Doing M&A in Western Europe

Tax traps and structuring opportunities

mazars

Contents

Foreword

Companies often assume there is a clear and uncomplicated tax landscape in Western Europe. While it is no doubt more certain that most other regions, conducting business can still be a challenge; especially for those operating in significantly different tax environments.

Transactions in the region still present attractive opportunities to many investors. Though despite most countries being part of the EU, it's important to note that the acquisition and integration processes respond to local specificities. Our experts often encounter several tax risks that can threaten the success of deals in fast-growing markets or how well the subsequent integration process plays out.

In this report, we highlight what businesses can expect from conducting deals in Western Europe and how they can avoid tax traps while making the most of structuring opportunities.

Methodology

This study is aimed at guiding investors in connection with both the traps they may encounter and the incentives they may be offered by hosting countries when engaging in acquisition in Western Europe.

For this purpose, we built a study around the main tax traps and tax incentives encountered in tax due diligence and tax optimisation processes when dealing with acquisition in the area.

Our local experts emphasised the importance of engaging with multiple levels of control of the information provided, enlarging the scope of the due diligence to address the critical areas, and conducting work on the ground with local experts and advisors.

The study has been conducted in close collaboration with Mazars' experts operating in the 17 targeted Western Europe countries: Belgium, Cyprus, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom.

Applied colour codes should be interpreted in terms of likelihood of the occurrence. For instance, a red colour code implies a high likelihood of encountering the issue, hence a clear red flag. Alternatively, a white colour code does not automatically imply that the issue cannot be encountered in a given jurisdiction – although we do not view the issue to be prevalent in that part of the world.

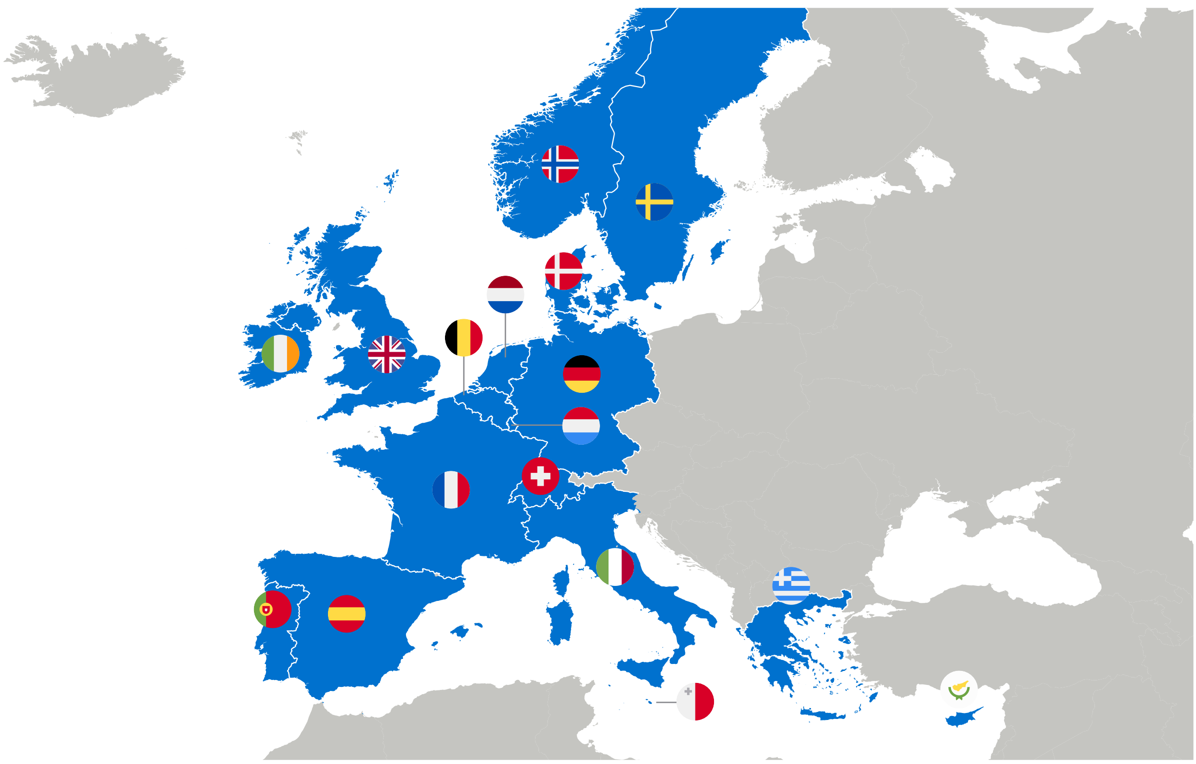
Top tax traps

	Belgium	Cyprus	Denmark	France	Germany	Greece	Ireland	Italy	Luxembourg	Malta	Netherlands	Norway	Portugal	Spain	Sweden	Switzerland	United Kingdom
Financial expenses deduction	Significant	Moderate	Significant	Significant	Significant	Significant	Non-significant	Significant	Moderate	Non-significant	Significant	Significant	Significant	Significant	Significant	Significant	Significant
Transfer pricing documentation	Moderate	Moderate	Significant	Significant	Moderate	Moderate	Moderate	Significant	Significant	Moderate	Significant	Significant	Moderate	Significant	Significant	Moderate	Moderate
Controlled foreign companies rules	Moderate	Moderate	Moderate	Moderate	Significant	Significant	Non-significant	Significant	Moderate	Significant	Moderate	Moderate	Moderate	Moderate	Moderate	Non-significant	Non-significant
Dissuasive tax rates (corporate income tax/capital gains)	Non-significant	Significant	Non-significant	Non-significant	Moderate	Non-significant	Non-significant	Non-significant	Non-significant	Non-significant	Non-significant	Moderate	Non-significant	Moderate	Non-significant	Non-significant	Non-significant
Tax treaties	Non-significant	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate	Non-significant	Non-significant	Non-significant	Moderate	Moderate	Moderate	Moderate	Moderate	Non-significant
Stamp duties on structuring operations	Non-significant	Moderate	Moderate	Moderate	Significant	Moderate	Non-significant	Moderate	Moderate	Non-significant	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate
Use of tax losses in case of change of control of the tax payer	Moderate	Significant	Significant	Significant	Significant	Significant	Moderate	Significant	Moderate	Moderate	Moderate	Significant	Significant	Significant	Significant	Non-significant	Moderate

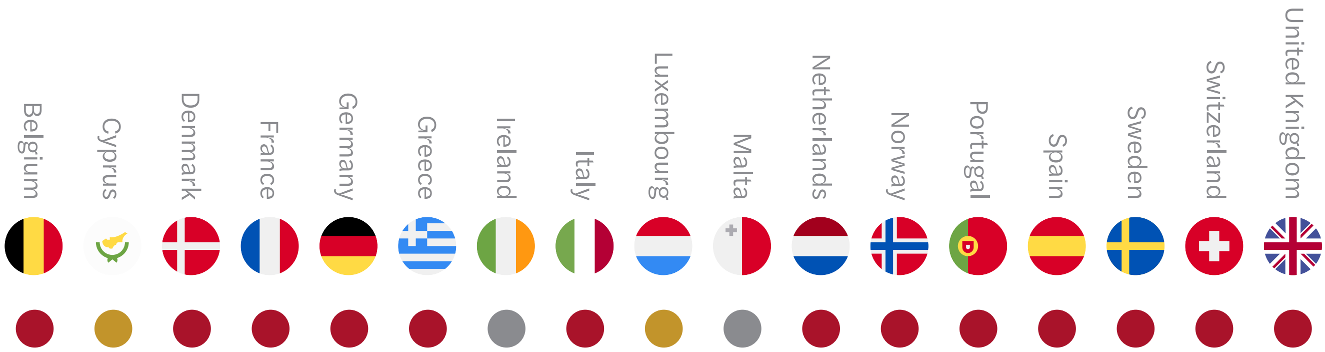
Significant trap

Moderate trap

Non-significant trap/not applicable



Top tax traps
Financial expenses deduction



Nature

The equity available to a corporate taxpayer corresponds to the only 'free' resource enabling the coverage of any company's liability towards its creditors, who bear the solvency risk of the company. Therefore, local tax provisions most often regulate the proportion of financing of the corporate taxpayer through equity and debt. Such provisions aim at solving solvency issues borne by the company's creditors as well as at limiting the possibility of abuses through excessive interest deductions. In addition, ATAD has been implemented in EU countries and financial expenses deduction see new limitations applicable on top of thin-capitalisation rules.

