5 and 6 - Loi du 4 décembre 1967 concernant l'impôt sur le revenu « LIR » (Income Tax Law), articles 56 and 164 (3), article 114 (2) and Circular Letter LIR n°114/2 dated 2 September 2010 - Loi générale des impôts "AO" (General Law), §§396, 397 and 398 StAnpG not available online	*§5 StAnpG "Fictitious transactions or other fictitious actions (for example the establishment or the maintenance of a fictitious residency) are of no significance for taxation purposes. In case a fictitious transaction covers another legal transaction, then the legal transaction is decisive for the taxation"* *§6 StAnpG "The tax burden cannot be circumvented or reduced through the misuse of forms and institutions of private law"* *Art. 56 LIR "A […] official of the Tax Administration […], may determine operating earnings on a lump sum basis, without regard to the earnings reported, if an earnings transfer is rendered possible by the fact that the undertaking maintains private economic relationships, whether directly or indirectly, with an natural or legal person that is not a resident taxpayer."* *Art. 164 (3) LIR "Hidden profit distributions shall be included in taxable income. A hidden profit distribution shall occur in the event that, among others, a partner, shareholder or interest holder directly or indirectly receives benefits from a company or association from which such party would not normally have benefited if that party did not have such capacity."* *Art. 114 LIR "The deduction of loss carry forwards shall be subject to the following conditions:* *1. the only losses that may be deducted shall be those that could not be offset against other net income for the tax year corresponding to the year in which the losses are incurred, and which could not be deducted during any other subsequent tax year by means of application of the provisions of this article or offset against a net gain from stabilization pursuant to Article 52;* *2. the business operators or other relevant persons must keep regularly maintained accounting records during the financial year in which the loss is incurred;* *3. only the party that has incurred the loss may use it as a deduction. However, in the event of transfer of the undertaking or operation by means of succession, the successor may claim the loss provided that the successor was subject to joint taxation with the transferor at the time the loss occurred."* *Circular Letter n°114/2 "[…] Following court case of Administrative Court of appeal 25957C dated 15 July 2010, tax offices apply the following instructions:*	Most recent case law: •Administrative Court, N° 30540, 27 June 2013: The Court ruled that a structuring with the result of making the parent company, which statutory object bears no relation to the one of its subsidiary, benefit from a tax credit which it could not have claimed if the structure would not have been set up, is motivated by sole tax reasons and is hence abusive in the sense of the law. (link) •Administrative Court, N° 30379, 1 July 2013: loans granted by a company to an interest holder without computation of interest are considered a deemed dividend distribution in the sense of article 164 (3) LIR, since even a fairly diligent and conscientious manager, tending towards assuring the profitability of a commercial business, would not grant a significant loan to a third party without counterpart. (link) •Court of Appeal of the Grand-Duchy of Luxembourg, 10th Chamber, N°7/10, 13 January 2010: during a tax control following the filing of a tax return by a taxpayer, the tax authorities noticed that

	AO not available online LIR: link Circular Letter n°224/2 : link	- *The entitlement to existing loss carry forwards is not denied due to the sole reason that the shareholders have changed, either partially or in total, and that the company continues its economic activities or extends its business purpose.* - *The use of existing loss carry forwards is denied if the tax office can deduce from circumstances of the acquisition of the loss-making company such as the cessation of the former activity which generated the losses, the absence of assets bearing a real economic value (empty shell) or the transfer of shares of the company with nearly concomitant change of activity, that the sales transaction can be qualified as being abusive if it has been realized with the sole aim to use the loss carry forwards in order to set-off the taxation of profits."* *§396 AO […]; §397 AO […]; §398 AO […]*	the amounts declared did not correspond to the bank statements and that the copies of the invoices received from the taxpayer did not correspond to the original invoices. The Court of Appeal confirmed the judgment of the Court of First Instance in the sense that the elements of a tax fraud or attempt of tax fraud were not given, since the tax authorities had not yet issued an assessment on the basis of the wrong tax return. The same has been judged as regards the existence of a tax fraud; however the attempt of tax fraud has been confirmed. No weblink available
Malta	Art 51 (1) and art 51(2)(a) Income Tax Act Cap 123	***51.*** *(1) Where any scheme which reduces the amount of tax payable by any person is artificial or fictitious or is in fact not given effect to, the Commissioner shall disregard the scheme and the person concerned shall be assessable accordingly.* *(2) (a) Where any person, as a direct or indirect result of any scheme of which the sole or main purpose was the obtaining of any advantage which has the effect of avoiding, reducing or postponing liability to tax, or of obtaining any refund or set-off of tax, has obtained or is in a position to obtain such an advantage, the Commissioner shall, by order in writing, determine the liability to tax or the entitlement to a refund or set-off of tax of the said person, or of any other person, for any year of assessment, in such manner and in such amount as may be necessary, in the circumstances of the case, to nullify or modify the said scheme and the consequent advantage. A person who disagrees with an order served upon him as aforesaid shall have the same rights to object to that order and to appeal from a decision of the Commissioner refusing that objection as if that order were an assessment issued under the* ***Income Tax Management Act*** *and the relevant provisions of that Act relating to objections and appeals shall apply mutatis mutandis.* *"scheme" includes any disposition, agreement, arrangement, trust, grant, covenant, transfer of assets, increase in the share capital of a company and alienation of property, whatsoever, irrespectively of the date on which such scheme was made, entered into or set up.*	Article 51(1): - Case 11 of the Board of Special Commisioners 1952 - Case 41 Board of Special Commissioners 1959 - Case 29 Board of Special Commissioners 1968 Article 51(2): - Case 43 Board of Special Commissioners 1986 - Case 9 Board of Special Commissioners 1994 - Case 102 Court of appeal 1986

Netherlands	The Dutch tax law provides for a general anti-abuse rule ("Richtige Heffing", article 31 of the Dutch General Law on Taxes (Algemene wet rijksbelastingen)). However, based on a decree issued by the Undersecretary of Finance, since 1987 this rule is until further notice no longer applied in practice. Instead, the abuse of law (fraus legis) doctrine) can be applied. In addition, a transaction can be ignored for tax purposes or recharacterised on the basis of the sham transaction doctrine (schijnhandeling"). Article 4, paragraph 7 of the Dividend Withholding Tax Act of 1965.	Fraus legis The fraus legis doctrine provides that for tax purposes a transaction or a series of transactions is ignored or substituted by another transaction or series of transactions, if (i) the main purpose for these transactions was to save or avoid Dutch taxes, (ii) the transactions or part of the transactions are not of practical (non-tax) relevance, and (iii) the objective and spirit of the relevant Dutch tax laws would be ignored if the tax benefits aimed for by the taxpayer would be realized. Sham transaction doctrine A transaction or series of transactions are qualified as a sham ("schijnhandeling") if the parties involved intended to enter into another type of transaction than they pretend to have entered into. For example a shareholder intended to make a capital contribution but it was disguised as a loan. *For dividend withholding tax purposes the recipient of a taxable distribution will not be treated as the beneficial owner and therefore is not entitled to an exemption or reduced rate based on Dutch domestic law, or a tax treaty to which the Netherlands is a party, if, expressed in general terms, the distribution is received in return for a consideration paid by the recipient of the distribution and in connection with a transaction or series of transactions, the aforementioned distribution is received directly or indirectly for the benefit of a person that cannot himself claim the exemption or reduced rate of withholding tax, and such person directly or indirectly has retained or acquired an interest in the shares on which the distribution was made.*	This article is aimed at so-called dividend-stripping transactions.
Poland	Not yet in force. The GAAR has been eliminated from the draft of the amendment of the Polish Tax Ordinance ("Ordynacja podatkowa" in Polish). The Ministry of Finance continues the works on the introduction of GAAR. There used to be a statutory GAAR between 1 January 2003 and 1 September 2005, but it was found unconstitutional by the Constitutional Tribunal (as not giving proper grounds for uniform and predictable application due to its imprecise wording).	n/a	n/a (in direct taxation there might be isolated cases, but they are deprived of practical significance; contrary is true for VAT where the ECJ case-law influenced the jurisprudence of Polish courts)

