The CJEU decided that German anti-abuse legislation is incompatible with EU Law

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On 20 December 2017, the Court of Justice of the European Union ("CJEU") decided on two cases involving German anti-abuse legislation that denies a (partial) exemption or refund of withholding tax on distributions made by German companies to foreign parent companies. This case law confirms the Court's previous jurisprudence and should have a significant impact on anti-abuse provisions implemented by several European countries. Evidently, this decision is of major relevance for Luxembourg companies holding participations in German and other European subsidiaries. This article provides a clear and concise overview of the cases under review, the anti-abuse provision in question and the limitations set by the CJEU on the scope of anti-abuse legislation in an EU context.

1. Introduction

Dividends distributed by a German capital company to a non-resident parent company are in general subject to German corporate income tax at a rate of 25% (plus 5.5% solidarity surcharge applied thereon). However, parent companies resident in EU Member States may benefit from a full withholding tax exemption in accordance with German tax law implementing the rules of the EU Parent-Subsidiary Directive. Moreover, the right of Germany to levy withholding tax on dividends may be restricted by tax treaties. So far, so good.

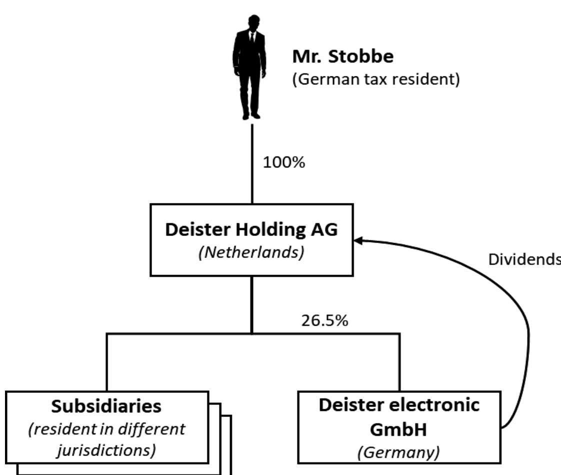
However, in practice, when German companies distribute dividends to non-resident parent companies, Paragraph 50d (3) of the German Income Tax Law (Einkommensteuergesetz, "EStG") provides for an anti-abuse provision that subjects the application of reduced or zero withholding tax rates on dividends to certain (excessive) conditions. Since its introduction in 2007, there have been serious doubts regarding the conformity of this rule with EU law as it did not tie on the "wholly artificial arrangement" criterion established in CJEU case law.

The Finance Court of Cologne (Finanzgericht Köln) referred two cases to the CJEU where § 50d (3) of the EStG was applied in order to have clarity whether this provision is in conformity with the EU Parent-Subsidiary Directive and primary EU law (freedom of establishment, etc.). By decision of the President of the CJEU of 6 April 2017, Cases C-504/16 and C-613/16 were joined for the purposes of the oral part of the procedure and the judgement.

2. Key facts of the cases under review

2.1. Deister Holding AG (Case C-504/16)

Deister Holding AG (formerly Traxx Investments NV) was a Dutch company that held participations in several subsidiaries resident in different jurisdictions. Deister Holding AG financed its subsidiaries with a mixture of equity and shareholder loans.



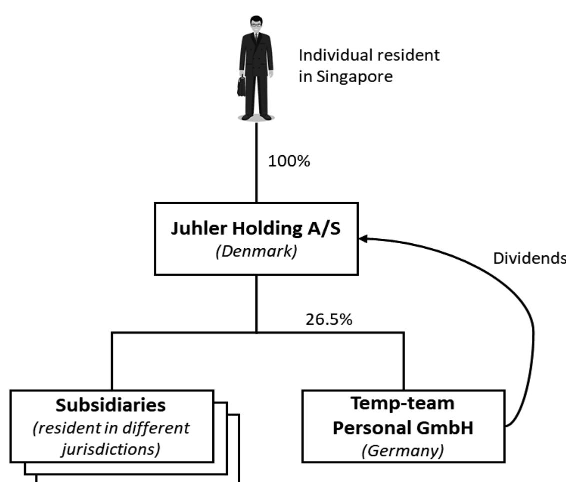
As from 2005, the company owned a participation of 26.5% in Deister electronic GmbH, a company resident in Germany. As from March 2007, Deister Holding AG rented an office in the Netherlands and employed two people (in 2007 and 2008). The sole shareholder of Deister Holding AG was Mr. Stobbe, a German resident individual.

