

WHT Explanatory Notes from 3rd July, 2025 on the application of the so-called beneficial owner clause for withholding tax purposes

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On July 9th, 2025 the long-awaited WHT Explanatory Notes regarding the application of the so-called beneficial owner clause for withholding tax purposes (hereinafter: the WHT Explanatory Notes) have been published. The key points are as follows:

1. The beneficial owner is, according to the Explanatory Notes, the entity that primarily has the autonomy to decide on the use of the receivables received (economic power / control) and an appropriate property and personal substance.
2. The Explanatory Notes allow the application of the concept of the so-called consolidated substrate:
 - a. within countries belonging to the European Union / European Economic Area if withholding tax exemptions apply on the basis of provisions implementing EU regulations or,
 - b. within the entity in same jurisdiction if the reduced rate arise from double taxation treaties.
3. The explanatory notes introduce the concept of the so-called Look Through Approach (hereafter **LTA**), which so far has only been recognized in certain rulings.
4. There is no need to investigate the beneficial owner status in the case of payments for intangible services.

We provide more details below:

1) Economic power / control

- a. In order to meet the definition of beneficial owner, it is necessary not only to formally be the owner of the receivable in question, but above all to have economic power over the receivable in question. The receivable should be received for its own benefit, and the entity receiving the receivable must not be obliged to transfer the receivable to any other entity.
- b. The entity receiving the receivables must bear the risks associated with the specific payment. The Explanatory Notes list, for example, default risk, interest debtor credit risk, interest rate risk, currency risk, exchange rate risk.
- c. The characteristics of an intermediary entity that will not meet the definition of a beneficial owner are among others:
 - small margin on transferred payments,
 - no tax revenue from receivables received,
 - transferring receivables received at small intervals,
 - the lack of other resources besides receivables received to enable repayment of debts,
 - no reinvestment of funds received,
 - not bearing the risk associated with the receivable.

2) Bussines substance

- a. Conducting genuine economic activity is understood as having the appropriate financial and human resources, which should be analysed in relation to a specific payment.
- b. Slightly lower requirements should be placed on holding companies than, for example, manufacturing companies.
- c. The Explanatory Notes indicate the universal criteria for assessing the business substance by listing, among other things, owning one's own assets, having office premises, employing staff, paying bills, having capital to finance the business, undertaking business activities independently or having a board of directors with adequate qualifications.

3) Consolidated substance.

- a. It is permissible to own the asset-personality substance within the group rather than in individual companies. The fact that an entity uses the property and personal assets of another entity within the group and/or does not bear any costs in this respect does not preclude its status as the beneficial owner.
- b. It is a condition of that the relevant personal and property substance is provided by an entity resident in one of the EU Member States / EEA, if the exemption is based on PS / IR Directive and in the case of DTT - such measures must be made available by an entity from the same country.

4) "Look-through approach" (LTA)

- a. The Explanatory Notes allow LTAs where the payments transferred in the chain of entities are generic identical (interest-interest or dividends-dividends), but there is no need for this to be an identity in amount .
- b. The right to use the LTA must be proved by tax remitter.

5) The Scope of the tax remitter's audit differs when payments are made to related and unrelated entities.

- a. In the case of payments to a related entity, the level of due diligence is higher and it is necessary to examine all circumstances resulting in the classification of the entity as the beneficial owner.
- b. In the case of payments to unrelated entities, the tax remitter's obligations are limited to verifying the taxpayer's residence certificate and the taxpayer's declaration that it meets the conditions for being considered the beneficial owner of the payment.

6) Scope of the survey of technical tax remitters

- a. So called technical tax remitters will be able to verify the taxpayer's fulfilment of the beneficial owner condition, as long as they do not contradict the financial statements and extract from the commercial register of such entity.

The WHT Explanatory Notes are crucial for WHT tax remitters and taxpayers and may have a positive impact on the current practice of tax authorities, which will contribute to the issuance of tax decisions that correspond to the economic reality. The explanations are not perfect, sometimes not precise and many topics raised by tax advisors have not been addressed. However, now we are going to analyze the ongoing cases to see which solutions will be useful.

MDDP is ready to support you:

- a. in determining the appropriate rules for withholding tax on payments made to non-residents and in demonstrating that the conditions for applying withholding tax preferences are met (including the conditions necessary for recognizing a given entity as the beneficial owner of a given payment, as set out in the WHT Explanatory Notes);
- b. in obtaining advanced tax rulings on the application of WHT preferences;
- c. in verifying the structure of your group in terms of the possibility of applying the concepts of consolidated substrate or look-through approach resulting from the Explanatory Notes;
- d. in analyzing the impact of the Explanatory Notes on ongoing tax audits in the area of withholding tax;
- e. the impact of the Explanatory Notes on pending tax refund cases under the 'pay&refund' procedure and making strategic decisions on whether to continue or modify the argumentation;
- f. in adaptation of internal processes and procedures to the requirements arising from the Explanatory Notes.

In case you are interested in the above information and its impact on your business, please contact:

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