Portugal	There is one GAAR: Artigo 38.º, n.º 2 da Lei Geral Tributária. Article 38 n. 2 of the General Tax Law. Link	Article 38 *2 - Any legal documentation or formalities, aimed by artificial or fraudulent means and by abuse of the legal forms, wholly or mainly at reducing, eliminating or postponing taxes that would be payable as a result of facts, legal documentation or formalities with the same economic purpose, or to obtain tax advantages that would not be achieved in whole or in part without the use of these means, shall be ineffective for tax purposes, and taxation shall proceed in accordance with the rules that would have applied in their absence and the tax advantages referred to shall not arise.*	**Name(s) of the court(s):** 1) Tribunal Central Administrativo Sul; 2) CAAD – Centro de Arbitragem Administrativa (Administrative and Tax Arbitration Center). **Case name(s), reference(s):** 1) Decision n.º 04255/10; 2) Decision n.º 5/2011-T. **Date(s) of the decision(s):** 1) 15 February 2011; 2) 26 January 2012. Neither of them are under appeal. **Brief summary of the main findings:** 1) Company A, resident in Portugal for tax purposes, used a subsidiary, Company B with headquarters in the international business center of Madeira (Portuguese special tax regime), to transform interest paid by indirect subsidiaries in the Netherlands and the Channel Islands, which otherwise would have been subject to corporate income tax, into exempt dividends. Company A transferred amounts to be loaned to the foreign subsidiaries to Company B via informal capital contributions. Company B then financed the foreign subsidiaries. The foreign subsidiaries paid interest to Company B, which benefited from the more favourable tax regime of Madeira (0% on interest received). Company B then distributed dividends to Company A, benefiting from the Portuguese participation exemption regime on dividend payments. The Portuguese tax authorities stated that the taxpayer deliberately created this tax avoidance situation, the tax inspectors ignored the interposition of the exempt company (e.g. the Madeira Company) and considered that taxation should occur as if the interest had been paid directly to the Portuguese parent company, accessing additional corporate income tax of several million euros. The lower court and the High Court agreed with the tax authorities (link). 2) Due to the technicalities of Portuguese tax procedure law, this decision of the arbitration court was not rendered on the legality of the additional corporate income tax assessment made by the tax authorities based on the application of the GAAR, but on a previous matter – the fact that the taxpayer did not react (as it should) to the decision of the head of the tax administration that authorized the application of the GAAR. Hence, in this case the arbitration court decided, on the grounds of formalities, not to analyze the applicability of the GAAR and therefore the legality of the additional tax assessment by the tax authorities of several million euros was not judged (link).

Romania	Legea 571/2003 privind Codul Fiscal cu modificarile si completarile ulterioare (Law 571/2003 on the Fiscal Code as supplemented and amended), article 11 par. (1), article 116 par (1) let. c^1) Yes, Romania has the following GAARs: • **Substance over form principle:** According to the substance over form principle, the tax authorities may disregard a transaction without economic purpose or may reclassify the form of a transaction in order to reflect its economic substance. • **Artificial cross-border transaction** Artificial cross-border transactions are defined as cross-border transactions or a series of cross-border transactions that have no economic substance or that cannot be used regularly within ordinary business practices, with their main purpose being to avoid taxation or to obtain tax advantages that could not be gained otherwise. Artificial transactions are not considered part of the scope of the Conventions for the avoidance of double taxation. • **Anti-treaty shopping rule** There is a 50% withholding tax on the income obtained by non-residents from Romania (e.g. dividends, interest, royalties, services) if the payments are made in bank accounts located in countries which do not have an exchange of information agreement concluded with Romania. This increased withholding tax rate would only apply if the transaction is deemed artificial. Weblink (please note that the legislative text is not updated).	• ***Substance over form principle:*** *"In determining the amount of any tax, duty or mandatory social contribution, the tax authorities may disregard a transaction which does not have an economic purpose, by adjusting its tax effects, or they may reclassify the form of a transaction in order to reflect the economic substance of the transaction/activity.* *The tax body shall be obliged to give reasons in fact for the taxation decision issued as a result of disregarding a transaction or, where appropriate, as a result of reclassification of a form of a transaction, by indicating the relevant elements in relation to the purpose and content of the transaction which is subject to disregarding/reclassification, as well as of all means of evidence taken into account for this."* • ***Artificial cross-border transaction*** *"Artificial cross-border transactions are defined as cross-border transactions or a series of cross-border transactions that have no economic substance or that cannot be used regularly within ordinary business practices, with their main purpose being to avoid taxation or to obtain tax advantages that could not be gained otherwise. Cross-border transactions or series of cross-border transactions are those transactions performed between two or more parties out of which at least one is situated outside Romania. Cross border transactions or series of cross-border transactions which are classified as artificial by the competent tax authorities will not be considered part of the scope of the Conventions for the avoidance of double taxation."* • ***Anti-treaty shopping rule*** *"The withholding tax due is computed by applying the following tax rates to the gross income: […] 50% for the income stated at art. 115 par. 1 let. a)-g), k) and l), if the income is paid in a state with which Romania does not have an exchange of information instrument. These provisions apply only in case the income mentioned above is paid as a result of a transaction deemed as artificial based on the art. 11 par. (1)."*	Substance over form principle and anti-treaty shopping rule are in force. The artificial cross-border transaction is going to be implemented starting with 1 January 2016, its status is adopted.

Slovakia	Yes. The general procedural rule in Slovak Law which referred to application of substantive tax rules, the „substance over form“ rule (Art. 3(6) of Slovak Tax Administration Act No. 563/2009 Coll., as amended), was amended with effect from 1 January 2014 with the aim to be considered a general anti abuse rule.	*Legal acts or other circumstances critical for identification, imposition or levying of tax that are without economic substance and their aim is to avoid tax obligations or to gain unjust tax advantage or the outcome of which is artificial (i.e. purely formal) decrease of tax obligation will not be taken into consideration by the tax authorities.*	No judicial decision applying the provision in its current (updated) wording. In the past the Slovak courts in VAT related cases applied the "abuse of law" principle based on the CJ EU VAT case law arguments (e.g. Supreme Court Decisions 5 Sžf 66/2011 and 2 Sžf 38/2012).
Spain	Yes, - Artículos 15.1 y 16.1 de la Ley 58/2003, de 17 de diciembre, General Tributaria. - Sections 15.1 and 16.1 of the Law 58/2003, of December 17th, on General Tax. Link	*“15.1.It will arise a conflict in the application of tax provisions when the taxpayer succeeds in total or partially avoiding the tax or obtains a tax benefit of any kind through acts or arrangements in which both the following circumstances occur:* *a) Individually considered or as a group, such acts are clearly artificial or improper for attaining the pursued economic objective;* *b) That no other substantial consequences arise from the adoption of this legal form or arrangement as would have arisen had the normal, proper form be used.”* *“16.1. Where there is a simulated act or transaction, taxes will be levied on the basis of the real act or transaction, disregarding the simulated one.”*	– *Sentence of the Supreme Court, of February 23th 2012 (rec. 821/2008):* conflict in the application of tax provisions (*Frau Legis*) in connection with a subsequent capital reduction and increase. [link] – *Sentence of the Supreme Court, of April 29th 2010 (rec.100/2005)*: the intention to infringe the law is irrelevant; the artificiality of the means used to obtain the tax benefit shall be the key to apply the corresponding tax provision (*Frau Legis*). [link] – *Sentence of the Supreme Court, of December 9th 2009 (rec. 4282/2004)*: simulated transaction in connection with a share purchase. [link]