Impact

Financial expenses deduction rules determine the proportion of financial expenses actually incurred by the corporate taxpayer that can be considered as deductible for corporate income tax (CIT) purposes. The amount of interest paid in excess of the limits is not tax deductible.

Solutions

Companies must monitor the level of their debt and financial expenses in order to achieve a full deduction of their financial expenses.

Illustrations

Belgium

For loans concluded prior to 17 June 2016 that have not been significantly changed, a 5:1 debt/equity ratio applies for intercompany loans. In the case of loans with directors/shareholders, the ratio is 1:1 debt/equity. In Belgium, exceeding borrowing costs (EBC) on third party and intercompany loans (excluding loans between Belgian group entities) concluded as from 17 June 2016, and are only tax deductible up to 30% of the tax-adjusted EBITDA or EUR 3 million, whichever is higher, to be calculated at Belgian group level (ad hoc consolidation). Non-deductible EBC can be carried-forward without time limit. Companies with excess deduction capacity can transfer this to another Belgian group company under certain conditions. Interest deduction can be denied in relation to debt push down structures, when challenged by the tax authorities as being abusive.

Portugal

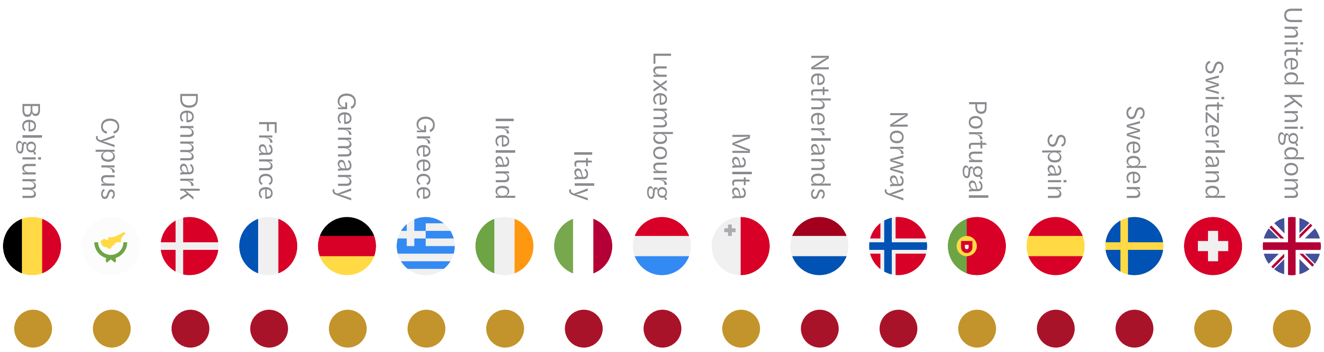
The tax deduction for net financial expenses is capped by the greater of the following amounts: (i) EUR 1 million or (ii) 30% of the EBITDA. The non-deductible excess, as well as the unused fraction of the 30% threshold, may be carried forward to the following five years. The relevant EBITDA is calculated by adding the deductible net interest expenses and depreciation and amortisation to the taxable profit. Moreover, the carry forward of the amounts mentioned above can be limited in case the ownership of the share capital or the voting rights of the taxpayer change in at least 50%. A petition to the Portuguese tax authorities is required to keep such carry forward credits in the event of an ownership change of at least 50%. In addition, on top of the above-mentioned rules, arm's length principle also applies to financial costs deduction.

Switzerland

As in other countries, Switzerland has Swiss thin capitalisation rules. As opposed to other countries, Switzerland's thin capitalisation rules have these following specific features: Swiss thin capitalisation rules apply only to 'related party debt' (including third party debt secured by a related party). Swiss thin capitalisation rules do not establish a fixed debt/equity ratio; rather, each Swiss company has its individual borrowing capacity, depending on the company's assets. While interest expense – disallowed under Swiss thin capitalisation rules – is not tax deductible; it constitutes a Swiss company's deemed dividend distribution, which is subject to a 35% Swiss dividend withholding tax.

Top tax traps

Transfer pricing documentation



Nature

Intercompany prices are sometimes used to relocate the companies' tax basis in a favourable tax jurisdiction in order to optimise the amount of corporate income tax. Therefore, in most countries, the local tax authorities have adopted the arm's length principle implemented at OECD level, which stipulates that transactions between related parties should be carried out under the same conditions, notably in terms of pricing, as those that would have been agreed between third parties. The companies must be capable of proving that the intra-group transaction they are involved in meets the arm's length criteria and must be able to justify, based on a sound documentation, that the price or the corresponding allocation of income, assets and/or equity (when recorded in respect of a branch) at stake duly reflects the situation of a non-related party under similar circumstances (transfer pricing documentation).

Impact

In practice, the fraction of inter-company expense exceeding the level of similar expenses incurred at arm's length is added-back to the corporate taxpayer's income for corporate income tax purposes. Similarly, indirect subsidies resulting from prices set below arm's length terms may be disallowed for corporate income tax purposes at the level of the corporate taxpayer. Lastly, in certain cases (i.e., lack of transfer pricing documentation), additional penalties may apply.

Solutions

Companies must meet the arm's length principle to avoid the tax risks of transfer pricing. Proper documentation should be available to justify the transfer pricing policy applied.

Illustrations

Denmark

New legislation will require taxpayers to have transfer pricing documentation ready for submission simultaneously with the company's income tax return. The new legislation enters into force on 1 January 2021 and will have effect for income years starting on or after 1 January 2021. Documentation must include specific information related to the Danish entity. Companies with calendar year accounts must submit transfer pricing documentation for the 2021 fiscal year within 60 days after the deadline for submission of the company income tax scheme of 2021. Certain limitations in documentation requirements apply for smaller companies below a certain threshold.

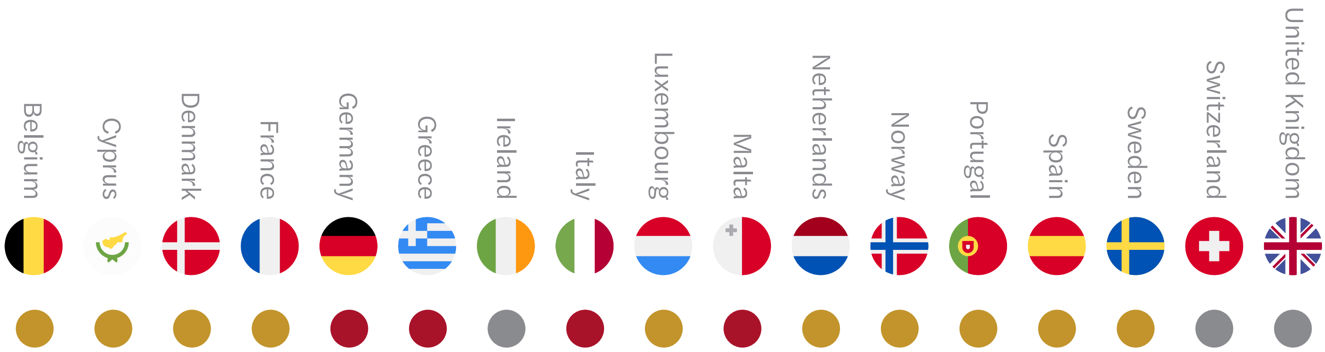
Luxembourg

Based on Luxembourg income tax law, every intercompany transaction should respect the arm's length principle. While there is no documentation requirement, Luxembourg taxpayers should be able to demonstrate that the arm's length principle is respected in case of questions from the tax authorities. Today, the tax authorities have put an increased focus on intercompany financial transactions, with specific remuneration and capitalisation requirements for companies in back-to-back financing structures.

Netherlands

Related party transactions should comply with the arm's length principle. This applies to both transactions in the Netherlands and cross-border transactions. Under the arm's length principle, the profit should be allocated to the company which performs the relevant functions, bears the respective risks, and possesses the assets to conduct its business. Entities belonging to a group with a revenue exceeding EUR 50 million annually are obliged to draw up a master and local file. Country by country reporting is obligatory starting from a group turnover of EUR 750 million annually.

Top tax traps
Controlled foreign companies (CFC) rules



Nature

Subsidiaries located in a jurisdiction where they benefit from a privileged tax regime (i.e., low taxation) are sometimes used to relocate their parent companies' tax basis in this favourable tax jurisdiction to optimise the amount of corporate income tax. Controlled Foreign Companies (CFC) rules aim to avoid the use of low-taxed jurisdictions to shelter profits that would otherwise be taxed at a substantially higher rate.