On 19 November 2007, Deister electronic GmbH paid dividends to Deister Holding AG. On this distribution, 25% German corporate income tax (plus solidarity surcharge) was withheld on behalf of Deister Holding AG. On 16 May 2008, Deister Holding AG applied for an exemption from German withholding tax which was rejected by the German tax authorities. Thereafter, Deister Holding AG brought an action against that decision before the Finanzgericht Köln (Finance Court of Cologne) on the grounds that Paragraph 50d (3) EStG is incompatible with the freedom of establishment and the EU Parent-Subsidiary Directive. The Court finally referred the case to the CJEU.

2.2. Juhler Holding A/S (Case C-613/16)

Juhler Holding A/S was a Danish company that was a wholly-owned subsidiary of Juhler Services Limited, a Cyprus company. The sole shareholder of Juhler Services Limited was an individual resident in Singapore.

Juhler Holing A/S held participations in more than 25 subsidiaries, some of which were resident in Denmark. The group was active in the area of personnel procurement services (one third of the volume of these services was rendered in Denmark). Since 2003, Juhler Holding A/S has held a 100% participation in temp-team Personal GmbH, a company resident in Germany.



As regards the activities and substance of Juhler Holding A/S, the following is mentioned:
- The company owned a property portfolio;
- It exercised financial control within the group so as to optimise the group's interest expenses;
- It monitored the performance of its subsidiaries;
- It had a phone line and an e-mail address;
- It was listed as a contact partner on the website of the group's homepage;
- It did not have its own office (if necessary, it used the premises as well as the other facilities and staff of other companies within the group);
- Its chief executive was also on the boards of various companies of the group.

In 2011, temp-team Personal GmbH paid a dividend to Juhler Holding A/S on which 25% corporate income tax (plus solidarity surcharge) was withheld. Juhler Holding applied for a refund of these taxes which was rejected by the German tax authorities.

Thereafter, Deister Holding AG brought an action against that decision before the Finanzgericht Köln (Finance Court of Cologne) on the grounds that Paragraph 50d (3) EStG is incompatible with the freedom of establishment and the EU Parent-Subsidiary Directive. The Court referred the case to the CJEU.

3. Overview of the German anti-abuse provision

The German anti-abuse provision as introduced in 2007 reads as follows:

"A foreign company has no entitlement to complete or partial relief under subparagraphs 1 or 2 to the extent that persons have holdings in it who would not be entitled to the refund or exemption if they earned the income directly, and
(1)There are no economic or other substantial reasons for the involvement of the foreign company; or
(2)The foreign company does not earn more than 10% of its entire gross income for the financial year in question from its own economic activity; or
(3)The foreign company does not take part in general economic commerce with a business establishment suitably equipped for its business purpose.

The circumstances of the foreign company shall be the sole decisive factor; organisational, economic or other substantial features of undertakings that are affiliated with the foreign company (Paragraph 1(2) of the Außensteuergesetz (Foreign Tax Act)) shall not be considered. A foreign company does not have its own economic activity if it earns its gross income from the management of assets or assigns its main business activities to third parties. …"

Hence, the entitlement to benefit from a withholding tax exemption or refund is precluded where (i) the non-resident parent company's shareholder would not be entitled to the exemption or a refund if they had received those dividends directly and (ii) one of the three conditions set-out in § 50d (3) of the EStG is met. The consequence of § 50d (3) is an automatic presumption of abuse or fraud without a possibility to rebut the presumption.

When determining whether the non-resident parent company has its own economic activity, current German legislation explicitly states that only the circumstances of the non-resident company are to be taken into account, whereas the organisational, economic and other substantial features of undertakings that are affiliated with that company are not to be considered. Thus, the structure and strategy of the group to which such a company belongs are not taken into account for the economic activity test.