Ukraine	No general rule. There are also no any specific tax anti-avoidance rules. Instead the Tax Code sets "business purpose" doctrine, beneficial ownership test and certain deductibility limitations on expenses incurred *vis-a-vis* non-residents and related parties, transfer pricing rules. The tax authorities also use the "business purpose" doctrine when challenging reasonability of expenses or discounted sales. As regards to the specific anti-avoidance measures, the following limitations on deductibility of certain expenses incurred vis-à-vis non-residents are explicitly stipulated by the Tax Code: • Fees for consultancy, marketing, and advertising services, paid to non-residents, are limited for deduction (up to 4% of net revenue for the year preceding the reporting one). They are not deductible entirely if their recipient is a tax resident in offshore jurisdiction. • Royalties paid to non-residents are also subject to "4% limitation". Also royalties are fully disallowed for deduction in certain cases (e.g. if the beneficial owner test is not met; royalties are not taxed in a jurisdiction of their recipient; royalties recipient is a tax resident in offshore jurisdiction, or IP rights originate from Ukraine). • Engineering fees paid to a non-resident are deductible only up to 5% of the customs value of the equipment imported		*Not a Civil law country and no precedent rule.* *Still, some cases exist were courts ruled in favour of the tax office using general anti abuse arguments. As a matter of practice, the tax avoidance in Ukraine means entering into the transaction with the sole or main purpose of obtaining undue tax benefits. At present, the Ukrainian courts mostly take the form over substance approach. However, recent cases indicate a shift to a ''substance over form'' based interpretation of the tax legislation.* ***Substance over form concept*** *The existence of primary supporting documentation is not the ultimate argument for deduction of expenses. The evidence that transaction was really done should be also in place (Resolution of Supreme court of Ukraine in case №К/9991/80738/12 dated 10.04.2013).* ***Business purpose doctrine*** *The tax authorities are actively using the "business purpose" doctrine when challenging reasonability of expenses or discounted sales. They refer to the provisions of the Tax Code which provides that expenses are tax deductible if they were incurred in respect of a taxpayer's business activity. Business activities are defined as activities that are aimed at profit generation.* *In practice the main transactions that are challenged by the tax authorities are loss making sales.* *The court practice in this respect is controversial. There are both positive (Resolution of Supreme court in case number К-25379/08 dated 23.08.2011) and negative (Resolution of Supreme court in case number К/9991/26252/11 dated 28.03.2013) court decisions. At the same time the court practice shows positive signs of shifting from the formalistic approach to the real economic substance of the transactions.* *Besides, the tax authorities apply certain legal concepts to counteract the tax avoidance. The transaction can be considered void if it contradicts the interests of the state or is against the public interests. Proving its voidance in the court is not required.* *Ukrainian courts often fear to create precedents of regarding the transactions void on the grounds of the norm of the contradiction to the interests of the state without making references to other legislative norms. The supporting norms include the relevance to the*

	for the provision of such services, provided the beneficial owner test is met and such fees are not paid to an offshore jurisdiction tax resident. • Payments for goods or services to foreign entities registered in black listed jurisdictions are deductible at 85% of payments, unless evidence is held that the foreign entity is subject to the ordinary tax rules in the respective foreign jurisdiction (i.e. it does not benefit from the offshore tax regime). • Interest paid to non-residents is also limited for deduction if at least 50% of the borrower's capital belongs to non-residents and the interest is payable to such non-residents (or related entities). The deductible interest paid to those persons and their related parties cannot exceed the amount of interest income plus 50% of the company's taxable profit (excluding interest income and before the deduction of interest). Any interest paid in excess of this limit is carried forward to future tax periods and deducted within this limit. As regards to the transfer pricing regulations, currently they are not well-developed, however, new rules, similar to OECD guidelines, were adopted recently and come into force from 1 September 2013. Law: Tax Code of Ukraine		*taxpayer's business activities, the availability of the back-up documentation and evidence that the transaction was really made (Resolution of the Supreme court of Ukraine in case № К/9991/59642/12 dated 20.02.2013).* ***Step transaction doctrine*** *Despite that the Tax Code does not recognise this doctrine, in practice the Ukrainian tax authorities often apply this doctrine when challenge the VAT credit of taxpayers. The main example is when the tax authorities reject the VAT credit based on the fact that the seller did not report VAT liability or do not have assets to perform business activity. However, the court practice in this respect is mostly in favour of tax payers (Resolutions of the Supreme court in cases № К/9991/24450/12 dated 27.09.2012; К/9991/47794/12 dated 15.01.2013).* *At the same time the step transaction of this nature can be captured by the civil concept of sham deals. Sham deals broadly cover the transactions intended to disguise a real transaction.* *Therefore, the entire chain of the sham deals if performed with a sole purpose of hiding a real transaction may be considered void. If successfully challenged in the court, the tax consequences of the sham deals will be discharged and the real transaction will be recognised for tax purposes.*

United Kingdom	There is a rule in draft. No such general rule is yet in force. There are many targeted anti-avoidance rules. The draft legislation forms clauses 203 to 212 and Schedule 41 of what is expected to become Finance Act 2013 (currently known as Finance (No 2) Bill 2013). Status: Proposed. Expected to be adopted with effect from a date in Summer 2013, yet to be determined. Link	Key provisions are as follows. Full text is available at the weblink below. *206 Counteracting the tax advantages* *(1) If there are tax arrangements that are abusive, the tax advantages that would (ignoring this Part) arise from the arrangements are to be counteracted by the making of adjustments.* *204 Meaning of "tax arrangements" and "abusive"* *(1) Arrangements are "tax arrangements" if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage was the main purpose, or one of the main purposes, of the arrangements.* *(2) Tax arrangements are "abusive" if they are arrangements the entering into or carrying out of which cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions, having regard to all the circumstances …*	No.

2. Specific Anti Abuse Rules

a) Parent-Subsidiary Directive 2011/96/EU

Country	Provision / link	Content / wording	Case-law / other remarks
EU	A minimum GAAR has been included in the 2015 revision of the PS Directive (link).	*Article 1:* *2. "Member States shall not grant the benefits of this Directive to an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of this Directive, are not genuine having regard to all relevant facts and circumstances.* *3. An arrangement may comprise more than one step or part.* *4. For the purposes of paragraph 2, an arrangement or a series of arrangements shall be regarded as not genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.* *5. This Directive shall not preclude the application of domestic or agreement-based provisions required for the prevention of tax evasion, tax fraud or abuse."*	
Austria	Yes: § 94(2) EStG – Income Tax Act. – Although not based on Art 1(2) of the Parent-Subsidiary-Directive (but rather on its Art 4), it should be mentioned that § 10(4)-(6) Corporate Tax Act provide for a switch-over from the exemption to the indirect credit method in case of inbound inter-company dividends; this switch-over takes place (1) for holdings of at least 10% if the foreign subsidiary earns mainly passive income (e.g., interest, royalties) and bears a low effective tax rate (< 15%) (2) for holdings of less than 10% if the foreign subsidiary is either not subject to a corporate tax, is subject to a nominal corporate tax rate <15% or is exempt from corporate taxation. (link)	*§ 94(2) EStG provides for an exemption from withholding taxation on qualified outbound dividends, but switches to a refund procedure of, inter alia, if there are reasons given in an ordinance of the Minister of Finance to prevent tax evasion or abuse within the meaning of § 22 BAO. This ordinance was published in the Federal Gazette 1995/56. Under this ordinance, the exemption from withholding taxation does not apply if there are (1) circumstances that indicate an abuse under § 22 BAO and (2) there is no statement by the recipient to the withholding agent that it pursues more than a passive activity, has own employees, and has own premises.*	There is a lot of administrative practice and quite some scholarly discussion. However, there are only very few decided cases. The most notable is UFS (Independent Tax Senate) 11 April 2007, RV/0323-S/06. – All decisions by the Independent Tax Senate are available, in German, at https://findok.bmf.gv.at.

