



**VILNIUS UNIVERSITY  
BUSINESS SCHOOL**

**SUSTAINABLE CORPORATE FINANCE AND INVESTMENTS PROGRAMME**

*Aurelija Malinauskienė*

**THE FINAL MASTER'S THESIS (PROJECT)**

**ĮMONIŲ DIVIDENDŲ  
APMOKESTINIMAS**

**CORPORATE DIVIDENDS  
TAXATION**

Student (signature)\_\_\_\_\_

Supervisor (signature)\_\_\_\_\_

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Supervisor Dr. Martynas Endrijaitis

Vilnius, 2025

## **SUMMARY**

VILNIUS UNIVERSITY BUSINESS SCHOOL

SUSTAINABLE CORPORATE FINANCE AND INVESTMENTS PROGRAMME

**Aurelija Malinauskienė**

### **Corporate Dividend Taxation**

Supervisor – Dr. Martynas Endrijaitis

Master's thesis was prepared in Vilnius, in 2025

Scope of Master's thesis (project) – 66 pages.

Number of tables used in the FMTP - 4pcs.

Number of figures used in the FMTP - 1 pcs.

Number of bibliography and references - 37 pcs.

#### **The FMTP described in brief:**

This master thesis goes on to examine the different ways in which dividends are taxed between companies in the European Union and the potential disputes that tend to arise, even though the Parent–Subsidiary Directive (2011/96/EU) was created specifically to be able to avoid double taxation. The research proceeds by focusing on how the Directive, and its anti-abuse amendment (2015/121/EU) are applied in practice. Differences often lead to uncertainty for businesses and create risks that dividends may be either taxed twice or not taxed at all. To understand these problems, the study analyses ten court cases: important CJEU rulings and several Lithuanian and Norwegian cases. Using qualitative analysis, the thesis compares how tax authorities and courts evaluate economic substance, company structure, and cross-border dividend payments.

Based on the results, the thesis offers a set of proposals that are meant to enhance the functioning of the tax system while emphasizing the need for a more consistent and straightforward method of identifying beneficial owners, greater openness in corporate structures through reinforced ownership registers, and harmonization of substance requirements across the

EU; the main measure is to foster clarity and transparency minimizing confusion and curbing tax avoidance while, at the same time, ensuring that cross-border investment can take place under fair and stable conditions.

**Problem, objective and tasks of the FMTP:**

**Problem:** Although the Parent–Subsidiary Directive aims to prevent double taxation of intra-group dividends, EU Member States apply its anti-abuse rule very differently, creating legal uncertainty and frequent disputes.

**Objective:** The objective of this thesis is to analyze real court practice on dividend taxation, identify the main gaps in how “genuine arrangements” and substance requirements are applied, and evaluate their impact on fair and consistent taxation.

**Tasks:** The thesis examines ten cross-border cases, compares national approaches, and provides recommendations to improve transparency, strengthen beneficial ownership identification, and harmonize the application of the anti-abuse rule across the EU.

**Research methods used in the FMTP:**

Qualitative Methods: Document/Content analysis; Case Study Analysis

**Research and results obtained:**

The thesis analysed ten court cases from Lithuania, the EU, and Norway to identify how tax authorities and courts interpret “genuine arrangements” and apply anti-abuse rules to cross-border dividends. The findings show that inconsistent criteria, limited transparency, and unclear beneficial ownership information are the main reasons for disputes and unequal tax treatment. Based on these results, the thesis proposes stronger transparency requirements, harmonized substance standards, and clearer rules for identifying the true economic owner of dividends.

**Conclusions of the FMTP:**

The research concludes that the biggest challenge in cross-border dividend taxation is the inconsistent and subjective application of anti-abuse rules across EU and EEA states. Clearer transparency requirements, especially unified rules for identifying beneficial owners and demonstrating real economic substance—would reduce uncertainty and help prevent both tax avoidance and unjustified double taxation. Strengthening harmonization at the EU level would create a more predictable system in which dividends are taxed where real value is generated.

# **SANTRAUKA**

VILNIAUS UNIVERSITETO

VERSLO MOKYKLA

TVARŪS VERSLO FINANSAI IR INVESTICIJOS PROGRAMA

**Aurelija Malinauskienė**

## **Įmonių dividendų apmokestinimas**

Darbo vadovas – Dr. Martynas Endrijaitis

Darbas parengtas Vilniuje, 2025 metais

Darbo apimtis – 66 puslapių.

Lentelių skaičius darbe – 4 vnt.

Paveikslų skaičius darbe - 1 vnt.

Literatūros ir šaltinių skaičius – 37 vnt .