Impact

CFC rules may vary from one country to another. Several countries do not have such provisions or rules. In most cases, the tax consequences of abusive use of those CFCs consist in having the CFC income taxed at the level of the parent company.

Solutions

Companies should monitor the level of taxation locally and be able to prove the absence of abuse.

Illustrations

Germany

Germany has implemented CFC rules in the Foreign Tax Act. The German CFC rules apply, when: (1) the foreign company is controlled by a German company, (2) generates passive income, (3) which is subject to non (or only low) German income taxation, (4) the passive income exceeds certain thresholds and (5) only for CFCs in the EU, it cannot be proved that the CFC carries out an actual economic activity (escape-clause). These criteria must be met cumulatively. A company is controlled if an individual/entity who is subject to unlimited tax liability in Germany holds over 50% of the shares or voting rights alone or with related parties (the related party regulation is newly implemented from 2022 onward). The criteria of low taxation requires a total income tax burden in the foreign country under 25%. Only income from passive sources falls under CFC, that typically includes interest, licence fees certain kinds of dividends.

Greece

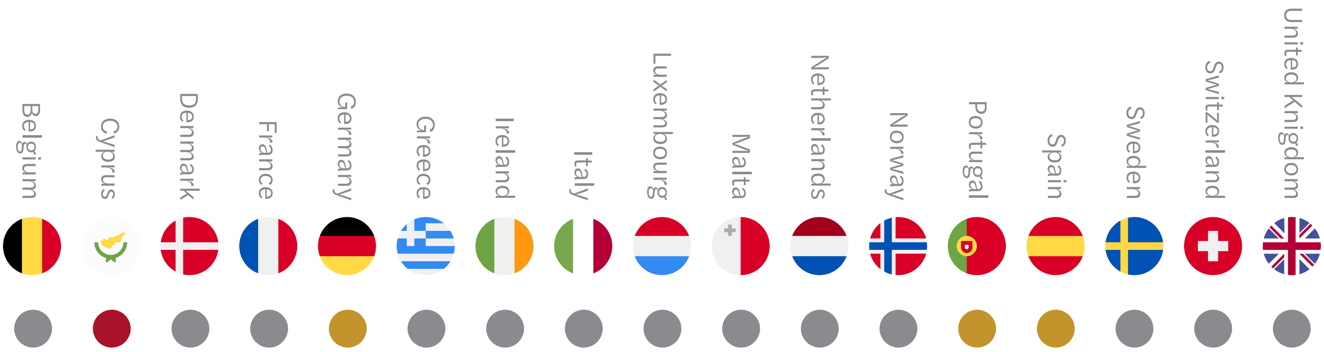
Greek CFC rules stipulate that, under certain conditions the undistributed income of a low-taxed subsidiary or permanent establishment, the profits of which are not subject to tax or are tax exempt in Greece shall be re-attributed to the Greek shareholder or the head office and be subject to Greek income tax.

Italy

The Italian tax law provides a set of specific rules to prevent the allocation of income to foreign subsidiaries resident in a country with a privileged tax regime. A foreign jurisdiction or special tax regime is deemed to be a tax privileged one when the corporate taxation is less than 50% of the nominal statutory taxation in Italy. CFC rules provide that an Italian resident subject (either an individual or a company) controlling, either directly or indirectly, an entity resident in a tax privileged jurisdiction (CFC country), is required to consolidate in Italy the taxable income arising from the CFC proportionately to the participation held, irrespective of whether the profits have been distributed or not. Tax losses cannot be used to offset CFC income. Foreign taxes paid by the CFCs are recoverable by way of a corresponding tax credit. Exemption from CFC rules can be achieved by means of an advance ruling from the Italian tax authorities showing that the CFC entity carries on a substantive economic activity by using employees, equipment, assets and premises.

Top tax traps

Dissuasive tax rate (corporate income tax/capital gains)



Nature

Capital gains tax rates may differ from local corporate tax income rates in order to limit the disposal of assets locally. This may be related to the nature of the assets at stake or to the way the assets are held (i.e., the vehicle through which the assets are owned).

Impact

Some applicable rates may discourage investors from selling their assets. Tax treaties should also be considered as they may provide reduced tax rates or exemptions.

Solutions

Appropriate structuring may help minimise the tax impact, for instance through the disposal of the enterprise at a higher tier of the legal structure, enabling the taxable gain to be in a country where it is subject to a lower tax rate.

Illustration

Cyprus

Capital gains tax applies on profits from sale of immovable property situated in Cyprus or shares in a company with more than 50% of its assets consisting of immovable property situated in Cyprus and are subject to an effective tax rate of 20%. Companies that are trading on immovable properties are taxed at the normal company income tax rate of 12.5%

France

There is no dissuasive CIT rates nor dissuasive capital gains rates in France. Participation exemption leads to an 88% exemption on capital gain (taxed at the standard CIT rate) and 95% to 99% exemption on dividends (taxed at the standard CIT rate).

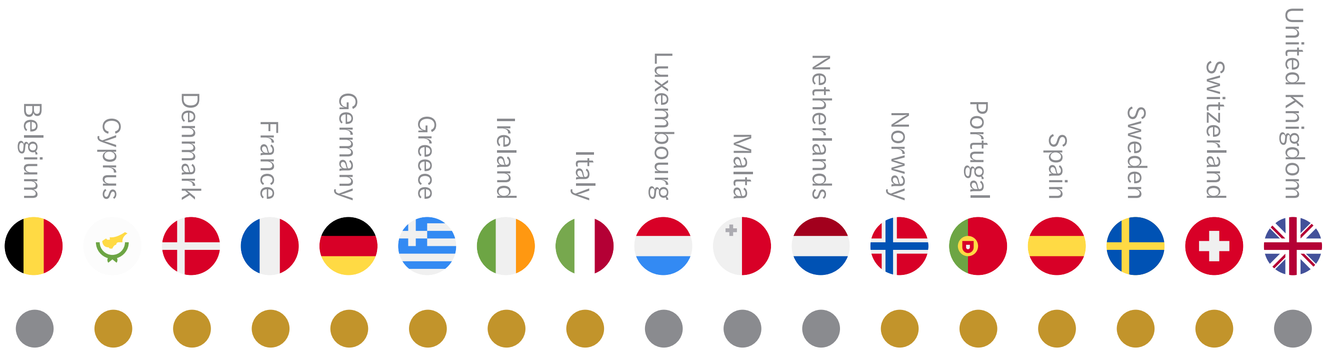
Spain

Capital gains are subject to the ordinary Spanish CIT rate (25%) and despite the tax neutral regime for mergers, spin-offs acquisition applies. Moreover, the Spanish CIT law establishes a general 95% exemption method for dividends and capital gains derived from resident and non-resident entities, provided that certain requirements are met. In particular: (1) the shareholding in the entity must be at least 5%; and (2) this shareholding must be held uninterruptedly for at least one year, although any period during which the shareholding was owned by a different group company as defined in Article 42 of the Code of Commerce may be taken into account. In case of participated entities not resident in Spain – and in addition to fulfilling the above-mentioned requirements – the investee entity must have been subject to and not exempt from a tax that was identical or analogous to the Spanish CIT at a nominal rate of at least 10%.

United Kingdom

The UK has a relatively low corporate tax rate of 19%, increasing to 25% in 2023. There is no difference in rate for capital gains, as these are subject to corporation tax, but there are significant exemptions such as the substantial shareholdings exemption which can exempt the disposal of trading subsidiaries.

Top tax traps
Tax treaties



Nature

Since taxes aim to finance state budgets, they are generally set by governmental bodies and legislators that have jurisdiction over one country. Therefore, conflicting provisions from distinct countries may result in double taxation issues. To avoid such issues, states often enter into tax treaties that aim at avoiding double taxation. Tax treaties are drafted based on models issued either by the OECD and/or, more rarely, the UNO. For example, France has signed a significant number of tax treaties with emerging countries. These treaties aim at limiting double taxation and facilitating economic exchange between different countries.

Impact

In practice, the provisions of the tax treaties considered allow two objectives to be achieved. Firstly, avoidance of double taxation: double taxation is avoided either through exclusive taxation of the income measured in the state who is a member of the tax treaty or through granting tax credits that aim at neutralising the impact, at the level of the beneficiary of the income, of the taxes possibly withheld at source at the level of the taxpayer who generated the income. Secondly, reduction of withholding tax rates: tax treaties often introduce specific reduced withholding tax rates applicable to certain types of income such as dividends, interest and royalties.

