

Holding Company or Fund Tax Policy Compliance Statement Procedure

1. INTRODUCTION

As a part of IFU's strategy for openness and transparency on tax matters IFU will publish a Tax Policy Compliance Statement for projects involving a Private Equity Fund (Fund) or a Holding Company in Third Jurisdictions. The purpose is to explain, why an investment that involves a fund or a holding company is in compliance with IFU's Tax Policy.

The Tax Policy Compliance Statement is prepared in respect of the specific investment and is issued by IFU's independent tax advisor at the internal approval date.

The Tax Policy Compliance Statements for new projects are published once a year together with IFU's Portfolio Report.

2. WORK CARRIED OUT

When an investment enters tax due diligence one of the issues being examined is if the proposed investment structure involves any conflicts with IFU's Tax Policy.

In case an investment structure involves a Holding Company or a Fund set-up in a Third Jurisdiction it must be confirmed that such Third Jurisdiction is not at the Approval Date on the EU Black List for non-cooperative jurisdictions for tax purposes or does not work towards complying with the peer review process of OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes. Regarding the peer review process this means that jurisdictions that will not complete the peer review process or which have completed the process but are not deemed "compliant" or "largely compliant" are not to be used for holding companies or Fund domiciles.

The above-mentioned EU and OECD lists are dynamic, and jurisdictions may step in and out of these lists depending upon when the jurisdictions are examined by EU and OECD and the outcome of the examination. At the date of issuing the final Compliance Statement this jurisdiction restriction is re-tested, and the result is reconfirmed at the Approval Date.

When a Holding Company or a Fund in a Third Jurisdiction is a part of the investment structure the following issues are examined if relevant for the transaction (the list is not exhaustive):

- Why is the Holding Company or Fund a part of the established investment structure?
- Why is the Holding Company or Fund established in that jurisdiction?
- Tax treaty benefits of having the Holding Company or Fund in that jurisdiction?
- Substance of the Holding Company or Fund in that jurisdiction.
- Are tax treaty benefits being claimed following the Principal Purpose Test?
- Compliance and payment of local taxes.
- Transfer pricing documentation, if relevant.
- Are net financing expenses exceeding a yearly threshold amount of EUR 3 million?
- Are net financing expenses in the operating company exceeding EBITDA 30%?

3. TAX POLICY COMPLIANCE STATEMENT

The work carried out is the basis for issuing the Tax Policy Compliance Statement including a conclusion saying *“The investment structure has been subject to due diligence and based on the facts and circumstances made available, [The independent tax advisor] believes the investment structure complies with IFU’s tax policy”*.


It is important to be aware that Tax Policy Compliance Statement can be issued in case of a Holding Company or Fund not meeting the Principal Purpose Test in a Third Jurisdiction and potentially having access to tax treaty benefits, as long as such tax treaty benefits are not being claimed or are not relevant to the cash flow from the particular investment.



The direct and indirect ownership percentage for IFU or IFU managed investments are disclosed, along with illustration of Holding Companies, if any, the involved jurisdictions and the name of the operative target investment. Holding Companies are often just named Holding Company because the company has not yet been established when issuing the Compliance Statement.

It is also disclosed if the investment is an Equity investment, a debt investment or a combination of Equity and debt (Shareholder Loan).

4. KEY FOR READING AND UNDERSTANDING OF COMPLIANCE STATEMENTS

The following definitions and illustrations are key for better reading and understanding of Holding Company and Fund Compliance Statements:

Word/graphic	Explanation
Approval Date	is the date when the investment is approved according to the established governance structure and the date being decisive in respect of the tax policy compliance statement.
BEPS	Is OECD's project trying to align the world against Base Erosion Profit Shifting (BEPS).
EBITDA 30%	is an OECD BEPS guideline restricting tax deductions of net financing expenses which exceeds 30% of the operative company's Earnings Before Interest Taxes Depreciation and Amortization (EBITDA). EBITDA 30% restriction only applies when net financing expenses at the same time are exceeding a yearly threshold amount of EUR 3 million.
Equity	is one out two typical financing instruments available when investing. The typical equity investment is an acquisition or subscription of common shares in an entity.
Holding Company	is defined as a legal entity established primarily to hold the Equity of another company.
Principal Purpose Test	is a test developed by OECD testing if one of the principal purposes of a Holding Company is to get access to tax treaty benefits and BEPS is in that case preventing the granting of treaty benefits in inappropriate circumstances.
Private Equity Fund	is a collective investment scheme established to create a legal framework for investors wanting to invest together under the same strategy. Private Equity Funds are typically Tax Transparent.
Shareholder loan 	is a debt instrument and the second out of two typical financing instruments available. Loans being provided by shareholders (Equity investors) of the company taking up the loan are phrased "Shareholder loans".

<p>Tax Transparent Entity</p> 	<p>means that the entity is not a taxable person, why income and expenses passing through such tax transparent entity is not subject to tax in the Tax Transparent Entity. Taxation is dealt with at the level of the shareholders of the tax transparent entity according to the tax rules applying to the shareholders.</p>
<p>Taxable Entity</p> 	<p>means that a legal entity is subject to corporate income tax and typically pays tax of the net profit generated by such Taxable Entity. Certain types of income within a Taxable Entity are however often exempt from tax (typically capital gains on Equity and dividends from Equity) to avoid the same income being taxed twice.</p>
<p>Tax Treaty</p>	<p>Tax Treaty means an agreement (treaty) between two countries with a purpose to avoid double taxation. Such agreements are often referred to as so-called Double Tax Agreements.</p>
<p>Tax Treaty Benefits</p>	<p>Tax Treaty Benefits are the benefits, the two countries have agreed upon in the Tax Treaty when having cross border financial transactions from entities or individuals being tax resident in one country and investing in entities being tax resident in the other country. Typically, a Tax Treaty provides Tax Treaty Benefits (reduced taxation) applying to dividends, interest, royalty and capital gain payments.</p>
<p>Third Jurisdiction</p>	<p>Is defined as a non-Danish jurisdiction different from the jurisdiction of the operative investment.</p>

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