### **Trumpas Darbo apibūdinimas:**

Ši magistro tezė nagrinėja įvairius būdus, kuriais Europos Sąjungoje apmokestinami dividendai tarp bendrovių, ir galimus ginčus, kurie vis dar kyla, nors Motininių ir dukterinių bendrovių direktyva (2011/96/ES) buvo sukurta būtent tam, kad dvigubas apmokestinimas būtų išvengtas. Tyrimas orientuojasi į tai, kaip praktikoje taikoma pati Direktyva ir jos piktnaudžiavimo prevencijos pataisa (2015/121/ES). Skirtingos valstybių narių taikymo praktikos dažnai sukelia teisinį neapibrėžtumą ir sudaro riziką, kad dividendai gali būti apmokestinami du kartus arba visai neapmokestinami. Norint geriau suprasti šias problemas, darbe analizuojama dešimt teisminių bylų: svarbūs ESTT sprendimai bei kelios Lietuvos ir Norvegijos bylos. Taikant kokybinės analizės metodus, teisinė praktika lyginama pagal tai, kaip mokesčių administratoriai ir teismai vertina ekonominę esmę, įmonių struktūrą ir tarpvalstybinius dividendų mokėjimus.

Remiantis tyrimo rezultatais, teikiamas pasiūlymų rinkinys pagerinti mokesčių sistemos veikimą. Ypatingas dėmesys skiriamas nuoseklesnio ir aiškesnio naudos gavėjų identifikavimo metodo sukūrimui, didesnio įmonių struktūrų skaidrumo užtikrinimui stiprinant nuosavybės registrus bei ekonominės esmės reikalavimų harmonizacijai visoje ES. Pagrindinis šių priemonių tikslas – didinti aiškumą ir skaidrumą, mažinant klaidingą interpretavimą ir ribojant mokesčių

vengimą, kartu sudarant sąlygas, kad tarpvalstybinės investicijos galėtų vykti sąžiningomis ir stabiliomis sąlygomis.

**Darbo tikslai ir uždaviniai:**

Problema: Nors EU direktyva 2011/96/ES siekiama užkirsti kelią grupės viduje mokamų dividendų dvigubam apmokestinimui, ES valstybės narės labai skirtingai taiko jos piktnaudžiavimo prevencijos nuostatą, taip sukurdamos teisinį neapibrėžtumą ir dažnus ginčus.

Tikslas: Šio darbo tikslas – išanalizuoti realią dividendų apmokestinimo teismų praktiką, identifikuoti pagrindinius trūkumus, susijusius su „tikrųjų sandorių“ ir ekonominės esmės reikalavimų taikymu, ir įvertinti jų poveikį sąžiningam ir nuosekliam apmokestinimui.

Uždaviniai: Darbe nagrinėjamos dešimt tarpvalstybinio pobūdžio bylų, lyginami nacionaliniai požiūriai ir teikiamos rekomendacijos didinti skaidrumą, sustiprinti naudos gavėjo identifikavimą ir suderinti piktnaudžiavimo prevencijos taisyklės taikymą visoje ES.

**Darbe panaudoti tyrimo metodai:**

Kokybiniai metodai: dokumentų / turinio analizė; bylų analizė.

**Atlikti tyrimai ir gauti rezultatai:**

Darbe išanalizuota dešimt bylų iš Lietuvos, ES ir Norvegijos, siekiant nustatyti, kaip mokesčių administracijos ir teismai aiškina „tikruosius sandorius“ ir taiko piktnaudžiavimo taisykles tarpvalstybiniams dividendams. Rezultatai rodo, kad pagrindinės ginčų ir nelygaus apmokestinimo priežastys yra nenuoseklūs vertinimo kriterijai, ribotas skaidrumas ir neaiški informacija apie tikruosius naudos gavėjus. Remiantis šiais rezultatais, darbe siūloma stiprinti skaidrumo reikalavimus, harmonizuoti ekonominės esmės standartus ir aiškiau reglamentuoti tikrojo ekonominio dividendų savininko nustatymą.

**Darbo išvados:**

Tyrimas atskleidžia, kad didžiausias iššūkis tarpvalstybiniame dividendų apmokestinime yra nenuoseklus ir subjektyvus piktnaudžiavimo taisyklių taikymas ES ir EEE valstybėse. Aiškesni skaidrumo reikalavimai – ypač vieningi naudos gavėjų identifikavimo ir realios ekonominės veiklos demonstravimo standartai – sumažintų neapibrėžtumą ir padėtų užkirsti kelią tiek mokesčių vengimui, tiek nepagrįstam dvigubam apmokestinimui. Harmonizacijos stiprinimas ES lygiu prisidėtų prie labiau prognozuojamos sistemos, kurioje dividendai apmokestinami ten, kur sukuriama reali vertė.

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## 1. INTRODUCTION

Dividends represent the portion of a company's profit distributed to shareholders as remuneration for the capital they have provided and the risks they have assumed. In legal terms, dividends reflect a shareholder's right to receive a proportional share of the economic value created by the company. As an independent legal entity, a company may determine the allocation of generated profit each financial year: reinvest them in further expansion, undertake capital strengthening measures, increase operational capacity, or distribute them as dividends. In the long term, profit reinvestment is generally considered as the most economically sustainable option, as it enables the company to grow, enhance its competitiveness, and generate greater added value. However, in many enterprises, shareholder expectations are oriented toward direct financial returns, which makes dividend distributions an integral element of the financial relationship between shareholders and company management.