Solutions

Proper tax structuring could improve tax leakage on repatriation of profits, notably through the rerouting of profits which may enable withholding tax savings

Illustrations

Greece

Greece is presently a signatory party to 57 income tax treaties following the OECD Model Convention. According to the Greek Constitution, international treaties, such as treaties for the avoidance of double taxation, prevail over any other domestic legislation. Pursuant to the income tax treaties, the withholding tax rates may be reduced. Ordinary dividends paid by Greek entities to foreign persons are generally subject to a 5% withholding tax rate. Most treaties provide for a dividend withholding tax ranging between 5% and 25%. Interest paid by Greek entities to foreign lenders is generally subject to a 15% rate. Most treaties provide for a withholding tax on interest payments of 5% - 10%. In most circumstances, royalties paid by Greek companies to non-resident beneficiaries are subject to a withholding tax rate of 20%. Applicable income tax treaties may reduce this domestic rate to 5-10%.

Ireland

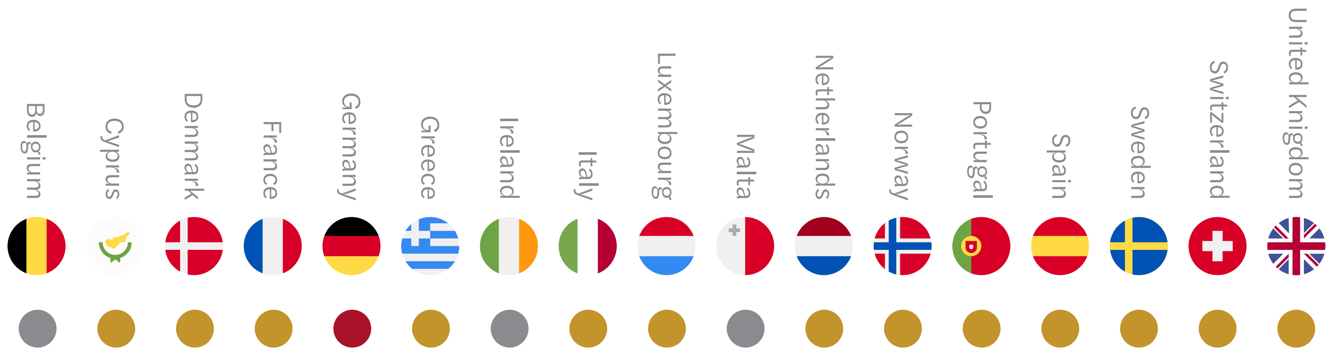
Ireland has an extensive network of double taxation treaties that reduce or eliminate withholding taxes.

Norway

The main rule in the Tax Act is 25%. According to different tax treaties entered by Norway, withholding tax rate on dividends may be reduced to 10-15%, in some cases even to 5% or 0%. Norway does not levy withholding tax on interest, royalties or capital gains.

From 2021, Norway has introduced withholding tax on interest, royalties and rent payments that go from a Norwegian company or branch to foreign related companies in low-tax countries.

Top tax traps
Stamp duties on structuring questions



Nature

Where enforced, this tax is applied on the transfer of homes, buildings, copyrights, land, patents and securities. When this tax exists, the transfer of documents in locations is legally enforceable only when they are stamped, which proves the amount of tax paid. As they correspond in most cases to fixed amounts or relatively low costs, stamp duties are often seen as ancillary taxes. However, structuring transactions (such as asset deals, share deals, capital decreases and mergers) usually involve stamp duties depending on the laws of the countries. In certain cases, those costs may be substantial and could impact the carrying out of a transaction.

Impact

Stamp duties are an actual cost in transactions which has a direct cash effect at the level of the paying party. In certain countries, a joint liability exists for both parties of a transaction for the payment of the stamp duties related to the transaction.

Solutions

In practice, companies should adopt the best routes that involve the most minimal stamp duty costs, either through the relocation of the transaction or the modification of the assets transferred.

Illustrations

Denmark

The registration duty related to the registration of ownership for some assets apply, typically with a fixed fee and a percentage fee (0.6-1.5 %) of the tax base of the purchase, depending on the underlying asset. This does not apply to a share deal.

Germany

According to the current legislation, real estate transfer tax (RETT) is triggered if at least 90% of the shares in a company holding German real estate are to be transferred to a new shareholder within a period of ten years. Moreover, RETT is triggered when shares in a company holding German real estate are directly or indirectly unified under a parent company and result in a unification of shares over 90%. This regulation should also be considered for indirect transactions and intra-group restructurings and must be carefully checked.

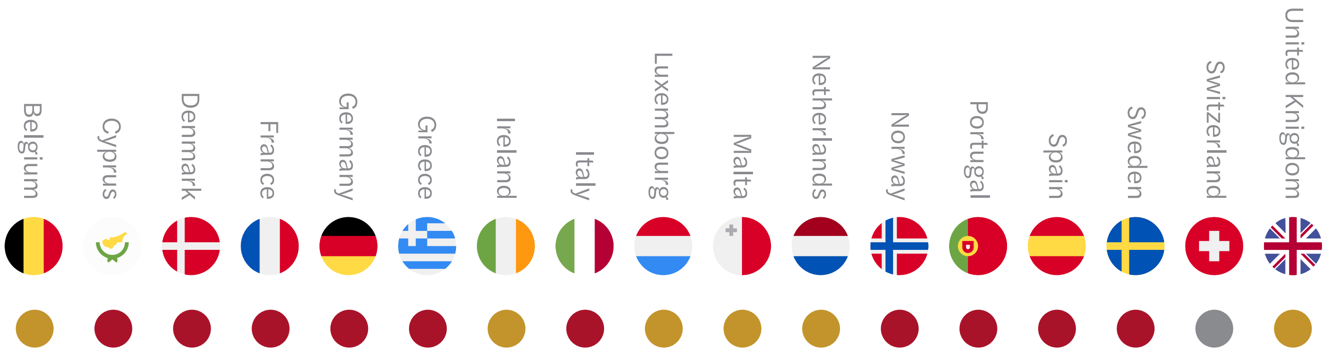
Netherland

No stamp duties are due in the Netherlands. A transfer of an entity passively exploiting real estate may be subject to real estate transfer tax under specific conditions.

United Kingdom

For land transactions and property acquisitions, there are varying stamp duty land tax charges up to 5% on commercial property and up to 15% on residential property. There are different regimes which operate in England, Scotland and Wales, so care needs to be taken over the specific rules which will apply depending on the property locations. Stamp Duty Land Tax is chargeable on the consideration paid, but there are market value substitution rules which can apply in certain circumstances. There are reliefs available to exempt transactions between group entities.

Top tax traps
Use of tax losses in case of change of control of the taxpayer



Nature

For corporate income tax purposes, most states enable the offsetting of past tax losses carried forward against the taxable income of the year to enable the determination of the corporate taxpayer's corporate income tax basis. Therefore, existing tax losses may give rise to the recognition of deferred tax assets in the consolidated accounts, when it is likely that the losses will be used for offsetting tax purposes. In order to limit the abusive use of tax loss carry-forwards by corporate taxpayers who did not generate the corresponding losses and to whom the tax attributes have been transferred, the change of control may trigger the forfeiture of tax losses or may limit their use.

Impact

The total or partial forfeiture of tax losses carried forward in case of a change of control could have a potential impact on cash flows (as the corporate income tax cash out increases) and on deferred taxes. Please note that several countries have no restrictive legislation on this matter.

Solutions

It is very difficult in practice to avoid the forfeiture of tax losses in case of a control change when the local tax provisions impose such forfeiture. In this case, the risk could be reduced by acquisition price adjustments considering the amount of tax attributes lost.

Illustrations

France

In principle, companies subject to CIT may carry forward, without time limit, the tax losses incurred. Thus, the tax losses can be deducted from the tax income made in a subsequent FY up to a limit of EUR 1 million, plus 50% of the fraction of the profit exceeding this threshold. It should be noted that tax losses can only be carried forward within the company that incurred them. As a result, in the event of a change of tax regime, of object or real activity, or of the loss of the means of production, which result in the cessation of business, the company is likely to lose the right to carry forward its tax losses.

Malta

Certain anti avoidance measures do exist in this area which limit the use of loss relief if the transaction is carried out solely to gain tax losses.

Norway

The Tax Act has provisions which mean that tax positions unrelated to assets or liabilities, such as losses carried forward, can be cut off when the company with the carry forward loss is a party to a reorganisation (a merger or demerger, for example) or there are changes to ownership as a result of such reorganisation or other transactions.