Apart from the passive management of assets, the active management of an investment, holding or financing company would, in case of non-resident parent companies, not be regarded as own economic activity within the meaning of § 50d (3) of the EStG. Last but not least, the German tax authorities did not even have to evidence tax avoidance when denying the dividend withholding tax exemption.

In 2011, the German legislator slightly modified § 50d (3) of the EStG as a reaction to concerns that the provision was not in conformity with EU law.

4. Analysis of the CJEU decision

The CJEU analysed the conformity of the German anti-abuse provision in regard to both the restrictions imposed by (i) the EU Parent-Subsidiary Directive and (ii) the freedom of establishment.

4.1. EU Parent-Subsidiary Directive

According to Article 5 (1) of the EU Parent-Subsidiary Directive ("PSD"), the distribution of profits by a company that is resident in an EU Member State to a parent company that is resident in another EU Member State should be exempt from withholding tax. This exemption is meant to avoid double taxation, to ensure tax neutrality and to facilitate the grouping of companies at EU level.

Consequently, the PSD limits the sovereignty of EU Member States regarding the taxation of profits distributed by resident companies to a parent company resident in another Member State. Member States are further not free to unilaterally introduce restrictive measures that would subject the right to exemption from withholding tax to various conditions.

Article 1 (2) of the PSD only allows Member States to introduce domestic or agreement-based provisions required for the prevention of fraud and abuse provided that these measures are appropriate and do not go beyond what is needed to achieve that objective. As an exception to the general rule laid down by the PSD, such measures are subject to a strict interpretation.

In other words, national legislation must be targeted to prevent conduct involving the creation of "wholly artificial arrangements" which do not reflect economic reality and the purpose of which is to unduly obtain a tax advantage. Thus, a general presumption of fraud and abuse cannot justify either a fiscal measure which compromises the objectives of the PSD or a fiscal measure which prejudices the enjoyment of a fundamental freedom guaranteed by the treaties.

When assessing the existence of fraud and abuse, tax authorities may not rely on predetermined general criteria. Instead, tax authorities have to carry out an individual examination of the whole operation at issue. The imposition of a general tax measure automatically excluding certain categories of taxable persons from the tax advantage, without the tax authorities being required to provide even *prima facie* evidence of fraud and abuse goes beyond what is necessary to prevent fraud and abuse.

The German anti-abuse provision clearly transgresses these guidelines and restrictions in many ways. When shares in a non-resident parent company are held by persons who would not be entitled to (partial) exemption from withholding tax if they received dividends directly from a subsidiary resident in Germany, Article 50d (3) of the EStG subjects the withholding tax exemption to the requirement that none of the three conditions laid down in that provision is met.

Furthermore, the organisational, economic or other substantial features of undertakings that are affiliated with the non-resident parent company are not to be considered. In addition, a non-resident parent company is not considered to have its own economic activity if it earns its gross income from the management of assets or assigns its main business activities to third parties.

It is self-evident that § 50d (3) of the EStG is not specifically designed to target wholly artificial arrangements the purpose of which is to obtain an exemption from dividend withholding tax. Rather, this provision covers any situation where persons who would not be entitled to such an exemption (if they received the dividends directly) have holdings in a non-resident parent company. However, according to the CJEU, the mere fact that such persons have holdings does not itself indicate the existence of a wholly artificial arrangement which does not reflect economic reality and whose purpose is to unduly obtain a tax advantage. Also, the PSD does not insert any restrictions linked to (i) the tax treatment of persons with holdings in parent companies resident in the European Union or (ii) the origin of such persons.[1]

Moreover, when one of the three conditions laid down in § 50d (3) of the EStG is met, it establishes an irrebuttable presumption of fraud or abuse. The CJEU noticed that the three conditions, whether taken individually or as a whole, are not the right criteria to imply the existence of fraud or abuse. In particular, the PSD does not contain any requirement as to (i) the nature of the economic activity of companies falling within the scope or (ii) the amount of turnover resulting from those companies' own economic activity.