Corporate income tax, imposed on company profits, is one of the principal sources of state budget revenue. Each country independently sets its own tax rate, resulting in significant variation across the European Union. Currently, the average corporate income tax rate in the EU stands at approximately 22%, with the lowest rate in Hungary at 9 % and the highest in Malta at 35%. Lithuania's corporate income tax rate remains below the EU average and will reach 17% in 2026, thereby maintaining the country's position as an attractive investment location. Corporate income tax ensures that companies contribute to the financing of public functions before profits are distributed to shareholders.

When dividends are paid to natural persons, they are taxed under the personal income tax regime applicable at the time. However, taxation becomes more complex when dividends are paid to legal persons — that is, when the recipient of the dividend is another company. In such cases, the question arises whether dividends should be taxed again, considering that the distributing company's profits have already been subject to corporate income tax. This question is directly linked to the prevention of double taxation, one of the fundamental principles of international tax law.

One of the essential elements of the EU internal market is the free movement of capital. This freedom ensures that capital may move between Member States without discriminatory or unjustified restrictions. Cross-border capital flows, in this context, also includes dividends, which are treated as a form of return on investment. As a result, dividend taxation becomes a particularly sensitive area, given that restrictive or inconsistent taxation practices may limit capital mobility and influence Member States' investment attractiveness.

Council Directive 2011/96/EU on the common system of taxation applicable to parent companies and subsidiaries of different Member States was adopted to prevent situations where the same profit is taxed multiple times within a corporate group. The objective of the Directive is to ensure that dividends paid between companies' which meet specific participation requirements and are not taxed in the Member State of distribution. Lithuania has integrated the Directive into its Corporate Income Tax Law (Lietuvos Respublikos Pelno mokesčio įstatymas) (Lietuvos Respublika, 2001), which provides the general rule that dividends distributed between parent and subsidiary companies are not subject to tax. However, to prevent abuse, the Directive introduces a specific anti-avoidance rule that identifies circumstances in which the dividend exemption regime does not apply.

In practice, the greatest challenge is that each company interprets the text of the directives individually, and as a result, either taxes or does not tax the dividends it pays or receives. Consequently, tax audits and subsequent disputes require courts to examine the dividend distribution structure case-by-case and determine whether the Directive was applied correctly. This assessment involves evaluating the risk of abuse, the artificiality of corporate structures, and the economic substance of transactions. Divergent interpretations among Member State tax authorities create considerable legal uncertainty and inconsistent administrative practice.

The objective of this research is to analyse dividend taxation chains, assess their shortcomings, and define potential improvements in the taxation process. To achieve this objective, the following tasks have been formulated:

1. To examine the theoretical foundations and evolution of dividends, dividends policy, distribution and their taxation
2. To systematize European directives regarding corporate dividends taxation
3. To analyse Lithuania and Nordic countries dividends taxation frameworks
4. To examine relevant Court of Justice of the European Union case law, identifying recurring issues, assessment criteria, and emerging trends
5. To evaluate challenges, limitations, and potential improvements for a more transparent and consistent EU dividend taxation model

The study employs a systematic review of academic literature and an analysis of EU and Lithuanian legislative frameworks. Document analysis methods are applied to relevant directives, case law, and regulatory documents.

Ten CJEU cases related to dividend taxation were selected and examined to identify common patterns, underlying issues, and divergences in application. The analysis highlights

weaknesses within the Directive's framework and proposes avenues for addressing these shortcomings.

This work provides a systematic examination of the concept of dividends and their taxation, supported by practical examples and comparative analysis. It identifies areas in which legislative regulation could be strengthened and offers potential practical solutions.

The thesis begins with theoretical material on dividends, dividend distribution policies, and their implications, followed by an introduction to dividend taxation. The analytical section examines ten CJEU cases, identifying key trends and weaknesses in dividend taxation regulation. The final section presents the conclusions of the research and recommends improvements.

The research is expected to contribute both academically and practically by deepening the understanding of dividend taxation challenges in the EU and providing an approach for analyzing jurisdictional practices, identifying trends, and assessing shortcomings.

This study acknowledges certain limitations. The relevant directives and regulatory frameworks are comparatively recent, which restricts the volume of available case law. Consequently, some findings rely on expert insights and practical experience perspective.

## **2. LITERATURE REVIEW**

### **2.1. DIVIDENDS DEFINITION AND DIVIDENDS POLICY**

Dividends have been a central feature of corporate finance since the emergence of modern corporations, beginning with joint stock companies in England and the establishment of the stock market in Amsterdam at XVII century. According to Frankfurter et al., 2004, the history of dividends in finance has evolved over time: at the beginning of the modern corporation, dividends were either all the earning for an accounting period or liquidating dividends. Over time, the magnitude and practice have changed to the discretion of management and often being symbolic with respect to the market value of the stock.

Dividends are a form of remuneration to company's shareholders: both individuals and other corporates. Academical articles and books describe dividends as portion of annual profit, share of earnings and compensation for the risk of investment, usually in form of cash paid to defined shareholders group.