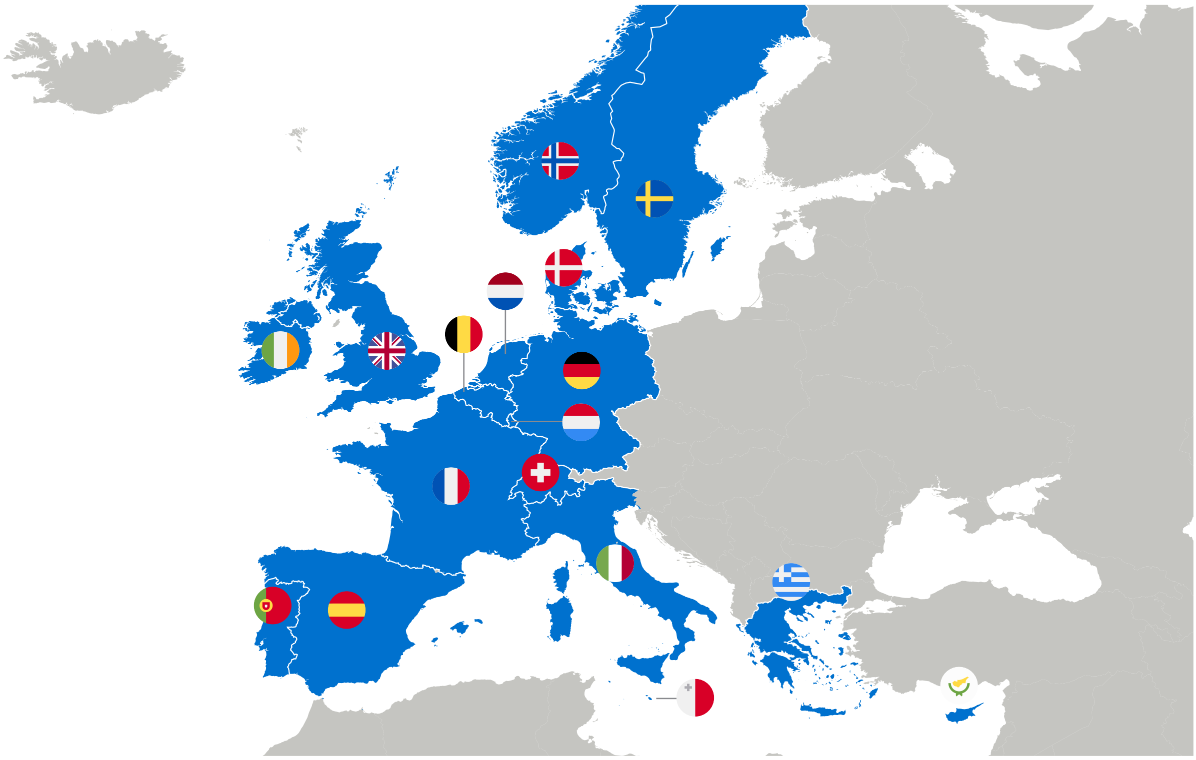
Sweden

Tax losses may be carried forward indefinitely and set off against income. However, certain limitations have been imposed on companies holding loss carried forward after a change of ownership. A change of ownership is deemed to have taken place in a company where the majority shareholding has shifted, meaning that another party, or several parties jointly, directly or indirectly have gained majority share in the company (more than 50% of the voting power). Pursuant to Swedish tax law, any loss carried forward from the year prior to the acquisition year exceeding 200% of the cost to acquire the majority influence over the company may be forfeited, this limitation is referred to as definite amount limitation. Losses that are not forfeited by the definite amount limitation are subject to a second limitations which limits the possibility to use a deficit against intra-group contribution. This intra-group limitation persists for five years.

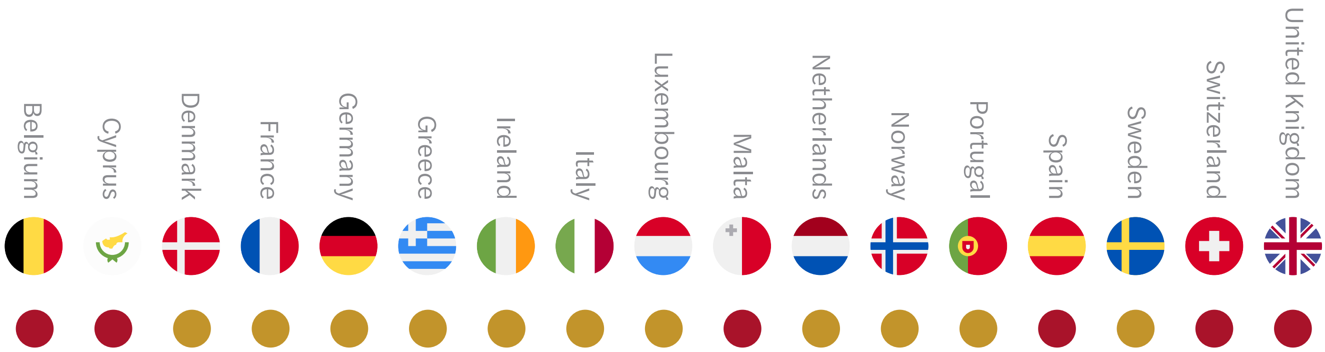
Top tax structuring opportunities

	Belgium	Cyprus	Denmark	France	Germany	Greece	Ireland	Italy	Luxembourg	Malta	Netherlands	Norway	Portugal	Spain	Sweden	Switzerland	United Kingdom
Amortisation of assets/Goodwill	Significant	Significant	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate	Significant	Moderate	Moderate	Moderate	Significant	Moderate	Significant	Significant
Corporate income tax/ capital gains rates	Moderate	Significant	Non-significant	Significant	Non-significant	Significant	Significant	Significant	Moderate	Moderate	Non-significant	Non-significant	Moderate	Significant	Non-significant	Moderate	Significant
Carry back/ Carry forward of tax losses	Moderate	Moderate	Significant	Significant	Significant	Significant	Moderate	Significant	Significant	Non-significant	Moderate	Significant	Moderate	Moderate	Significant	Non-significant	Significant
Tax treaties (tax sparing credits)	Non-significant	Significant	Moderate	Significant	Non-significant	Moderate	Moderate	Moderate	Non-significant	Moderate	Significant	Non-significant	Non-significant	Non-significant	Non-significant	Moderate	Significant
Deduction of financial costs	Moderate	Moderate	Moderate	Non-significant	Non-significant	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate	Significant	Non-significant	Moderate	Significant	Moderate	Moderate
Group tax regime	Moderate	Moderate	Significant	Significant	Significant	Non-significant	Significant	Significant	Moderate	Moderate	Significant	Significant	Significant	Significant	Significant	Non-significant	Significant
Tax exemption applied to mergers/ demergers	Significant	Significant	Non-significant	Significant	Significant	Significant	Significant	Moderate	Moderate	Significant	Significant	Non-significant	Significant	Significant	Significant	Significant	Moderate
Local incentives supporting investments	Moderate	Significant	Moderate	Moderate	Non-significant	Significant	Moderate	Moderate	Moderate	Moderate	Moderate	Significant	Significant	Non-significant	Significant	Significant	Significant

Significant opportunity — Moderate opportunities — Non-significant opportunities/not applicable



Top tax structuring opportunities
Amortisation of assets/goodwill



Nature

As a general principle, goodwill is an intangible asset which provides a competitive advantage, such as a strong brand, reputation, or high employee morale. In an acquisition or restructuring, goodwill appears on the balance sheet of the acquirer in the amount by which the purchase price (or transfer value) exceeds the net tangible assets of the acquired business/company. In such a context, this amount is considered as representing the synergies between the existing business and the acquired/transferred business, either in the form of cost reductions and/or revenue enhancement. The recognition of such goodwill is sometimes supplemented by the possibility to amortise such goodwill from an accounting standpoint and, in some countries, from a tax standpoint, in order to reflect that a part of the price paid at the moment of acquisition, corresponds to future profits of the business transferred or acquired. Note that the amortisation of goodwill and intangible assets for tax purposes is not systematically allowed.

Benefits

Where possible, the goodwill (market share, opportunities, etc.) and intangible assets (patents, software, etc.) may gradually be amortised using a straight-line method. Amortising those assets may lead to significant tax cost reductions.