The fact that the economic activity of a non-resident parent company consists in the management of its subsidiaries' assets or that the income of that company results only from such management cannot per se indicate the existence of a wholly artificial arrangement which does not reflect economic reality. In light of the above, the CJEU held that Article 1 (2) in conjunction with Article 5 (1) of the PSD preclude national legislation such as § 50d (3) of the EStG.

4.2. Freedom of establishment

The CJEU further analysed as to whether § 50d (3) of the EStG is in conformity with the freedom of establishment.

As a matter of principle, all measures which prohibit, impede or render less attractive the exercise of freedom of establishment must be considered to be restrictions to that freedom.[2] Such restrictions are only permissible if they relate to situations which are not objectively comparable or if it is justified by overriding reasons in the public interest recognised by EU law.

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However, in the present cases, the CJEU concludes that a non-resident parent company receiving a dividend from a German subsidiary is in a situation which is comparable to that of a German parent company. In these circumstances, it is further necessary that the restriction is appropriate for ensuring the attainment of the objective that it pursues and that it does not go beyond what is necessary to achieve this.

The CJEU states that the objective of combating tax evasion and avoidance, whether it is relied on Article 1 (2) of the PSD or as justification for an exception to primary law (i.e. the freedom of establishment) has the same scope. Therefore, anti-abuse provisions have to be targeted measures aiming at "wholly artificial arrangements" which do not reflect economic reality and the purpose of which is to unduly obtain a tax advantage.

Accordingly, EU Member States are free to protect their tax bases by way of anti-abuse rules which are exclusively directed at "wholly artificial arrangements".[3] Nevertheless, within the EU, restrictions can only be justified by the need to prevent tax avoidance when a specific anti-avoidance rule targets "wholly artificial arrangements aimed solely at escaping national tax normally due".

Thus, an abusive situation does not depend only on the intention of the taxpayer to obtain tax advantages (i.e. a motive test) but requires the existence (or absence) of certain objective factors.[4] Amongst these objective elements, the CJEU emphasized the importance of the existence of an "actual establishment" in the host state (for example, premises, staff, facilities and equipment) and a "genuine economic activity" performed by the foreign company.[5] Here, a company may even rely on staff and premises of affiliated companies resident in the same jurisdiction.

The notion of "genuine economic activity" should be understood in a very broad manner and may include the mere exploitation of assets such as shareholdings, receivables and intangibles for the purpose of deriving what is often described as "passive" income. The nature of the activity should not be compromised if such passive income is principally sourced outside the host state of the entity.[6]

In addition, no specific ties or connections between the economic activity assigned to the foreign entity and the territory of the host state of that entity can be required by domestic anti-abuse provisions. Therefore, insofar as the EU internal market is concerned, the mere fact that an intermediary company is "active" in conducting the functions and assets allocated to it (rather than being a mere letterbox company) should suffice to be out of the scope of domestic anti-abuse rules or the PPT in tax treaties concluded between EU Member States.

The objective of combating tax evasion and avoidance and that of safeguarding a balanced allocation of taxation powers between the Member States cannot, in the present case, justify an impediment to the freedom of establishment. In addition, the CJEU noted that the origin of the shareholders of the parent companies does not affect the rights of companies to rely on the freedom of establishment. It does not follow from any provision of EU law that the origin of the shareholders, be they individuals or legal persons, of companies resident in the European Union affects the right of those companies to rely on that freedom.

In light of the above, the CJEU held that the German anti-abuse provision was violating the freedom of establishment.

5. Conclusion

Luxembourg is a prime holding location and a leading global centre for investment management within Europe. Therefore, the question as to whether Luxembourg companies involved in these investment structures may benefit from EU Directives and tax treaties concluded by Luxembourg with other EU Member States is of utmost importance. Unfortunately, anti-abuse legislation implemented by some EU Member States and the attitude of some foreign tax authorities have created unprecedented legal uncertainty in this respect.