Williams, 2011 define dividends as payments made by a company to its shareholders, typically as a portion of the annual profits. These payments can be made in the form of cash (cash dividends) or additional shares (stock dividends). Cash dividends are direct payments to

stockholders, while stock dividends involve issuing new shares to shareholders, which provides perceived value while retaining cash within the company for operations and investment. o

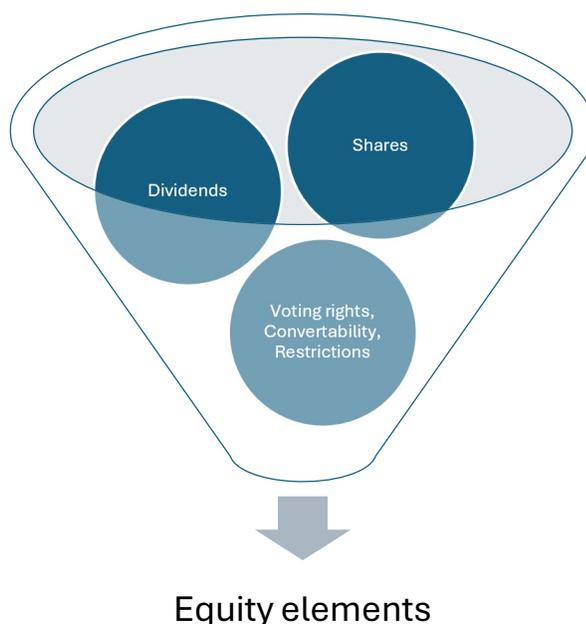
Dividends are considered as a way for companies to share earnings with their shareholders and can serve as a compensation for their investment and risk-bearing (San Martín Reyna, 2017). Companies need to balance between growth through reinvestment of profits and distribution of dividends to shareholders.

According to Duening et al., 2010 dividends serve as a form of earnings on stocks and are used by firms to keep their stock attractive to investors and to signal financial soundness. The payment of dividends must be planned as a use of company funds, and stock usually does not require the payment of dividends, though most firms choose to pay them for these reasons.

Many companies pay dividends to their shareholders. A dividend is a share of a company's net profits distributed by the company to its stockholders. The dividend is paid in a fixed amount for each share of stock held. Neapolitan & Jiang, 2007 write that dividends are usually paid quarterly (four times a year).

Within the structure of equity securities, dividends are considered one of the core “elements” of ownership rights, alongside voting rights and residual claims on assets (Williams, 2011).

Figure 1. Equities elements



Source: compiled by the author based on Williams, 2011

Shares, as a proportion of ownership, represent both the right to vote and the right to receive dividends as a share of the company's profits. They also carry certain responsibilities, including the need to make more advanced decisions related to the conversion of shares and to comply with shareholder restrictions.

The theoretical discussion of dividend policy has evolved considerably over time.

The seminal contribution by Modigliani and Miller (1961) introduced the dividend irrelevance hypothesis, arguing that under perfect capital market conditions—no taxes, no transaction costs, no asymmetric information, the value of a firm is independent of its dividend policy. In this view, whether profits are distributed or retained is irrelevant to shareholders, as they can create “homemade dividends” by selling shares if they prefer cash. In practice, this hypothesis rarely holds. Real-world markets are characterized by frictions that include agency conflicts, imperfect information, and transaction costs (Sacadura & Bentes, 2025).

However, subsequent theories challenged this neutrality. Gordon (1962) and Lintner (1956) advanced the so-called “bird-in-hand” theory, suggesting that investors prefer the certainty of dividends today over uncertain capital gains in the future. Lintner also found, through empirical work, that companies are highly reluctant to cut dividends and therefore tend to smooth payouts over time, adjusting them gradually to earning changes. This behaviour indicates that managers consider dividends an important strategic tool, not merely a residual decision. Narcissistic CEOs driven by their need for validation are more likely to utilize dividends as a signalling tool to attract market attention and affirm their perceived competences. Such managers use dividend announcements to convey private information about the firm's prospects. Because dividends are costly to reverse, an increase is often interpreted by markets as a credible signal of confidence in future earnings, while dividend cuts are perceived as negative signals (M. D. Park et al., 2025).

There's plenty of additional theories that have further expanded the understanding of dividend policy: the clientele effect goes on to suggest that different groups of investors tend to prefer different payout patterns according to their tax status and income needs, for example, institutional investors that include pension funds may prefer some more stable dividend-paying stocks, whereas high-income individuals in high-tax brackets tend to prefer firms that are more prone to retain earnings; the tax-preference theory argues that because capital gains tend to be taxed more favourably than dividends, investors may be more prone to prefer firms with lower dividend payout ratios.

Relatedly, the agency cost hypothesis suggests that dividends reduce free cash flow under managerial discretion, thereby limiting the risk of overinvestment and aligning managers' actions with shareholder interests. The agency cost due to the separation of ownership and management

control also impacts dividend policy. Managers do not necessarily have the same interests as shareholders. They may pursue their own perquisite consumption or empire-building unprofitable projects at the expense of shareholders' interests. Dividend payments reduce funds available to managers for overinvestment or excessive perquisite consumption and hence mitigate the agency problems between managers and shareholders (Duening et al., 2010).