Optimisation process

Accordingly, companies should carry out further studies about the feasibility and the domestic tax treatment with respect to amortisation.

Illustrations

Cyprus

Amortisation of goodwill is not tax deductible in Cyprus. On subsequent sale of the goodwill, any acquisition payment will be deducted as a cost but disposal of acquired goodwill is taxable. Payments to acquire intangible assets such as trademarks, patents, or exclusive rights are subject to annual amortisation for tax purposes.

Malta

Intangible assets and innovation can attract various deductions in Malta.

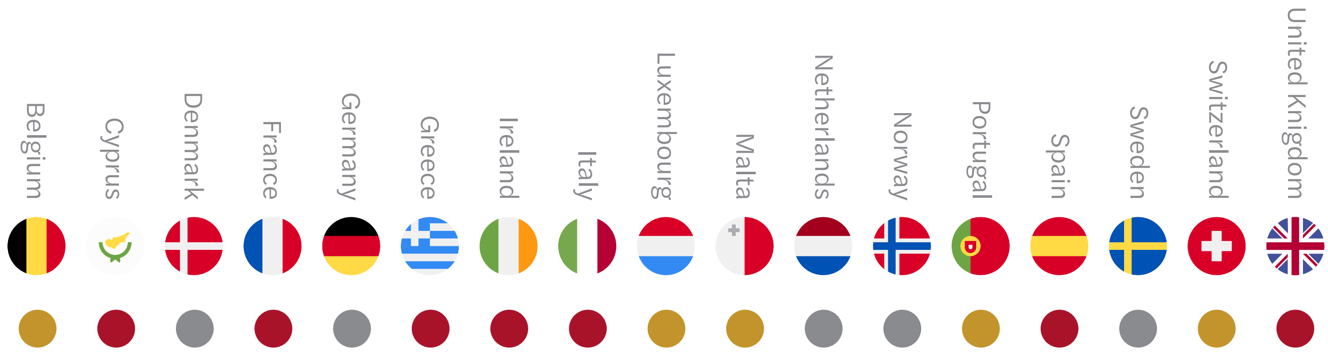
Spain

Intangible assets with a definite useful life are amortised according to their useful life. When this useful life cannot be estimated reliably, the amortisation will be deductible up to the maximum annual limit of one-twentieth its amount. In relation to the goodwill, from a tax perspective the amortisation rate considered deductible for CIT purposes is 5% (from an accounting point of view it is amortised on a 10%). In the case of goodwill as a consequence of restructuring (or merger) transactions, if the transaction is subject to the neutral regime applicable for restructuring transactions, as a general rule this goodwill will not be tax deductible (there is a transitional provision for shares acquired before 1 January 2015).

Switzerland

Amortisation of goodwill and other intangible assets are deductible for tax purposes. The depreciation must be done over a period of five years.

Top tax structuring opportunities
Corporate income tax/capital gains rates



Nature

The profits derived from a corporate taxpayer's day-to-day activities, as well as the gains resulting from the disposal of its assets, are generally subject either to CIT under standard rules or to capital gains tax, the rate of which often varies depending on the nature of the assets disposed. In several cases, reduced tax rates may be set up by local tax authorities and used as incentives to corporate taxpayers. Please also note that most tax treaties aiming to avoid double taxation also set forth reduced tax rates (mainly for withholding tax purposes) which may enable tax savings upon proof of the tax residency of the taxpayers on each end of the financial flow.

Benefits

Some applicable rates may encourage investments.

Optimisation process

An appropriate structuring could improve the utilisation of these incentives, notably through proper routing of the financial flows of income.

Illustrations

Belgium

Capital gains realised by companies on assets are taxable at the normal corporate income tax rate of 25% (reduced CIT rate of 20% on first EUR 100,000 for SME's) and tax deferral is possible where certain conditions are met (but not applicable to own built-up goodwill). An individual seller is subject to personal income tax at progressive tax rates on the professional assets sold. Capital gains realised on shares by corporate taxpayers are tax exempt provided that certain conditions are met (minimum participation requirement of 10% or EUR 2.5 million; min holding requirement of one year; subject-to-tax requirement). For individuals, a general capital gain exemption on shares applies but Belgian tax law provides that a capital gains tax is due where the buyer of a substantial participation is a non-Belgian company resident outside the EEA. Further, the disposal of shares by Belgian individuals is taxable as miscellaneous income at a 33% tax rate (instead of the normal progressive rates) where the transaction can be considered realised outside the management of the private estate. This may be relevant in management buy-out structures but is also used by the Belgian tax authorities in situations that are deemed to be abusive (e.g. sales of companies with excessive cash).

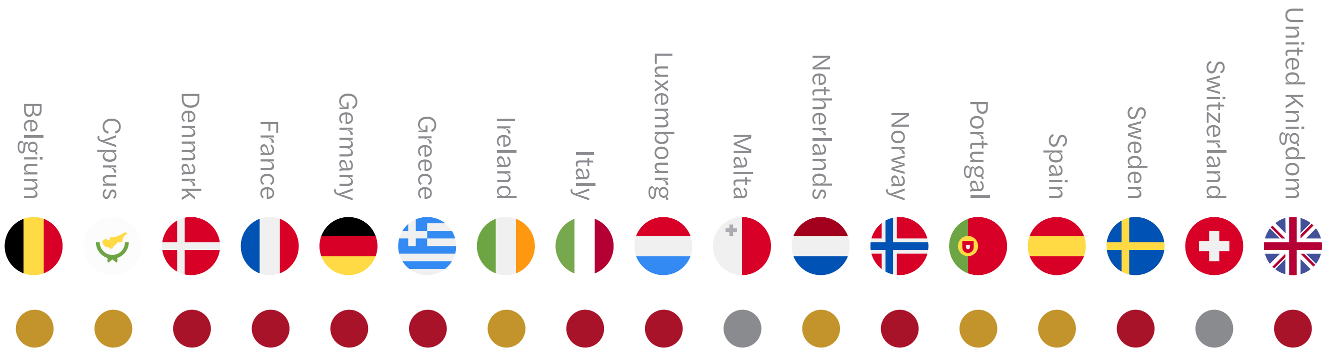
Ireland

In Ireland, an exemption from capital gain tax applies on sale of trading companies by holding company.

United Kingdom

The UK has a relatively low corporate tax rate of 19%, increasing to 25% in 2023. There is no difference in rate for capital gains as these are subject to corporation tax for corporate entities, but there are significant exemptions such as the substantial shareholdings exemption which can exempt the disposal of trading subsidiaries.

Top tax structuring opportunities
Carry back/carry forward of tax losses



Nature

For corporate income tax purposes, most states enable the carry-forward or the carry-back of past tax losses in order to offset them against the taxable income of either past years (carry-back) or subsequent years (carry-forward). Thus, the carry-forward and the carry-back impact the determination of the corporate taxpayer's corporate income tax basis. Therefore, existing tax losses may give rise to the recognition of deferred tax assets in the consolidated accounts if it can be evidenced that it is likely, at year-end, that the taxpayer will generate enough tax basis in the future to offset those tax assets. Carry forward is mainly adopted by emerging countries but not all countries allow carrying tax losses back.

Benefits

Both carry-back and carry-forward mechanisms allow some flexibility in the management of losses by corporate taxpayers. Also, having losses carried forward or carried back will impact the deferred tax in consolidated accounts.

Optimisation process

Companies should monitor the expiry of the tax losses in accordance with the provisions of their domestic tax law.

Illustrations

Denmark

Tax-losses can be carry forward up till 8.767.500 DK in taxable income. Taxable income above this amount can only be off-set with 60% of the remaining tax-losses.

Germany

Losses carried forward can be offset against potential future profits and thus reduce the tax burden. The deduction is not limited in time, but only EUR 1 million of the profits can be offset against losses from the past without restriction. Of the remaining profits, only 60% can be offset against the losses, the remaining amount is taxable (minimum taxation rule). In other words, the use of the tax losses is stretched further into the future by this rule. Tax losses for CIT purposes amounting up to EUR 1 million, can be carried back for one year. For TT purposes there is no possibility to carry back losses.