The CJEU now re-confirmed that taxpayers are free to rely on their EU freedoms when structuring investments as long as the underlying contractual arrangements are not "wholly artificial arrangements" which do not reflect economic reality and the purpose of which is to unduly obtain a tax advantage.

The right of a Member State to protect its tax base against abusive arrangements is secondary. It follows that "tax jurisdiction shopping" is a legitimate activity in an internal market, even if the choice of the jurisdiction is principally based on tax considerations.

While § 50d (3) of the EStG has been slightly amended in 2011 with a view to ensure conformity with EU law, even the amended version of this provision does not comply with the requirements determined by the CJEU. It is interesting to note that the Finance Court of Cologne already referred a case relating to the 2011 version of § 50d (3) of the EStG to the CJEU. It is more than likely that the CJEU will decide that the new version is also incompatible with EU law. Ultimately, the case law of the CJEU provides for clear guidelines regarding the design and interpretation of anti-abuse provisions in an EU context, contributing to legal certainty in the post-BEPS era.

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The authors wish to thank Samantha Schmitz (Chief Knowledge Officer) for her assistance.

1) See Paragraph 66 of the Decision.
2) See Paragraph 88 of the Decision.
3) See "Cadbury Schweppes", note 3, Para. 51; see Dr. Eric Robert, Driss Tof, „The Substance Requirement and the Future of Domestic Anti-Abuse Rules within the Internal Market", European Taxation, IBFD, November 2011, p. 438; see José Calejo Guerra, "Limitation on Benefits Clauses and EU Law", European Taxation, IBFD, February/March 2011, p. 93.
4) See "Cadbury Schweppes", note 3, Para. 55.
5) See "Cadbury Schweppes", note 3, Para. 54.
6) In addition, the mere fact that a structure may help to shift income from a high-tax to a low-tax jurisdiction does not alone suffice to conclude that the structure is "abusive" (even if the structure has innovative features); See Dr. Eric Robert, Driss Tof, «The Substance Requirement and the Future of Domestic Anti-Abuse Rules within the Internal Market", European Taxation, IBFD, November 2011, p. 438.

Le Luxembourg en voie de se doter d'un registre des bénéficiaires effectifs et d'un registre des fiducies

Par Audrey SCARPA & Carole SCHMIDT, Counsels chez Allen & Overy

Contrairement à ses voisins français, belge et allemand, le Luxembourg est loin d'avoir achevé la transposition de la directive (UE) 2015/849, dite quatrième directive anti-blanchiment, qui devait en principe avoir lieu pour le 26 juin 2017 au plus tard. Bien qu'une première étape dans la transposition ait été franchie au Grand-Duché dès fin 2016 avec l'insertion, dans le contexte d'une loi de réforme fiscale, de la fraude fiscale aggravée et de l'escroquerie fiscale dans la liste des infractions primaires de l'infraction de blanchiment, il aura fallu attendre avril 2017 pour qu'un premier projet de loi 7128, dédié à la transposition des dispositions principales de la directive, soit publié. Ce n'est finalement qu'en décembre 2017 que le gouvernement a révélé son plan pour la transposition des dispositions de la directive concernant la mise en place d'un registre des bénéficiaires effectifs et d'un registre des fiducies en publiant respectivement les projets de loi 7217 et 7216.

Si à première vue ces deux derniers projets de loi paraissent similaires quant à leur contenu et semblent poursuivre un même objectif, à savoir accroître la transparence quant à l'identité des bénéficiaires effectifs, une analyse plus détaillée permet de constater qu'ils diffèrent tant dans leur portée que dans leurs implications concrètes.

Le projet de loi 7217

Ce projet de loi, en sa forme actuelle, impose l'obligation aux sociétés commerciales luxembourgeoises ainsi qu'à toute une série d'autres entités inscrites auprès du Registre de commerce et des sociétés d'obtenir et de conserver des informations adéquates, exactes et actuelles sur leurs bénéficiaires effectifs, en ce compris la nature et l'étendue des intérêts effectifs détenus, et de faire inscrire ces informations dans un registre des bénéficiaires effectifs, en abrégé REBECO, tenu par le groupement d'intérêt économique RCSL en tant que gestionnaire.