Ownership structure also plays a critical role. In firms with concentrated ownership, such as family-controlled or state-owned enterprises, dividends may be used to alleviate conflicts between controlling and minority shareholders; conversely, in widely held corporations, regular dividends function as mechanisms of corporate governance, limiting managerial discretion and reducing information asymmetry (San Martín Reyna, 2017). This confirms that dividend policy is not purely a financial decision but also an institutional and governance tool.

Although dividends can take various forms, the table below provides a basic comparison of the different types of dividends and their main characteristics.

**Table 1.**  
*Different types of dividends and their main characteristics*

<b>Dividend Type</b>	<b>Core Characteristics &amp; Mechanism</b>	<b>Strategic Implications (for Shareholders &amp; Company)</b>
Cash Dividend	Monetary payment per share; usually distributed quarterly or annually; provides immediate income and forms basis for dividend yield computation.	Shareholders gain liquidity and predictable income; company reduces cash reserves but signals financial stability and maturity.
Stock Dividend (Scrip Dividend)	Distribution of additional shares to existing shareholders; preserves ownership proportion and conserves liquidity; no immediate cash outflow.	Shareholders increase holdings without dilution; company retains cash for reinvestment or debt management; may signal optimism about future earnings.
Special / Extra Dividend	One-time payout reflecting extraordinary profits, asset sales, or capital surplus; typically, larger than regular dividends.	Shareholders receive a windfall return; company leverages surplus assets; can boost investor sentiment but not sustainable long-term.
Interim Dividend	Temporary payment made before final accounts; reflects interim	Provides early income to shareholders; company signals

	performance and managerial confidence in profitability.	strong short-term performance; supports confidence ahead of year-end results.
Final Dividend	Declared after annual financial results; represents the company's final decision on profit distribution for the fiscal year.	Confirms overall profitability and shareholder reward; company formalizes retained earnings distribution; marks end of fiscal performance cycle.
Property Dividend	Distribution of non-cash assets (e.g., inventory, property); rare and often symbolic; used when cash liquidity is limited.	Transfers tangible value to shareholders; company conserves cash but loses physical assets; typically used for restructuring or symbolic gestures.
Dividend Reinvestment Plan (DRIP)	Optional reinvestment of dividends into additional shares, often at a discount; automates compounding of investment returns.	Encourages shareholder loyalty and long-term investment; company retains capital while effectively raising equity internally.
Dual Dividend	Hybrid of cash and stock distribution; provides both liquidity and retained value; designed to balance agency cost control with growth signaling.	Shareholders benefit from liquidity and ownership growth; company communicates balanced capital management and confidence in earnings potential.

Source: compiled by the author

Two types dominate both practice and theory: cash dividends and stock dividends. Cash dividends are direct monetary payments to shareholders. Cash dividends are straightforward, transparent, and provide investors with immediate income. They are also central to the computation of dividend yield and total shareholder return.

Other dividend types include special or extra dividends, which are one-time payments often reflecting exceptionally high profits or asset sales; interim dividends, paid before the annual financial statements are finalized; and final dividends, declared after the approval of annual results. In rarer cases, companies may issue property dividends, distributing assets other than cash or stock, or offer dividend reinvestment plans (DRIPs), which give shareholders the option to reinvest their dividends into additional shares, often at a discount.

Dividend entitlements also vary by share class.

To summarize dividends, reflect a company's financial condition and serve as compensation to shareholders for their investment in the company's equity, thereby rewarding their contribution to the company's success and financial performance. In many cases, the payment of dividends is a long-awaited event. Naturally, their distribution triggers various reactions and consequences. One such consequence is taxation, which applies to this type of income for shareholders. This topic will be examined in greater detail in the following section.

## **2.2. DIVIDENDS DISTRIBUTION**

Dividends are typically distributed at the beginning of the year, once the annual reports for the previous year have been prepared and it is possible to determine the amount that is appropriate and aligned with the company's financial capacity and strategic plans. As a result, dividends generally reach shareholders in the first half of the year. However, some companies choose to distribute dividends more frequently, resulting in payment intervals that differ from the standard annual cycle.

The announcement of dividend distribution usually triggers positive reactions—until the tax calculations begin, as taxes must be paid to the state. For individual shareholders, dividends are treated as income comparable to or supplementary to salary and are therefore subject to personal income tax. For legal entities, the taxation approach is different, as the distributing company's profits have already been taxed at the corporate level.

According to Quang, 2024, the announcement of dividend payments is a significant market event. Numerous studies demonstrate that markets react differently depending on the type of dividend distributed. Evidence shows that markets generally respond positively to cash dividends, which are perceived as credible signals of financial health, while reactions to stock dividends are weaker and sometimes ambiguous. Recent research finds that the market response is often biased: reactions are accurate in the case of cash dividends but less reliable for stock dividends, where optimism may not always align with future performance.