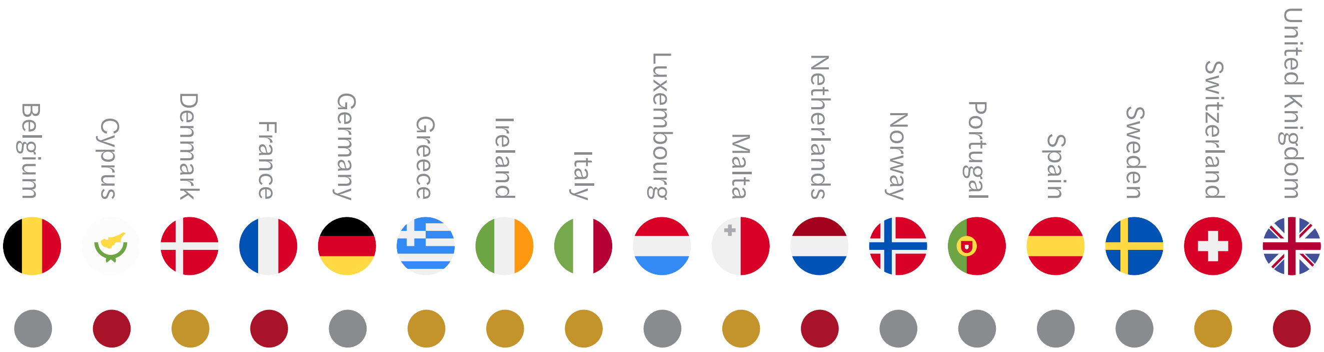
Italy

Italian tax law provides that tax losses incurred by companies can be carried forward in compliance with the following rules: (1) tax losses incurred in the first three years of activity can be carried forward without time limitation and they can be utilised to offset 100% of the taxable income; (2) other tax losses (those incurred in following years) may be carried forward without time limitation, but they can be utilised to offset only 80% of the taxable income. Please note that no tax losses can be carried forward for regional tax purposes and tax losses cannot be carried back. The company should record the DTAs only on the assumption that future profit will be sufficient to offset the losses carried forward. In an 'asset deal', such tax losses are not transferred to the buyer. On the contrary, in a 'share deal', the said tax losses can be carried forward by the acquiring company, even if they are subject to certain limitation rules aimed to avoid the so called 'trade of tax losses'. In particular, change of control and change of business can lead to the loss of the tax losses.

Luxembourg

Tax losses realised prior to 2017 should in principle be carried forward indefinitely. Tax losses realised as from the financial year 2017 by a Luxembourg company can be carried forward for the next 17 years. No carry-back of the tax losses realised by a Luxembourg company is allowed from a Luxembourg tax perspective.

Top tax structuring opportunities
Tax treaties (tax sparing credits)



Nature

In some cases, the amount of tax credit necessary to avoid double taxation may be higher than the amount of the income tax that should be paid in the country where the income is originated. This results in a potential tax optimisation when the tax credit can be offset by the tax due at the level of the beneficiary of the income.

Benefits

Such mechanism increases the tax credit to be offset by the tax charge of the beneficiary of the income sourced abroad.

Optimisation process

Considering that the gain could be significant for a company that operates an entity in an emerging country benefiting therefore from tax-sparing credits, companies should find a way to manage the tax credit offsetting at the level of the beneficiary.

Illustrations

Cyprus

The tax treaty between Cyprus and Greece provides a favourable tax credit. A Greek resident receiving a dividend from a Cyprus company, is entitled to a credit relating to both any withholding taxes paid, but also the underlying tax paid by the Cyprus investee company in Cyprus (effective Cyprus rate can be a maximum of 12.5%)

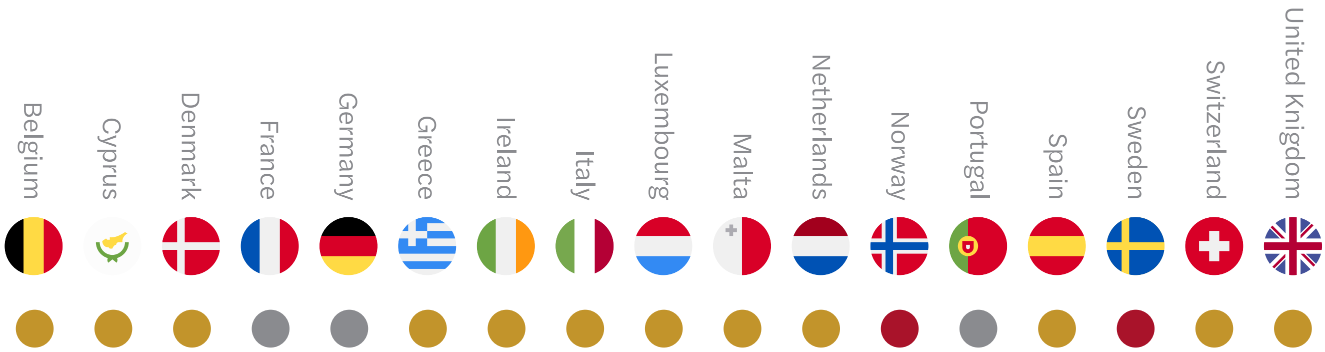
Netherland

The Netherlands has an extensive treaty network.

Portugal

In general, tax treaties apply a reduced withholding tax rate for dividends, interest and royalties and exemption on services withholding tax, subject to tax treaty relief requirements and a set of formalities. EU directives may allow for the exemption of withholding tax on dividends, interest, and royalties, also subject to a set of conditions and formalities. Usually, the foreign tax credit deductions are limited to the tax paid herein. Excess credit amount can be carried forward for five years.

Top tax structuring opportunities
Deduction of financial costs



Nature

As a general rule, it is important to determine whether domestic tax law provisions put limitations on the tax deduction of financial expenses. Indeed, such restrictions may result either from thin capitalisation rules, aiming at preserving the solvency of the corporate taxpayer at stake, or from specific provisions aiming at discouraging several tax optimising structures considered abusive by the local tax authorities.

Benefits

The deduction of financial costs enables tax leveraging of investments abroad and more flexibility in the repatriation of profits.

Optimisation process

Companies should seek an improvement of the gearing between equity financing and debt financing and optimise the use of specific capital structures

Illustrations

Italy

Italy no longer has thin capitalisation rules. According to the Italian tax rules, the deductibility of interest expenses (regardless they arise from SHLs or third parties financing) is limited to 30% of the EBITDA. The following should be taken into consideration: (1) the percentage of deductible 'net interest expense' is linked to gross operating margin relevant for tax purposes ; (2) the interest expense of the year is fully deductible up to (i) the amount of the interest income of the current year and of any prior excess interest income carried forward from the previous years, and (ii) 30% of EBITDA of the year increased by any excess EBITDA carried forward from previous years; (3) the excess 30% of EBITDA can be carried forward for a maximum period of 5 financial years; (4) interest income exceeding interest expenses can be carried forward to offset future interest expenses in any following FY; (5) interest expenses exceeding the 30% of EBITDA threshold can be carried forward in any following financial years and can be deducted with the excess of EBITDA from previous financial years.

Luxembourg

From a Luxembourg tax perspective, financial costs in relation to the acquisition of shares and assets should be deductible provided that the Luxembourg thin capitalisation rules are respected.

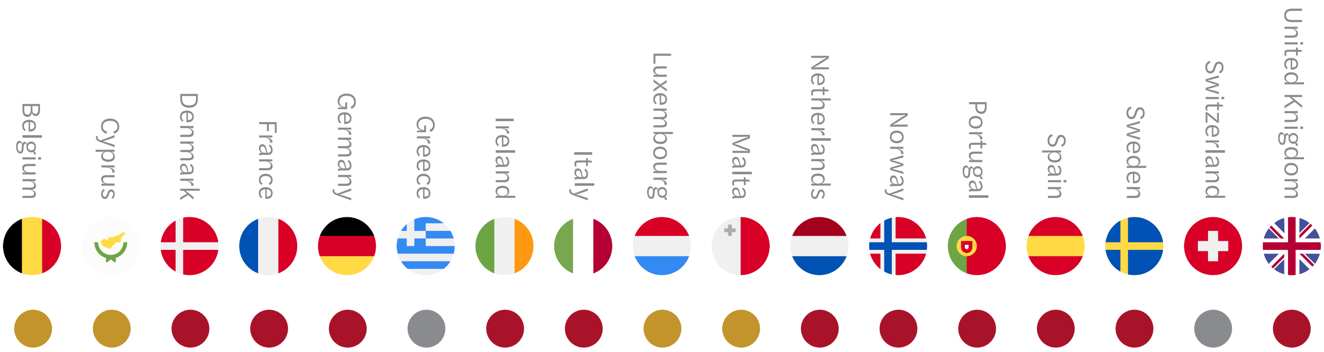
Norway

Tax deduction for negative net interest is capped to an amount corresponding to 25% of the company's tax adjusted EBITDA. For companies that are not group companies, the rules apply when the company has a net interest cost of more than NOK 5 million, but only so that net interest to related lenders can be cut off.