Belgium	No specific rules		
Czech Rep.	No specific rules		
Finland	No specific rules		
France	Yes, incorporation of the 2015 EU directive at the end of 2015.	*Exemption at source does not apply to dividends distributed in the framework of an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the exemption, are not genuine having regard to all relevant facts and circumstances. An arrangement may comprise more than one step or part.* *An arrangement or a series of arrangements shall be regarded as not genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.* *The above rule applies also with respect to dividends received by French corporations eligible to the parent subsidiary regime irrespective of whether the subsidiaries are located in France, in the EU or outside the EU.*	
Germany	No. However, for inbound cases there is a provision which gives no relief of withholding taxes in cases of - Double tax conventions or - Parent-Subsidiary-Directive resp. Interest and Royalties-Directive are concerned: Sec. 50d, para. 3 of the Income Tax Act (EStG).	*"A foreign company has no entitlement to full or partial tax relief pursuant to paragraph 1 or paragraph 2 if it is owned by persons who would not be entitled to the relief if they received the income directly, and if the foreign company does not generate its gross income from genuine economic activity in the relevant tax year, and* *1. there are no financial or other notable reasons for involving the foreign company in relation to this income* ***or*** *2. the foreign company does not participate in general economic transactions with a suitable business establishment set up for its business purpose.* *Only the circumstances of the foreign company are relevant; organisational, financial or other notable characteristics of the companies that are close to the foreign company will not be considered (Sec. 1, para. 2 of the Foreign Tax Act). There is no genuine economic activity if the foreign company generates its gross income through managing assets or transfers its fundamental business activities to third parties. The burden of proving the presence of financial or other notable reasons within the meaning of clause 1, number 1 and a business establishment within the meaning of clause 1, number 2 rests with the foreign company. Clauses 1 to 3 do not apply if there is substantial and regular trading on a recognised stock exchange in the foreign company's principal class of shares, or if the provisions of the Investment Tax Act apply to the foreign company."*	The prevailing opinion in the tax literature is that the provision still infringes EU law, as the previous provision did.

Ireland	Yes.	*Finance Act 2015 introduced the anti-abuse clause to domestic legislation.* *It provides that the PSD shall not apply to an arrangement or a series of arrangements which—* *"(i) has been put in place for the main purpose of, or one of the main purposes of which is, obtaining a tax advantage that defeats the object or purpose of the Directive, and* *(ii) is not genuine having regard to all the facts and circumstances.* *(b) For the purposes of paragraph (a)(ii), an arrangement or series of arrangements shall be regarded as not genuine to the extent that it is not put into place for valid commercial reasons which reflect economic reality.* *(c) In this subsection and subsection (6), an arrangement may comprise more than one step or part."*	
Italy	No.		
Latvia	n/a; since 1.January 2013, dividends are not taxable		
Luxembourg	Loi du 4 décembre 1967 concernant l'impôt sur le revenu « LIR » (Income Tax Law), article 166 (5) and 166 (7); (link)	*Art. 166 (5) LIR "If income [from a qualifying subsidiary] is exempt under sub-article (1), the following shall not be deductible:* *1. operating expenses that are economically related directly to such income;* *2. a write down due to impairment of the participation following the distribution of such income, in the order listed above."* *Art. 166 (7) LIR "Income from participation received in exchange for another participation under Article 22bis shall not be covered by this article if the distributions from the participation given in exchange would not have been exempt if the exchange had not taken place. Distributions made after the end of the 5th tax year following that of the exchange shall not be covered by this restriction."*	

Malta	Article 51(2) (b) Income Tax Act Cap 123	*(b) The benefits of EU Council Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (as amended) shall not be granted to any arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the said EU Council Directive 2011/96/EU, are not genuine having regard to all relevant facts and circumstances.* *For the purpose of this paragraph -* *(i) an arrangement may comprise more than one step or part;* *(ii) without prejudice to any remaining genuine steps or parts of any particular arrangement, an arrangement or a series of arrangements shall be regarded as not genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality; and* *(iii) where a single step or part in an arrangement or a series of arrangements is, by itself and without regard to the remainder of the arrangement or series of arrangements, not genuine, the provisions of this paragraph shall apply only to such step or part that is not genuine, without prejudice to the remainder of the arrangement or series of arrangements that are genuine.* *The provisions of this paragraph -* *(i) implement EU Council Directive 2015/121 of 27 January 2015 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States; and* *(ii) shall not preclude the application of any other* *provision in the Income Tax Acts or any rules issued thereunder concerning the prevention of tax evasion, tax fraud or abuse.*	

Netherlands	Article 17, paragraph 3, b of the Dutch Corporate Income Tax Act of 1969 Article 1, paragraph 7, of the Dutch Dividend Tax Act of 1965	*The following rules have recently been amended in order for the Netherlands to comply with the GAAR in the Parent-Subsidiary Directive.* *A foreign resident shareholder in a Dutch entity or the relevant member in a cooperative is subject to Dutch corporate income tax as a non-resident taxpayer if it holds a so-called substantial interest in a Dutch entity and (a) its shareholding is held with the main purpose or one of the main purposes of avoiding Dutch personal income tax or dividend withholding tax in the hands of another person (anti-abuse or subjective test) and (b) there is an arrangement or a series of arrangements that are not genuine. For purposes of condition (b) an arrangement may comprise more than one step or part and an arrangement or a series of arrangements is considered not genuine if and to the extent that they are not put into place for valid commercial reasons which reflect economic reality (objective test).* *Whether an arrangement has been put into place for valid commercial reasons (objective test) will depend on the substance at the level of the shareholder. Valid commercial reasons may inter alia be present if the shareholder (a) conducts a material business enterprise and the shareholding is part of the business enterprise's assets, (b) is a top holding company that carries out material management, policy and financial functions for the group it heads or (c) functions as an intermediary holding company within the group structure in relation to the relevant subsidiary. In case of an intermediary holding company as meant in (c) above, an additional requirement applies pursuant to which such holding company would have to meet the Dutch minimum substance requirements for holding companies seeking an advance tax ruling, had it been tax resident in the Netherlands. These Dutch minimum substance requirements include that at least half of the statutory directors of the holding company are (in fact) resident in the relevant jurisdiction, the board decisions of the holding company are made in such jurisdiction and the acquisition price of the shareholding held by the holding company is for at least 15% financed with equity.* *A similar test applies to cooperatives. A cooperative is subject to Dutch dividend withholding tax if (a) the cooperative is used in a structure as a holding company with the main purpose or one of the main purposes of avoiding Dutch dividend withholding tax or a foreign withholding tax (anti-abuse or subjective test) and (b) there is an arrangement or a series of arrangements that are not genuine, i.e. they are not put into place for valid commercial reasons which reflect economic reality (objective test). The valid commercial reasons as described above under (a), (b) and (c) also apply.*	