This asymmetry in market perception tends to have various implications for corporate decision-making, in fact, many firms have to weigh both the financial consequences of dividend distributions and also their signalling effects in the capital market: as highlighted by empirical research, the various dividend changes might trigger short-term share price movements even though their long-term impact tends to depend on whether they are consistent with underlying earnings capacity (Baral & Xydis, 2021).

An extremely important question in dividend policy is the trade-off between distributing profits to shareholders and retaining earnings for reinvestment, in fact, the classical valuation models that include Gordon's growth model tend to illustrate how retention can support growth through reinvested earnings and with return on equity; conversely, paying out all profits as dividends tends to limit growth potential even though it maximizes immediate returns to shareholders.

Empirical studies reinforce this trade-off. The firms that have strong reinvestment opportunities that include high-growth technology or energy companies, typically are more prone to favor retention, while mature firms in stable industries tend to emphasize higher payouts (Neapolitan & Jiang, 2007). In the life-cycle theory of dividends it's possible to build on this observation, suggesting that dividend policy go on to change with firm maturity, in fact, young firms retain profits to finance growth, while older, cash-rich firms are more incline to distribute higher dividends.

Firms distributing dual dividends (both cash and stock) have shown a positive association between payout ratios and following earnings growth, particularly when cash-to-stock ratios are balanced. This supports the view that dividends can simultaneously mitigate agency costs and signal optimism about the future (Huang et al., 2009). However, excessive payouts may undermine growth by reducing retained earnings, while excessive retention may create agency problems and invite inefficient investment.

Dividends represent far more than simple cash transfers from companies to investors. They include the intersection of legal entitlements, financial metrics, corporate governance mechanisms, and market signals. From their basic definition as profit distributions, dividends have evolved into a subject of extensive theoretical and empirical debate.

Competing theories—from Modigliani and Miller's irrelevance proposition to Gordon's bird-in-hand theory, Lintner's smoothing model, and agency and signalling hypotheses—highlight the multifaceted nature of dividend policy.

The way dividends are taken in, whether cash, stock, or combinations thereof, carry distinct implications for liquidity, ownership structure, and market perception (Huang et al., 2009). Market reactions differ depending on dividend type and context, showing the importance of managerial decision on dividend payments. Ultimately, the dividend decision reflects a balance between satisfying shareholder demand for income and preserving resources for reinvestment and growth. As such, dividends remain central to both corporate finance theory and practice, and their taxation—a subject to be addressed in the following section of this thesis—represents a crucial determinant of their role in firm value and investor welfare.

Additionally, (Pradhan et al., 2025) indicates that the plan to pay or not dividends influence the annual report readability and tone. Lower readability is associated with smaller dividend payouts, negative, litigious, uncertain or weak-model tone predicts fewer and smaller payouts. Clear, positive reporting aligns with higher dividend payouts.

Based on my 17 years of experience in finance and accounting, I would say that the frequency of dividend payments depends primarily on the shareholder structure, the company's profitability, its maturity, and its future strategic goals.

Companies with a simple ownership structure and a small number of shareholders tend to distribute dividends more frequently, often without a detailed evaluation, depending on profitability and the stage of the company's development. Larger companies typically pay dividends annually, in accordance with their established dividend payment policies. More mature companies with a solid financial foundation usually distribute dividends consistently each year, in contrast to newly established companies or start-ups, where shareholders often must wait longer before receiving dividends. The need for additional investment or reinvestment can also postpone dividend payments.

### **2.3. DOUBLE DIVIDEND TAXATION CONCEPT**

Taxes, as a universal and unavoidable element of economic life, naturally provoke strong reactions among individuals and businesses alike. The taxation is generally perceived as a legitimate mechanism through which the state finances public goods and redistributes resources.

In modern economies, virtually all income streams are subject to taxation. Employees pay taxes on their salaries and wages; individuals are taxed on gains from selling property or other assets; and investors are taxed on income generated from financial instruments, such as dividends, interest, or capital gains. While salaries paid to corporate employees are deductible by the C-Corporation, dividends paid to shareholder are not. The dividends are thus taxed twice, first as income to the company (at the corporate tax rate) and again as dividend income to the shareholder at the individual's tax rate (Duening et al., 2021). This means businesses pay corporate income tax on their profits before distributing any returns to shareholders.

Dividend taxation on corporate level is a very specific topic because here taxes come on company dividends distributor level as a corporate income tax and from a dividend's receiver perspective. Literally the same source can be taxed twice on corporates level.

It has a strong position in corporate finance theory and practice because dividend taxation directly influences both corporate payout decisions and shareholder welfare. In most jurisdictions,

dividends are subject to what is known as “double taxation”: corporate profits are first taxed at the company level and, when distributed as dividends, taxed again at the shareholder level. This system has been widely criticized for reducing the efficiency of capital markets, discouraging equity investment, and creating distortions in firms’ financing choices (Ahmad & Xiao, 2013).

The is ongoing debate about whether to integrate corporate and individual taxes to avoid double taxation. Some countries have adopted full or partial integration systems, such as dividend tax credits or imputation, while others maintain separate taxation.

According to Frankfurter et al., 2004b, it created a tax disadvantage for dividends compared to capital gains, which are only taxed once at the shareholder level. This can incentivize corporates to retain than pay dividends.

