

Corporate tax

Dividend Abuse – Double non-taxation and the EU General Anti-Abuse Rule

The Johnson Controls International case

On June 6, 2025, the Leuven Court of First Instance handed down a judgment resolving a dispute over the exemption in Belgium of dividends received by a Belgian company belonging to an international group.

The court denied the exemption of these dividends by applying the general principle of EU law prohibiting abusive practices in the area of dividends and the parent-subsidiary regime.

Key takeaways from this judgment:

- The dispute arose from intragroup financing transactions which, according to the court, were not justified by valid commercial reasons;
- In its analysis, the court focused on the artificial nature of the arrangement and of the financial flows running through it, rather than on the substance of the group companies involved;
- The court gave weight to the fact that the arrangement resulted in double non-taxation, due to the use of the tax consolidation regime by the distributing company established in the United Kingdom.

BACKGROUND

The parent-subsidiary regime, known in Belgium as the “DRD regime” (dividends-received deduction), aims to avoid the economic double taxation of profits generated within groups of companies. Under this regime, profits earned by a subsidiary and distributed as dividends to its parent company are subject neither to withholding tax at the level of the subsidiary nor to tax in the hands of the parent company.

However, where the dividend distribution is part of an abusive practice, the exemption provided by the parent-subsidiary regime is denied to the companies involved. European and Belgian courts have already ruled on this issue in several cases (see, in particular, our previous newsletters, including [here](#)).

1. JUDGMENT OF THE LEUVEN COURT OF FIRST INSTANCE OF JUNE 6, 2025

1.1 Facts

The dispute concerns various financial flows between several companies within a U.S. multinational group (Johnson Controls).

Several transactions took place in 2011:

- the group's Belgian company (JCI srl) borrowed EUR 800 million from a Luxembourg group company (interest rate of 7.22%). These funds ultimately originated from the U.S. parent company at the head of the group;
- using the borrowed funds, JCI srl subscribed (within the group) to a EUR 780 million capital increase of the UK company S;
- the UK company S, in turn, granted two loans to JCE, another UK group company, bearing interest at 11.02% and 11.17%, respectively;
- the UK company JCE, in turn, used the funds at its disposal to incorporate two companies, one in Germany and the other in the United Kingdom.

According to the judgment, the funds actually flowed directly from a U.S. group company to the UK company JCE (bypassing the chain of companies and the structure described above).

The disputed tax aspects can be summarized as follows:

- the UK company JCE incurred significant interest expenses on the two loans taken out from the UK company S;
- this interest created a loss at the level of JCE and constituted the profit of S;
- S applied the UK tax consolidation rules to offset JCE's losses against its own profits (no tax was paid on the profits consisting of the interest received);
- the profit of S was then distributed as dividends to the Belgian company JCI srl.

The Belgian tax authorities **denied the DRD** to JCI srl on the basis of the general anti-abuse rule (Art. 344 ITC 1992), the specific anti-abuse rule of the DRD regime (Art. 203, § 1, 7°, ITC 1992) and the general principle of EU law prohibiting abusive practices.

The tax authorities also raised a transfer pricing issue regarding the 7.22% interest rate. We will not address it here.

1.2 Court's decision

The court **ruled in favor of the tax authorities** on the basis of the **general principle of EU law prohibiting abusive practices**, as established in the Danish cases of the Court of Justice of the European Union and in the judgment of the Court of Cassation (Belgian Supreme Court) of November 30, 2023 (previously discussed, see [here](#)). The facts predate both the Belgian general anti-abuse rule and the specific anti-abuse rule of the DRD regime. The court therefore relied on the general principle of EU law.

The court held that the structure as a whole constitutes a *non-genuine* arrangement (objective element) put in place to obtain a tax advantage that defeats the object and purpose of the Parent-Subsidiary Directive (subjective element).

According to the court, the arrangement is non-genuine (objective element) because it results in **double non-taxation**, arising from the following:

- the artificial interposition of two conduit companies in the United Kingdom, namely S (lender) and JCE (borrower);

- the use by the conduit company S of UK tax consolidation (no taxation, in the hands of S, of the interest paid by JCE);
- the exemption, in the hands of the Belgian company JCI srl, of the profits of S distributed to it as dividends (application of the DRD regime).

According to the court, double non-taxation is contrary to the Parent-Subsidiary Directive, since the Directive's purpose is to eliminate double taxation, which, again in the court's view, presupposes at least one level of taxation.

As regards the subjective element, the court held that the arrangement was **not justified by valid commercial reasons**. In the court's view, the arrangement can be explained solely by tax reasons. Before the court, the Belgian company JCI srl presented alternative structures. The court pointed out that the disputed arrangement generated a tax advantage that would not have been obtained had those alternative structures been implemented.

ANALYSIS AND COMMENTS

The court made no reference to, let alone any **assessment of the substance** of, the companies involved. In fact, the court focused on the artificial nature of the structure and of the transactions carried out, rather than on the substance or operational role of the entities involved.

The court gave weight to the fact that the arrangement resulted in **double non-taxation** of the profits generated by certain group entities (i.e., tax consolidation in the UK and the DRD in Belgium). However, it would not be appropriate to systematically extend the court's position to every case of double non-taxation. The benefit of the Parent-Subsidiary Directive should be denied only where such double non-taxation is part of a non-genuine arrangement resulting in a tax advantage contrary to the Directive.

Intragroup financing transactions must be justified by **valid commercial reasons**, or even operational reasons, where they may lead to a dividend distribution (in this case, the interest received by S enabled it to distribute a dividend to JCI srl). This is all the more crucial where one of the steps of the arrangement involves a tax consolidation that neutralizes the taxation of certain intragroup financial flows (in this case, the interest received by S was not effectively taxed, because it created a loss at JCE that could be offset against the profits of S).

As this judgment illustrates, the fact that some or all of the intragroup financing transactions are not backed by an **actual transfer of cash** throughout the entire chain of companies may reinforce the artificial nature of the arrangement.

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