Poland	An implementation of the change of EU Parent Subsidiary Directive (amendment included in Directive 2015/121) is expected to be introduced to the Polish law by the end of 2015. The bill is being considered by the Parliament.	*The planned wording of Art. 22c of the CIT Act:* *"1. The regulations of art. 20.3 and 22.4 [which stipulate dividend income exemption] shall not be applied if:* *1) deriving income from dividends and other income from participation in legal persons is connected with the conclusion of an agreement or performace of another legal action or a series of actions, having been put into place for the main purpose or one of the main purposes of obtaining the exemption from income tax on the basis of art. 20.3 or 22.4 and obtaining of such exemption does not result solely in the elimination of double taxation of such income (revenue) and* *2) the actions mentioned in point 1 do not have a genuine character.* *2. For the purposes of par. 1, an agreement or a legal action does not have a genuine character to the extent it is not performed for justifiable economic reasons. Particularly, this applies to a situation, in which by means of actions described in par. 1, the ownership of shares of the company which pays out dividend is transferred or a company derives revenue (income), paid out subsequently in a form of a dividend or other income from participation in legal persons."*	
Portugal	Yes; Artigo 51.º, n.º 10 do Código do IRC. Article 51 n. 10 of the Corporate Income Tax Code; Link	*Article 51* *10 - The deduction mentioned in paragraph 1 is only applicable when the income derives from profits that were subject to effective taxation.*	
Romania	Yes, Romania has adopted Anti Abuse Rule, as follows: • General Anti Abuse Rule; • Anti-hybrid arrangements rule. Legea 227/2015 privind Codul Fiscal (Law 227/2015 on the Fiscal Code) article 24, par. (4) and par. (6) The law is in force since 1 January 2016.	• **General Anti Abuse Rule** *"The provisions of the current article will not apply to an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the current article, are not genuine having regard to all relevant facts and circumstances. An arrangement may comprise more than one step or part. For the purpose of the current paragraph, an arrangement or a series of arrangements shall be regarded as not genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality. The provisions of the current paragraph shall not preclude the application of domestic or agreement-based provisions required for the prevention of tax evasion, tax fraud or abuse."* • **Anti-hybrid arrangements rule** *"In case the dividends distributed to Romanian legal entities, or to permanent establishments of Member States entities situated in Romania, are tax deductible at the level of the subsidiary situated in a Member State, the provisions of art. (1) will not be applicable."*	

Slovakia	Yes. Article 50a was implemented into the Slovak act no. 595/2003 Coll. on Income Tax as amended ("**Slovak Income Tax Act**") as of 1 January 2016.	*Article 50a* *"Anti-abuse rules* *(1) If a taxable person receives a profit share (dividend) based on an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of this Act, are not genuine having regard to all relevant facts and circumstances, such dividend is subject to taxation. An arrangement may comprise more than one step or part.* *(2) For the purposes of this Act, an arrangement pursuant to paragraph 1 shall be regarded as not genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality."*	1) The provision is effective from 1 January 2016. 2) Dividends in general are not subject to income tax in Slovakia; however, this exemption will not apply to dividends received by a Slovak tax payer the payment of which is tax deductible at the payer's level from 1 January 2016.
Spain	Yes: Artículo 14.1.h) del Real Decreto Legislativo 5/2004, de 5 de marzo, por el que se aprueba el texto refundido de la Ley del Impuesto sobre la Renta de no Residentes. Section 14.1.h) of Royal Decree 5/2004, of March 5th, on Non-Resident Income Tax Law. Link	*"14.1. The following income will be exempt:* *(...)* *h) Profits distributed by subsidiaries resident in Spain to its parent companies resident in another Member State of the EU, or to permanent establishments of the parent company located in another Member State, provided that certain conditions are met:* *1. Both companies must be subject in its country of residence and not exempt from any of the corporate income taxes included in section, 2.c) of the Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.* *2. The profit distribution must not be a consequence of the liquidation of the subsidiary.* *3. Both companies must one of the forms listed in annex 2 of the Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, modified by the Council Directive 2003/123/CE of 22 December 2003.* *A parent company is one that has a direct or indirect holding in another company of at least a 5%. That second company is considered a subsidiary.* *(…)* *The provisions of this letter h) will not be applicable in case the majority of the voting rights of the parent company are directly or indirectly owned by individuals or entities which are non-EU residents, except in case the owner carries out effectively an economic activity directly related with the one carried out by the subsidiary, or in case its purpose is the management of the subsidiary through the necessary organization of material and human resources, or in case it proofs that it has been established for valid economic reasons and not to benefit unfairly from the application of the regime established in this letter h).* (…)"	– *Sentence of the Supreme Court, of April 4th 2012 (rec. 3312/2008)*: the 14.1.h exemption is not applicable to benefits distributed by a Spanish subsidiary to its EU parent company since the beneficial owner is a USA resident. [link] – *Sentence of the Supreme Court, of March 22th 2012 (rec. 1260/2009)*: application of the anti-abuse clause. Simulated transaction [link]

Ukraine	Not an EU member. For dividends anti-avoidance rules – see section 1.		
UK	No.		

b) Interest & Royalties Directive 2003/49/EC

Country	Provision / link	Content / wording	Case-law / other remarks
EU	Art.5 I&R Directive An optional revision has been suggested by the Commission in its working paper of 12 April 2013.	*1. This Directive shall not preclude the application of domestic or agreement-based provisions required for the prevention of fraud or abuse.* *2. Member States may, in the case of transactions for which the principal motive or one of the principal motives is tax evasion, tax avoidance or abuse, withdraw the benefits of this Directive or refuse to apply this Directive.* Suggested amendment: *"2. Member states shall, in the case of an artificial arrangement or an artificial series of arrangements which has been put into place for the essential purpose of avoiding taxation and leads to a tax benefit, withdraw the benefits of this Directive or refuse to apply this Directive.""*	
Austria	Yes: § 99a(9) EStG – § 99a(9) Income Tax Act. No English version available, but the Austrian rule is a literal translation of Art 5(2) Interest-Royalties-Directive. All Austrian federal laws are available at: www.ris.bka.gv.at.	*§ 99a EStG provides for an exemption from withholding taxation on qualified outbound royalty payments, but withdraws this exemption in § 99a(9) "in the case of transactions for which the principal motive or one of the principal motives is tax evasion, tax avoidance or abuse".*	There is very little administrative guidance on § 99a EStG and no case law.
Belgium	No specific rules		
Czech Rep.	No specific rules		
Finland	No specific rules		
France	Articles 182 B bis and 119 quarter of the general tax code	*The exemption at source does not apply if the EU recipient is directly or indirectly controlled by one or more residents of states which are not members of the European Union and if the main purpose or one of the main purposes of the chain of ownership is to take advantage from the exemption.*	