Ces nouvelles obligations ne sont par contre pas applicables aux fonds communs de placement et aux sociétés dont les titres sont admis à la négociation sur un marché règlementé, qui sont déjà soumises à des obligations de transparence. On peut néanmoins regretter que le législateur n'ait pas envisagé une exception analogue pour toutes les autres sociétés dont les titres sont transférés par l'intermédiaire d'un système de compensation. En effet, l'identification des bénéficiaires effectifs ultimes de telles sociétés pourrait s'avérer difficile en pratique.

Afin d'identifier leurs bénéficiaires effectifs, les entités concernées, et partant leurs représentants légaux, devront se référer à la définition de ce concept qui figurera dans la loi modifiée du 12 novembre 2004 relative à la lutte contre le blanchiment et contre le financement du terrorisme suite à l'adoption du projet de loi 7128. De manière synthétique, il s'agira d'identifier toute personne physique qui, en dernier ressort, possède ou contrôle l'entité concernée, étant entendu qu'une participation de plus de 25% est considérée comme suffisante pour être qualifié de bénéficiaire effectif. Si une telle personne ne peut être identifiée et pour autant qu'il n'y ait pas de motif de suspicion, une personne physique occupant la position de dirigeant principal de l'entité concernée pourra être désignée comme bénéficiaire effectif.

Le projet de loi liste les informations à recueillir sur les bénéficiaires effectifs. Ces informations pourront être consultées, soit au siège de l'entité, soit auprès du gestionnaire du REBECO, par les autorités nationales, à savoir notamment les représentants de la justice pénale (procureurs, juges d'instruction et cellule de renseignement financier), la Commission de surveillance du secteur financier, le Commissariat aux assurances et les autorités fiscales luxembourgeoises.

Une partie de ces informations pourra également être consultée, de la même manière, par les professionnels au sens de la loi du 12 novembre 2004, à savoir notamment les établissements de crédit, les réviseurs d'entreprises et les avocats, afin de satisfaire à leurs propres obligations de vigilance à l'égard de leur clientèle, ainsi que par les organismes dits d'autorégulation chargés de veiller au respect par les professionnels précités de leurs obligations en matière de lutte contre le blanchiment et contre le financement du terrorisme (par exemple, l'Institut des réviseurs d'entreprises ou le Conseil de l'ordre du barreau).

Le projet de loi prévoit encore que toute personne ou organisation résidente démontrant un intérêt légitime peut demander auprès du gestionnaire du REBECO à obtenir certaines informations sur les bénéficiaires effectifs d'une entité particulière clairement identifiée, informations qui lui seront fournies par extrait si la demande est acceptée. Le bien-fondé de telles demandes fera l'objet d'une analyse préalable par une commission spéciale dénommée commission de coordination. Si la commission rend une décision positive, celle-ci sera notifiée à l'entité concernée qui pourra exercer un droit de recours. A noter que, exceptionnellement, une entité concernée pourra demander à ce que l'accès aux informations relatives à un de ses bénéficiaires effectifs soit limité aux seules autorités nationales lorsque cet accès exposerait le bénéficiaire effectif au risque de fraude, d'enlèvement, de chantage, de violence ou d'intimidation ou lorsque le bénéficiaire effectif est un mineur ou autrement frappé d'incapacité.

Les professionnels tout comme les organismes d'autorégulation seront sanctionnés pénalement s'ils demandent accès à des informations détenues dans le REBECO alors qu'un tel accès n'est pas justifié au regard de leurs obligations ou de leur mission. De même, les entités concernées et leurs représentants pourront être poursuivis pénalement s'ils ne respectent pas les obligations qui leur incombent en vertu du projet de loi.