Sweden

Tax deduction for negative net interest is capped to an amount corresponding to 30% of the company's tax adjusted EBITDA or SEK 5 million. The SEK 5 million relief applies to all the Swedish group companies and not on entity level.

Top tax structuring opportunities
Group tax regime



Nature

Specific incentives may apply to groups of companies (participation exemption, assessment of corporate income tax charges based on the aggregated income of the group members, etc.).

Benefits

The group tax regime enables a reduction of the tax basis through the offsetting of the losses incurred by tax group members by the profits earned by other tax group members.

Optimisation process

Proper structuring is sometimes needed to be eligible for participation exemption or tax group regimes.

Illustrations

France

French corporations and their 95% owned domestic subsidiaries may elect to file one single tax return, thus allowing the offset of losses (generated during the tax consolidation) of a group entity against the profits of other group entities. CIT is then levied on the aggregate income after certain adjustments (i.e., neutralisation / de-neutralisation of capital gain or loss on the sale of assets, provisions, etc.) have been made. In addition, French parent companies (i.e., companies incorporated in France and holding qualifying shares that represent at least 5% of the issued capital of subsidiaries, French or foreign) have the option of exclude 95% of the subsidiaries' net dividends from CIT (a 5% lump sum must be added back to the parent company's taxable results). In the case of the beneficiary being part of a French tax group, or is a foreign company that met the same shareholding conditions, the exemption is for 99% exemption.

Ireland

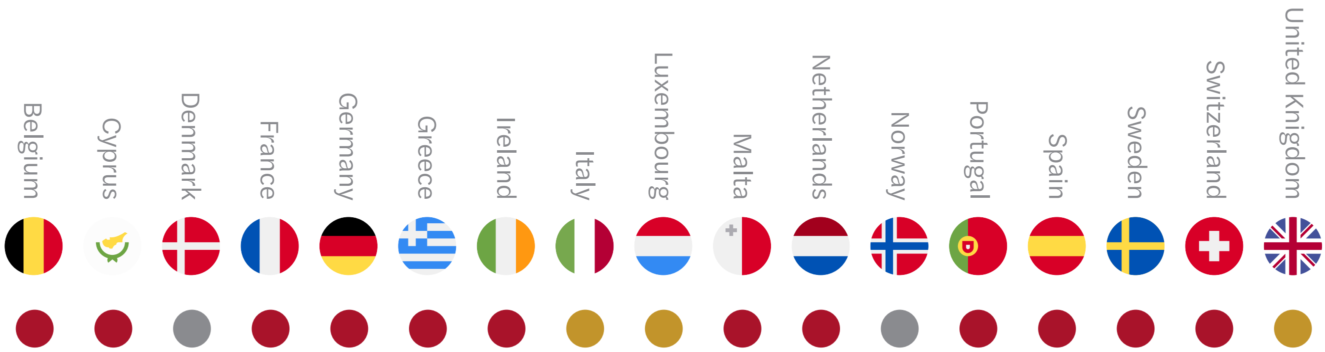
75% group entities can surrender losses. Likewise, assets can be transferred between group companies without capital gain tax.

Switzerland

There is no concept of group company for tax purposes in Switzerland. Nevertheless, dividends paid to a company (shareholder) resident in Switzerland are exempted through a mechanism of participation exemption.

Top tax structuring opportunities

Tax exemption applied to mergers/demergers



Nature

In a number of countries, the tax impact of mergers, demergers and transfers of branches of activities may be neutralised (tax roll over) to the extent that a number of requirements are met.

Benefits

Companies are tax-exempt on the gain that may result from a merger, demerger or assimilated transaction at the level of the absorbing company.

Optimisation process

Eligibility to such regimes should be carefully verified.

Illustrations

Belgium

Demergers, or partial demergers, and contributions of a line of business or of a universality of goods can take place under a tax-neutral regime (tax roll over under the EU Merger Directive) under certain conditions: (1) the absorbing company must be a resident of Belgium or another EU member state (EU Merger Directive requirements must be met); (2) the reorganisation must not have as its principal objective, or as one of its principal objectives, tax evasion or tax avoidance. The tax neutral regime is not an option, it either applies or does not apply.

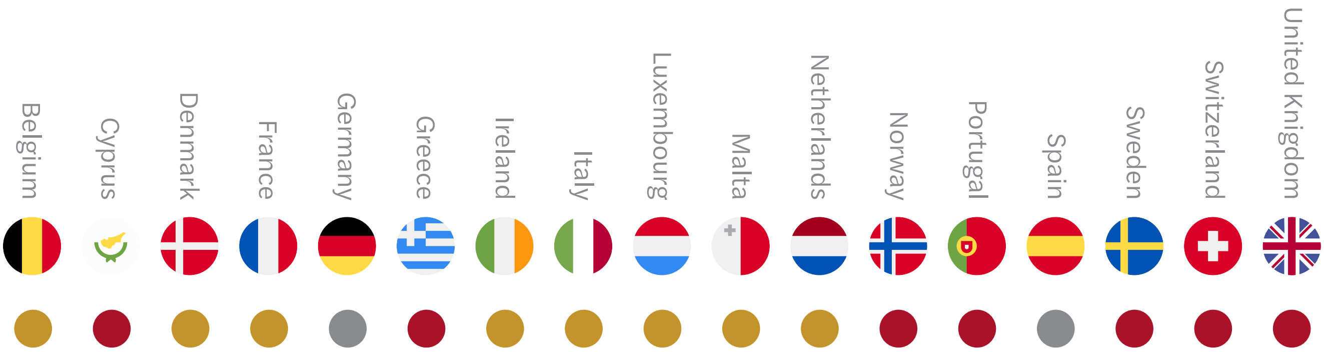
Malta

Malta provides certain exemptions as a result of group mergers or demerges to provide for significant opportunities.

Spain

Following the Council Directive 2009/133/EC of 19 October 2009, the Spanish CIT legislation provides a tax neutral regime applicable to mergers, spin-offs, partial spin-offs, transfers of assets and exchanges of shares, based on the principles of non-intervention by the tax authorities and tax neutrality, which guarantees the deferral of or exemption from taxation, as appropriate, in respect of direct taxation, for taxpayers carrying out such operations, along the same lines as the rest of the EU Member States. A valid economic purpose is needed to apply the special neutral regime.

Top tax structuring opportunities
Local incentives supporting investments



Nature

Local tax law may encourage the development of a sector of activity or of an undeveloped geographic area by granting various tax incentives (i.e., corporate income tax exemption or a lower tax rate).

Benefits

A company entitled to benefit from such incentives will reduce its tax burden. As a result, it will be able to expand its activity.

Optimisation process

Identification and eligibility of a specific tax incentive may sometimes be a driver for the location of the foreign establishment.

Illustrations

Greece

Law 4399/2016 'Statutory framework for the establishment of Private Investments Aid Schemes for the regional and economic development of the country - Establishment of Development Council and other provisions', provides for the following tax benefits: (1) tax exemption (exemption from the payment of CIT on profits, before taxes, generated from the total business activity of the company, following the deduction of the CIT that corresponds to the profits distributed to the company's shareholders); (2) subsidy of funds in order to cover part of the eligible expenses of the investment project; (3) state grant regarding the leasing for the acquisition of new machinery and other equipment (which cannot exceed the period of seven years); (4) state aid of employment cost; (5) fixed CIT rate for a period of 12 years from the completion of the investment project, exclusively for investment projects of major size.

Portugal

The Portuguese tax benefits code foresees a set of tax benefits on investments carried out herein. Most of the benefits operate through a corporate income tax credit and relies on investment on R&D (32.5% on investment and 50% on growth) or investment on assets (up to 25% of assets cost) used on industrial, tourism, editing, cinematographic and television, IT consulting, share services centres and scientific activities. In addition, share capital increases up to EUR 2 million may benefit from a notional interest deduction of 7% for a six-year period.

Sweden

Due to Covid-19 pandemic, the rate of investment in companies has decreased. To encourage new investments, a temporary tax reduction is proposed to be introduced as of 1 January 2022. The reduction amounts to 3.9% of the acquisition value of equipment and machinery acquired in 2021, provided that the expenses for the acquisition of the equipment are deducted through annual depreciation. Reduction is only allowed for equipment that still belongs to the business at the end of the first financial year for which the tax reduction can be requested.

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