Double taxation is usually insignificant for small amounts, but as dividend payments increase, it becomes increasingly burdensome and sensitive for companies and their shareholders. The table below demonstrates the impact of taxation on the final value of the taxes and net dividend, using a tax rate of 16%, which is currently applicable in Lithuania.

**Table 2.**

*Double taxation impact on net dividends*

Brutto Dividend	Corporate income tax	Dividend tax	Total tax	Net Dividend
1 EUR	$1 \text{ EUR} \times 16\%$ $= 0,16 \text{ EUR}$	$(1 \text{ EUR} - 0,16 \text{ EUR}) \times 16\% = 0,1344 \text{ EUR}$	$0,16 + 0,1344 = 0,2944 \text{ EUR}$	0,7056 EUR
100 EUR	$100 \text{ EUR} \times 16\%$ $= 16 \text{ EUR}$	$(100 \text{ EUR} - 16 \text{ EUR}) \times 16\% = 13,44 \text{ EUR}$	$16 + 13,44 = 29,44 \text{ EUR}$	70,56 EUR
1000 EUR	$1000 \text{ EUR} \times 16\%$ $= 160 \text{ EUR}$	$(1000 \text{ EUR} - 160 \text{ EUR}) \times 16\% = 134,4 \text{ EUR}$	$160 + 134,4 = 294,4 \text{ EUR}$	705,6 EUR
100000 EUR	$10000 \text{ EUR} \times 16\%$ $= 16000 \text{ EUR}$	$(100000 \text{ EUR} - 16000 \text{ EUR}) \times 16\% = 13440 \text{ EUR}$	$16000 + 13440 = 29440 \text{ EUR}$	70560 EUR

Source: compiled by the author

Lithuania tax level is one of the lowest in Europe, so the total tax from dividends payment is on 29,44 %. This very subjective to decide on this is low or high, but the higher the taxes, the more difficult it becomes to make the decision to distribute dividends.

If we adopt a broader perspective on dividends payments, it becomes clear that an unfavourable or overly restrictive approach by the tax authority toward cross-border dividend flows may have tangible negative consequences for a country's overall investment climate. Investor confidence—particularly among multinational groups—depends heavily on the predictability, neutrality, and proportionality of tax administration. When dividend payments between associated companies are systematically viewed with suspicion, this may deter foreign investors, reduce capital inflows, and ultimately weaken the competitiveness of the domestic economy. Mishra & Anwar, 2017, says that 1 percentage point increase in capital gains tax rate leads to a measurable decrease in foreign equity holdings, and similar negative effects are observed for dividend taxation.

The practice of any tax authority must therefore be firmly grounded in the applicable legal framework and guided by a principled, well-reasoned assessment of each individual case. In reviewing case law and practical examples, it becomes apparent that national authorities often treat domestic and cross-border situations differently, consciously or unconsciously applying stricter scrutiny to foreign structures. Transactions involving foreign entities are at times assessed as inherently questionable or presumptively artificial, as if cross-border activity were an indicator of tax avoidance. Such an approach risks creating a systemic bias: domestic arrangements are granted the benefit of the doubt, while foreign transactions are treated as potential sources of abuse that must be taxed unless proven otherwise.

This asymmetry not only contradicts the fundamental freedoms enshrined in EU law—particularly the free movement of capital and the freedom of establishment—but also creates legal uncertainty for businesses operating across borders. For this reason, a consistent, evidence-based, and neutral evaluation methodology is essential to maintain both compliance with EU obligations and a fair, investment-friendly tax environment.

Theoretically, the effects of dividend taxation have been approached from multiple angles. One of the most influential theories is the tax clientele theory, which declares that investors self-select into securities that match their tax preferences. Investors in low tax brackets may prefer dividend-paying firms, while those in higher tax brackets may prefer firms that retain earnings and create value through capital gains. Direct empirical support for this idea is provided by studies documenting that investors' portfolio allocations respond to dividend tax changes, demonstrating that different tax rates across investor groups generate observable clienteles (Dahlquist et al.,

2014). Similarly, research using detailed Swedish tax data shows that insiders' effective tax rates shape dividend outcomes. A significant negative relationship exists between insiders' effective tax rates and dividend payout, confirming that highly taxed shareholders push for lower dividends, while low-tax or tax-exempt shareholders have less incentive to reduce distributions (Holmen et al., 2008). These findings emphasize that dividend taxation is not merely a neutral revenue-raising tool but actively conditions the ownership structure and the composition of shareholders attracted to a firm.

Complementing the clientele perspective is the tax-preference theory, which argues that investors generally prefer capital gains to dividends because capital gains taxation can be deferred until realization and often faces lower statutory rates. This theory provides one explanation for the observed trend of declining dividend payments in favour of share repurchases, particularly in markets such as the U.S. and U.K. Empirical evidence from the U.K. confirms that tax rules influence the choice between payout channels: after reforms that reduced the tax advantages of dividends, many companies shifted toward share repurchases (Geiler & Renneboog, 2015). However, researchers also caution that while taxation exerts some influence, firms do not always cater perfectly to shareholder tax preferences. Other factors—such as executive compensation design, investor sentiment, and signalling concerns—often play equally strong roles. Nevertheless, taxation of income remains one of the most consistent forces shaping the overall balance between dividends and share repurchases across time.