Germany	No. However, the provision shown in table 2a) is applicable for interest and royalties as well.		
Ireland	Yes, 267K TCA 1997 contains a specific anti-abuse clause.	*The relief shall not apply to interest or royalties unless it can be shown that the payment of the interest or royalties was made for bona fide commercial reasons and does not form part of any arrangement or scheme of which the main purposes or one of the main purposes of which is avoidance of liability to income tax.*	
Italy	No.		
Latvia	However, interest receiver must be qualified company; Enterprise income tax law; In force, however, from 1 January 2014 will not be relevant as interest and royalties will not be the subject of WHT; [Link]	*(19) Company – a capital company, which is:* *1) a resident of the Republic of Latvia;* *2) a company – resident of other Member States of the European Union, which at the same time conforms to the following criteria:* *a) is referred to in the Annex 1 to this Law;* *b) in accordance with the tax regulatory enactments of the Member States of the European Union is recognised for the purposes of imposing taxes as a resident of the relevant Member State of the European Union and, on the basis of an agreement for the prevention of the imposition of double taxation, which has been entered into with a third state, for the purposes of imposing taxes is not considered as a resident of a state which is not a Member State of the European Union; and* *c) is a taxpayer, which pays one of the taxes referred to in Annex 2 to this Law if it is not exempt from the relevant tax or it does not have the possibility to choose a tax exemption; and* *3) a resident of a state of the European Economic Area, with which Latvia has entered into a convention on the prevention of imposition of double taxation and tax evasion and such convention has entered into force and which is not a Member State of the European Union, which in the state of residence is subject to the imposition of a tax similar in substance to the enterprise income tax of the Republic of Latvia, is not exempt from the relevant tax or it does not have the possibility to choose a tax exemption and, on the basis of an agreement for the prevention of the imposition of double taxation, which has been entered into with a third state, for the purposes of imposing taxes is not considered as a resident of a state which is not a member state of the European Economic Area.* *(191) Companies associated with the Member States of the European Union – companies which conform to the criteria specified in Paragraph nineteen, Clauses 2 and 3 of this Section and are referred to in Annex 3 to this Law, as well as if they conform to one of the following criteria:* *1) one company owns at least 25 per cent of the capital or voting rights in another company; or* *2) 25 per cent of the capital or voting rights of both companies belongs to another company, which conforms to the criteria specified in Paragraph nineteen, Clauses 2 and 3 of this Section and are referred to in Annex 3 to this Law.*	

Luxembourg	No specific GAAR in the context of the EU Interest & Royalties Directive; general GAAR may apply. The Tax Directorate has however issued a Circular Letter as regards the tax treatment of financing companies, providing for a certain number of conditions to be met in order to ascertain that the margin realized meets the arm's length principle. Circular Income Tax Law Letter n°164/2 dated 28 January 2011 on the tax treatment of companies practising intragroup financing activities *(link1)* Circular Income Tax Letter n°164/2bis dated 8 April 2011 on the tax treatment of intragroup financing transactions secured by a binding decision from the Direct Tax administration prior to the publication of the Circular Income Tax Law Letter n°164/2 dated 28 January 2011 *(link2)*	*The Circular Letter specifies the Transfer Pricing (TP) policy on intra-group financial transactions (i.e. loan and transfer of funds between associated enterprises). It refers to the 2010 OECD TP guidelines for multinational enterprises, and clarifies how the arm's length principle should be applied to such transactions (i.e. functional and risk analysis). In addition, it formalizes a mechanism similar to the unilateral Advance Pricing Agreement (APA).*	
Malta	No.		
Netherlands	No.		
Poland	No.		
Portugal	Yes; Artigo 87.º, n.º 6 do Código do IRC. Article 87 n. 6 of the Corporate Income Tax Code; Link	*Article 87* *6 - The rates provided for in paragraph g) of paragraph 4 shall not apply:* *a) to interest and royalties derived in Portuguese territory by a company from another Member State or by a permanent establishment in another Member State of a company of a Member State, where most of the capital or the majority of the voting rights of the company are held directly or indirectly, by one or more residents of third countries, except where it is proved that the chain of participation does not have as its main objective or as one of its objectives the obtaining of a reduced rate of withholding tax;* *b) Where special relations, as defined in Article 63 hereof, exist between the payer and the debtor or the beneficial owner of interest or royalties, or between them and a third, to the excess amount of interest or royalties over that which, in the absence of such a relationship, would have been agreed between the payer and the beneficial owner.*	

Romania	Yes, the Interest & Royalties Directive as implemented in the domestic legislation contains a General Anti Abuse Rule which refers to Fraud and Abuse. There are also targeted anti-abuse rules which deny the benefits of the directive in case, for example, the payments are treated as distribution of profits or repayment of capital. Legea 571/2003 privind Codul Fiscal cu modificarile si completarile ulterioare (Law 571/2003 on the Fiscal Code as supplemented and amended), article 12422 par. (1) and par. (2). The law is in force. Weblink (please note that the legislative text is not updated.)	*Since 1 January 2016, the provision is amended as follows:* *"(1) The provisions of this Chapter shall not preclude the application of domestic or agreement-based provisions, agreements to which Romania is a party, required for the prevention of tax fraud or abuse observed by the conditions of the law.* *(2) The provisions of this Chapter shall not apply where the transactions have as consequence tax fraud, tax evasion or abuse as observed by the conditions of the law;"*	
Slovakia	Yes. Beneficial ownership test. Art. 13(2)(f)(h) of the Slovak Income Tax Act	*[Interest]/[Royalties] income from sources in the territory of the Slovak Republic incurred by a EU tax resident who is a beneficial owner of such income or by a permanent establishment of such (EU tax) resident on the territory of another EU member state, if* ***it is a beneficial owner of such income****, is exempt from tax [...]*	No.
Spain	No.		
Ukraine	Not EU member. For interest and royalties anti-avoidance rules – see section 1.		
UK	No.		

c) Tax Merger Directive

Country	Provision / link	Content / wording	Case-law / other remarks
EU Law	Merger Directive 2009/133/EC, Art.15 (1). An optional revision has been suggested by the Commission in its working paper of 12 April 2013.	*1. A Member State may refuse to apply or withdraw the benefit of all or any part of the provisions of Articles 4 to 14 where it appears that one of the operations referred to in Article 1:* *(a) has as its principal objective or as one of its principal objectives tax evasion or tax avoidance; the fact that the operation is not carried out for valid commercial reasons such as the restructuring or rationalisation of the activities of the companies participating in the operation may constitute a presumption that the operation has tax evasion or tax avoidance as its principal objective or as one of its principal objectives;"* Suggested amendment: *"A member state shall refuse to apply or withdraw the benefit […] where […] one of the operations […]* *(a) is an artificial arrangement or an artificial series of arrangements which has been put into place for the essential purpose of avoiding taxation and leads to a tax benefit."*	ECJ case Kofoed (C-321/05), para 38: *"Thus, Article 11(1)(a) of Directive 90/434 reflects the general Community law principle that abuse of rights is prohibited. Individuals must not improperly or fraudulently take advantage of provisions of Community law. The application of Community legislation cannot be extended to cover abusive practices, that is to say, transactions carried out not in the context of normal commercial operations, but solely for the purpose of wrongfully obtaining advantages provided for by Community law"*
Austria	Yes: § 44 Umgründungssteuergesetz (UmgrStG) – § 44 Reorganization Tax Act. No English version available, but the wording of the Austrian rule is in part a literal translation of Art 15 Merger Directive. All Austrian federal laws are available at: www.ris.bka.gv.at.	*The application of the Reorganization Tax Act is to refuse if (1) the reorganization serves the circumvention or diminution of the tax liability within the meaning of § 22 BAO* [abuse] *or (2) has as its principal objective or as one of its principal objectives tax evasion or tax avoidance within the meaning of Art 15 of the Merger Directive.*	There is some administrative practice and scholarly discussion. However, there are only very few decided cases. One of the most notable is UFS (Independent Tax Senate) 1 December 2009, RV/0472-F/07. – All decisions by the Independent Tax Senate are available, in German, at https://findok.bmf.gv.at.