Le projet de loi 7216

Ce projet de loi porte quant à lui exclusivement sur les fiducies soumises à la loi modifiée du 27 juillet 2003 relative au trust et aux contrats fiduciaires. Pour rappel, aux termes de cette loi seuls certains types d'entités comme par exemple les établissements de crédit, les entreprises d'investissement ou les entreprises d'assurance ou de réassurance, peuvent agir en tant que fiduciaire.

Le projet de loi prévoit que les personnes occupant la fonction de fiduciaire pour les fiducies tombant dans le champ d'application de la prédite loi doivent obtenir et conserver à leur siège des informations sur les bénéficiaires effectifs des fiducies en question.

D'après le projet de loi, et par référence à la définition figurant dans la directive, il faudra considérer comme bénéficiaires effectifs d'une fiducie à la fois le constituant, les fiduciaires, «le protecteur, le cas échéant» (notion relevant du concept du trust et, à notre sens, non pertinent pour les fiducies luxembourgeoises), les bénéficiaires et toute autre personne physique exerçant un contrôle effectif sur la fiducie. Il est à noter qu'en l'état actuel du texte, tout bénéficiaire de la fiducie, sans aucune condition de seuil minimal de détention ou de contrôle, est à identifier ce qui pourrait rendre la tâche des fiduciaires ardue.

Tout fiduciaire devra par ailleurs, entre autres, obtenir et conserver les informations sur les bénéficiaires effectifs de la fiducie à son siège jusqu'à cinq ans après la cessation de son implication dans la fiducie, s'assurer que ces informations demeurent adéquates, exactes et actuelles, fournir les informations requises aux autorités nationales sur demande et déclarer aux professionnels au sens de la loi du 12 novembre 2004 son statut de fiduciaire et leur fournir les mêmes informations lorsque la loi l'impose. S'il ne respecte pas ces obligations, le fiduciaire pourra se voir infliger des sanctions ou autres mesures administratives de la part de son autorité de contrôle (celles-ci pouvant le cas échéant être prises à l'égard des membres de sa direction).

Les fiducies ainsi que les informations portant sur leurs bénéficiaires effectifs ne devront être inscrites auprès du Registre des fiducies, tenu par l'Administration de l'enregistrement et des domaines, que si la fiducie est une fiducie qui génère des conséquences fiscales. La fiducie se verra alors attribuer un numéro d'immatriculation. Le projet de loi ainsi que la directive ne donnent pas d'indications sur le concept de «conséquences fiscales», alors même que, au regard de la sévérité des sanctions encourues, une clarification sur le sujet serait bienvenue. En effet, suivant le texte du projet de loi, l'Administration de l'enregistrement et des domaines peut prendre des mesures administratives et infliger des sanctions administratives à l'encontre de tout fiduciaire et de ses représentants qui ne respecteraient pas l'obligation d'inscription, qui inscriraient sciemment des informations inexactes ou non actuelles ou ne procéderaient pas à la mise à jour des informations inscrites.

Contrairement au REBECO, l'accès au Registre des fiducies est limité aux seules autorités nationales. Il n'existe donc pas de procédure au profit de personnes ou organisations résidentes démontrant un intérêt légitime leur permettant d'accéder aux informations inscrites dans le registre.

Délais de mise en œuvre et mise en perspective

Chacun des projets de loi prévoit une période transitoire de six mois à compter de l'entrée en vigueur de la loi pour permettre la collecte des informations requises et procéder aux inscriptions dans le REBECO ou le Registre des fiducies. Des délais de mise en œuvre similaires ont également été prévus par les législateurs français, belge et allemand, si bien qu'il n'est pas encore possible de tirer un enseignement de l'application chez nos voisins de ces nouvelles mesures de transparence.

Au-delà des modifications qui pourraient être apportées à ces deux projets de loi au cours du processus législatif venant de commencer, il convient également de garder à l'esprit qu'un projet de directive modificative, ayant notamment pour objet de clarifier la directive (UE) 2015/849 et de renforcer les obligations de transparence portant sur l'identité des bénéficiaires effectifs, est en discussion au niveau européen et pourrait très prochainement entraîner une modification substantielle des nouvelles règles que nous venons d'exposer.