Belgium	Artikel 183bis WIB/CIR 1992 Article 183bis Belgian Income Tax Code 1992; link (p.208 - in FR)	*For the application of [the tax neutral regime on transactions covered by the Merger Directive], the transaction cannot have tax fraud or tax avoidance as its main or one of its main objectives.* *When the transaction does not take place on the basis of sound business reasons, such as the restructuring or rationalization of the activities of the companies involved in the transaction, suspicions could arise, unless counter-proof is delivered, that the transaction has tax fraud or tax avoidance as its main or one of its main objectives.*	Court of Appeals of Antwerp, 15 May 2012: only tax objectives directly related to the tax neutrality of the restructuring (in casu: demerger) must be taken into account. Other tax consequences resulting from the restructuring, but which would also have taken place without neutrality, can be an objective of the transaction.
Czech Rep.	Yes, Zákon o daních z příjmů, Income taxes act, Article 23d	*The benefits of the "Merger Directive" cannot be claimed in case that the main reason or one of the main reasons for the transaction is decrease of tax liability or tax evasion. , especially if there are no business reasons.*	Czech Republic is not a case law country.
Finland	Section 52h of the Act of Taxation of Business Income	*If it is evident that the one of the main reasons to carry out a transaction has been to avoid taxes, the sections 52a-52g cannot be applied.*	Finland relied on its existing domestic provisions when implementing the Parent-Subsidiary and Interest and Royalties Directives. Whereas implementing the Merger Directive Finland included a special anti-avoidance provision for restructuring situations. The reasoning behind the different implementation techniques is unclear. It may be argued that the specific rule is unnecessary and the general domestic anti-avoidance provisions would have been sufficient.
France	Not specifically. However, tax neutrality of transnational mergers, contributions and similar operations requires prior ruling and such ruling is not delivered in case of fraud or abuse; Articles 210 A, B and C of the general tax code		The Highest Tax Court (Conseil d'Etat) has referred to the CJEU the question of the compatibility of the French legislation with EU law as a prior ruling is required for benefiting from tax neutrality in case of operations involving another Member state whereas it is not the case for purely domestic operations (Case of CE 30 December 2015 No 369311, Euro Park Service).
Germany	No.		

Ireland	No.		
Italy	No.		
Latvia	Yes; Section 6.[2] Special Provisions for Taxpayers Involved in a Reorganisation Paragraph 4; Link	*(4) The provisions of Paragraphs one and two of this Section shall not be applied if the stocks of the acquiring company which have been received by the transferring, merging or dividing company are not located in their ownership at least three years after the transfer thereof, if only the transferring, merging or dividing company justifiably does not prove that the alienation of such stock has not been performed for the purpose of reducing its taxable income and not to pay the taxes payable in Latvia or to reduce the amount thereof.*	
Luxembourg	No specific GAAR in the context of the EU Merger Directive; general GAAR may apply.		
Netherlands	In compliance with the Tax Merger Directive, for individual income tax and corporate income tax purposes the Netherlands provides exemptions to income and capital gains realized or deemed realized upon qualifying mergers, divisions, partial divisions (demergers), transfers of assets/liabilities that form an enterprise or independent part of an enterprise, and exchanges of shares.	*The taxation of income and taxation on capital gains realized upon mergers, divisions, partial divisions, transfers of assets/assumption of liabilities that form an enterprise or independent part of an enterprise, and exchanges of shares is deferred under certain conditions and provided that the predominant purpose of the merger is not to avoid or defer taxation. The transaction under consideration is deemed to have the predominant purpose to avoid or defer taxation if it does not have business reasons such as restructuring or rationalization of the activities of the companies involved.* *Cross-border mergers, divisions, partial divisions and transfers of assets; in case a Dutch entity is legally merged into a foreign entity, insofar it concerns the Dutch entity that is merged into that foreign entity, or in case an entity is demerged from a Dutch entity, the exemptions described above only apply if and to the extent the relevant assets and liabilities with respect to which non-recognition is claimed are attributed to a Dutch permanent establishment of the foreign entity. Also in regard to aforementioned transfers of assets/liabilities the exemptions described above only apply if and to the extent the relevant assets and liabilities with respect to which non-recognition is claimed are attributed to a Dutch permanent establishment of the foreign entity.*	

Poland	Yes – applicable only to mergers and divisions (including spin-offs) Art. 10 ust. 4 ustawy z dnia 15 lutego 1992 r. o podatku dochodowym od osób prawnych (Article 10 Clause 4 of the Act on Income Tax for Legal Persons of 15 February 1992; i.e. Corporate Income Tax Act); Link	*« The provisions of Clause 2.1 and Article 12 Clause 4.12 do not apply where a merger or a division of companies are not performed for valid economic reasons but principal or one of the principal objectives of such operation is tax evasion or tax avoidance ».* *Art. 10 Clause 2.1. provides for non-taxation of the excess of the net value of assets and liabilities transferred to a receiving or newly established company over the nominal value of shares attributed to the shareholders of a transferring company or a company subject to division.* *Article 12 Clause 4.12 provides for non-taxation of revenues of a shareholder of a transferring company or a company subject to division, amounting to the nominal value of shares attributed to a shareholder by a receiving or newly established company.* *They jointly ensure the neutrality of mergers and divisions – and are set aside by Article 12 Clause 4.*	Case law is astonishingly scarce, if at all existent.
Portugal	Yes; Artigo 73.º, n.º 10 do Código do IRC. Article 73 n. 10 of the Corporate Income Tax Code; Link	*Article 73* *10 - The special scheme shall not apply in whole or in part, when it is determined that the transactions covered by it have as their main objective or as one of the main objectives tax evasion, which shall be considered to exist, in particular, where the companies involved are not all subject to the same system of IRC taxation on all of their income or where transactions have not been entered into for valid economic reasons, such as restructuring or streamlining of the activities of companies that participate in them, making then, if appropriate, the corresponding additional tax assessments.*	Case 1: Court: CAAD – Centro de Arbitragem Administrativa (Administrative and Tax Arbitration Center) Reference: Decision n.º 14/2011, 4 January 2013 Not under appeal, to our knowledge In this case the arbitrators expressly addressed the possibility of the application of article 73, n. 10 as a specific anti-avoidance rule. In this case a downstream/reverse merger was in question and the arbitrators recognized that there were valid commercial reasons for business restructuring operations in the reverse merger, against the Tax Authorities interpretation, being fully applicable the tax neutrality regime. (link) Case 2: Court: Supremo Tribunal Administrativo Reference: Decision n.º 0180/13, 23 April 2013 Not under appeal, to our knowledge In this case the Tax Authorities denied the neutrality of a demerger with the argument that there was no attribution of shares to the shareholder as required in the Portuguese tax neutrality regime. In the present case the demerged company was fully owned by a single shareholder and the Court has concluded that in this situation the attribution of shares was not necessary and that the operation was made for valid commercial reasons. (link)

Romania	Yes, the Merger Directive as implemented in the domestic legislation contains General Anti Abuse Rule: Legea 571/2003 privind Codul Fiscal cu modificarile si completarile ulterioare (Law 571/2003 on the Fiscal Code as supplemented and amended), article 271 par. (11), let. a). This rule is in force. Weblink (please note that the legislative text is not updated.)	*"The provisions of this article shall not apply where it appears that the merger, division, partial division, transfer of assets or exchange of shares:* *a) has as its principal objective or as one of its principal objectives tax fraud or tax evasion. The fact that one of the operations referred to in paragraph (2) is not carried out for valid commercial reasons such as the restructuring or rationalisation of the activities of the companies participating in the operation may constitute a presumption that the operation has tax evasion or tax avoidance as its principal objective or as one of its principal objectives;"*	
Slovakia	No specific GAAR in the context of the EU Merger Directive; general GAAR may apply. A specific rule in Article 30(2) of the Slovak Income Tax Act applies to carry forward of tax losses by a legal successor of a taxpayer that ceased to exist.	*"The legal successor may claim the tax loss, if both the legal entity that ceases to exist and the legal successor are payers of income tax and, simultaneously, if the purpose of such cessation is not solely decrease or evasion of tax obligation."*	No.
Spain	Yes: Artículo 96.2 del Real Decreto Legislativo 4/2004, de 5 de marzo, por el que se aprueba el texto refundido de la Ley del Impuesto sobre Sociedades. Section 96.2 of Royal Decree 4/2004, of 5 March, on Corporate Income Tax. Link	"96.2 *The regime set forth in this chapter shall not apply should the subject matter of the transaction performed is a fraud or tax evasion. Particularly, the regime shall not apply should the transaction not be performed for valid economic grounds, such as the restructuring or streamlining of activities of the companies having an interest in the transaction, but with the mere purpose of obtaining a tax benefit*."	*1. Sentence of the Supreme Court, of September 27th 2012 (rec. 452/2009)*: the merger was not carried out for valid economic grounds, the merged entity must develop a business activity; [link] *2. Sentence of the National High Court, of March 9th 2011 (rec. 110/2008)*: the intention of the contracting parties is irrelevant; the determining fact that triggers the application of the anti-abuse cause is the existence of a valid cause for the transaction. The transaction is reasonably aimed at a business purpose; [link]

Ukraine	Not EU member. The only specific rule regarding mergers is about transfer of tax losses. Tax losses are not recognised for the successor if the taxpayer subject to liquidation as a result of merger or acquisition and the successor were related persons less than eighteen consecutive months prior to the completion of accession. Law: Tax code of Ukraine, Art.153.15.1		
UK			

3. Anti Aggressive Tax Planning Rule

Country	Provision / link	Content / wording	Case-law / other remarks
EU			
Austria	No. There is, however, a specific anti-arbitrage rule in § 10(7) Corporate Income Tax Act since 2011. This rule leads to non-application of the participation exemption for inbound inter-company dividends insofar as the "dividend" payment is tax deductible at the payer's level.		
Belgium	No specific rules. However, this is within the scope of article 344, §1 BITC 1992 (GAAR in Belgium).		
Czech Rep.	No specific rules		
Finland	No specific rules		Aggressive tax planning is not a legal concept in Finnish tax law. Though it's moral acceptability has been recently questioned.
France	No specific rules; only abuse of law is applicable provided that the tax motive is exclusive.		

Germany	No specific. However, this is within the scope of § 42 Abgabenordnung (see above). A number of changes have recently been introduced to prevent double non-taxation of income. The following amendment to the Investment Tax Act is currently being considered by the German government (ministerial draft bill of 16 December 2015, link):	Draft § 5a Investment Tax Act: *"§ 5a Violation of professional duties when assessing tax bases:* *(1) A professional who, acting deliberately or grossly negligent,* *1. In spite of existing errors, certifies that the tax base has been determined according to German tax laws, or* *2. in spite of existing indications, does not make specifications regarding arrangements of an investment fund that have served tax evasion or avoidance for the investors, the investment fund or third persons, commits an administrative offence.* *(2) This offence can be subject to a penalty of up to € 1m."*	Reference to aggressive tax planning is also made in the draft bill (amendment of 319a HGB (link)) implementing the Audit Regulation (EU)537/2014, in the provision on the incompatibility of providing both statutory audit to public interest entities and "material" tax advice: The EU Regulation states that for this purpose, aggressive tax planning should not be considered immaterial. In defining materiality, the German draft bill states that „*in particular, it is not a merely immaterial effect [on the annual account] if the tax advisory services in the business year to be audited have significantly reduced the domestic profit for tax purposes, or shifted a significant part of the profit abroad, without there being an economic need for the undertaking, apart from obtaining a tax advantage."*
Ireland	No, but there is the concept of "tax avoidance transactions" defined in Section 811.		

Italy	No. There is no general provision in force, specifically relating to "*aggressive tax planning*". However, one has been proposed (see under b) below).	Proposed "Delegated Law for Tax Reform": *"CHAPTER II* *Fight against tax evasion and avoidance and revision of the relationship between tax authorities and taxpayers* *Article 5* *(Rules on the abuse of rights and tax avoidance)* *1. With the Legislative Decrees as of Article 1, the Government is delegated to implement the review of current anti-avoidance provisions in order to introduce the general principle of the prohibition of abuse of rights, extended to non-harmonized taxes, implementing the following principles and criteria:* *a) to define the abusive conduct as distorted use of legal instruments suitable to get a tax saving although such conduct does not infringe any specific provision;* *b) to guarantee the taxpayer's freedom of choice between different operations entailing also a different tax burden, and, for such a purpose:* *1) to consider the aim of getting undue tax advantages as main reason of the abusive operation;* *2) to exclude the existence of an abusive conduct if the operation is justified for relevant reasons unrelated to taxation;* *3) to establish that such reasons are also those not necessarily producing an immediate profitability of the operation but meet organizational needs and consist in a structural and functional improvement of the taxpayer's business;* *c) to provide for the enforceability against Tax Administration of legal instruments as of letter a) and the ensuing power of Tax Administration to deny the tax saving;* *d) to regulate the regime of the proof laying on the Administration the burden to prove the abusive intention and the modes of functional manipulation and alteration of the legal instruments used as well as their compliance with an ordinary market logic and conversely laying on the taxpayer the burden to allege the existence of sound alternative or concomitant reasons unrelated to taxation justifying the use of such instruments;* *e) to set forth the inclusion in the grounds of the tax assessment a formal and precise identification of the abusive conduct, in default of which it is void;* *f) to lay down specific procedural rules ensuring an effective adversarial procedure with the Tax Administration and safeguarding the right of defense at any stage of the assessment procedure and in any stage and tier of the tax judgment;* *g) to envisage that in case of appeal penalties and interest are collectable after the decision of the provincial tax court".*	
Latvia	No.		
Luxembourg	No.		

Malta	No – should be covered by section 1 (see above)		
Netherlands	No, but in practice aggressive tax planning could fail on the basis of the abuse of law doctrine or the sham transaction (see 1.)		
Poland	No.		
Portugal	Yes; Artigo 1.º a 24.º do Decreto-Lei n.º 29/2008, de 25 de Fevereiro. Article 1 to 24 of Decree Law 29/2008, of 25 February; Link	*As mentioned above this law has 24 articles and therefore it is not feasible to translate the entire law in this section. Please see hereunder a translation of Article 2 n. 1 that rules on the scope of applicability of this regime.* *Article 2:* *1 - This decree law applies to tax planning schemes or acting that imply tax advantages related, by any mean, totally or partially, to taxes on income, expenditure and capital administered by the Tax Authorities.*	
Romania	No.		
Slovakia	No. According to a specific anti-arbitrage rule in the Slovak Income Tax Act, as from 1 January 2016, dividends (which in general are not subject to income tax in Slovakia) will not be exempt from tax in Slovakia if the "dividend" payment is tax deductible at the payer's level.		The provision is effective as of 1 January 2016.
Spain	No. The General Anti - Abuse rules apply.		
Ukraine	No.		
UK	No. However, in practice case-law requires the courts to apply legislation in a particular way in the context of aggressive tax planning, and to prefer interpretations which are consistent with the perceived purpose of the legislation.		Case-law is too extensive to cite here. The three most recent cases of the House of Lords or Supreme Court addressing statutory interpretation in the context of tax structures are as follows_ 1st Link 2nd Link 3rd Link The most commonly cited test (at paragraph [36]) of the case cited at 1 above is that "*The ultimate question is whether the relevant statutory provisions, construed purposively, were intended to apply to the transaction, viewed realistically.*"