Dividend taxation also interacts with theories of signalling. Traditional signalling models suggest that dividends communicate private information about future earnings because they are costly to alter. However, when dividends are taxed more heavily than capital gains, their signalling role becomes less attractive. Evidence from some international firms indicates that dividend taxation interacts with signalling mechanisms in complex ways. Taxable stock dividends, for example, may still convey positive information to markets, but the valuation effect is moderated by the tax treatment applied to shareholders (Kuo & Lee, 2013). This underscores that dividend taxation does not simply suppress payout but reshapes the informational role of dividends in capital markets.

The legal and structural foundations of corporate entities also determine how dividend taxation is applied. In most developed economies, corporations are recognized as separate legal unit, distinct from their owners. This separation provides limited liability but also creates the framework for corporate taxation (Duening et al., 2015). When a corporation earns profits, those profits belong to the corporate entity and are taxed at the corporate income tax rate. Only after-tax profits may be distributed to shareholders, who then incur a personal tax liability on dividends

received. This institutional design lies at the heart of the double taxation problem. Alternative systems have been developed to mitigate this burden. For instance, imputation systems (historically used in Australia and the U.K.) grant shareholders credits for corporate taxes already paid, effectively integrating corporate and personal taxation. Split-rate systems (as in Germany before reforms) tax distributed profits at a lower rate than retained profits, encouraging dividend payments. Finally, exemption systems, common in continental Europe, release dividends received by corporations from additional taxation, reducing the burden of cascading taxes in ownership chains. Each system represents a different attempt to balance revenue collection, investment incentives, and fairness in tax policy.

Beyond corporate-level theory, dividend taxation has a strong implication for economic efficiency and distribution. By reducing the after-tax return on equity, dividend taxation may bias corporate financing toward debt, since interest payments are tax deductible. This debt bias can exacerbate leverage in the corporate sector and increase financial fragility. Dividend taxation also affects broader economic variables. Evidence from the U.S. indicates that temporary reductions in dividend taxes can stimulate investment and output in the short term, especially when such cuts are unexpected, though the effects tend to be moderate and sometimes lead to subsequent downturns when cuts expire (Ahmad & Xiao, 2013). In contrast, announced cuts have weaker effects because investors adjust their expectations in advance. Thus, the timing and communication of dividend tax reforms matter as much as their design.

The international evidence further highlights how taxation shapes payout behaviour. In Sweden, where shareholder-level data allow precise measurement, insiders clearly adjust dividends based on their personal effective tax rates (Holmen et al., 2008). In the U.K., pension funds were strongly affected by the 1997 abolition of tax credits on dividends, which reduced their income by billions of pounds annually and led to sharp reductions in dividend payout ratios (Geiler & Renneboog, 2015). These examples demonstrate that dividend taxation does not operate in a vacuum but intersects with ownership structures, institutional investors, and political choices.

Another dimension of dividend taxation is the political economy. Tax reforms often reflect broader ideological debates about fairness, efficiency, and growth. For instance, proponents of eliminating double taxation argue that dividends represent after-tax corporate profits and taxing them again constitutes unfair duplication. Opponents counter that dividends are new income streams for shareholders and therefore should be subject to taxation like wages or interest. Empirical work shows that reducing dividend taxation can stimulate investment and marginally increase output, but it also has distributional consequences, often benefiting wealthier households

who receive most of the dividend income (Ahmad & Xiao, 2013). Thus, dividend taxation remains a contested area of fiscal policy, balancing efficiency gains against equity concerns.

Overall, corporate dividend taxation appears to be a multifaceted phenomenon. It shapes corporate payout policies, conditions investor behaviour, influences firm valuation through signalling and clientele effects, and affects the broader distribution of income in the economy. The empirical evidence from multiple countries shows that while taxation is not the sole determinant of dividend policy, it consistently plays a critical role in shaping outcomes. Different institutional designs—classical, imputation, split-rate, and exemption systems—offer varying solutions to the double taxation problem, each with distinct advantages and drawbacks. Studies confirm that changes in dividend tax regimes are not neutral but alter firm behaviour, shareholder composition, and even macroeconomic performance. For this reason, the study of dividend taxation remains essential to both corporate finance theory and public policy.

A distinctive feature of dividend taxation is that many jurisdictions provide preferential or even exempt treatment of dividends received by corporations that are themselves shareholders. The rationale behind this system is to avoid cascading taxation within corporate ownership chains. If a dividend distributed by one company to another company were taxed at both levels, the same stream of profits could face multiple layers of taxation before ultimately reaching individual investors, creating severe inefficiencies and discouraging corporate equity holdings. To prevent this outcome, many tax systems exempt intercorporate dividends from taxation, either fully or partially.

In practice, this exemption plays a crucial role in shaping ownership structures and the behaviour of corporate blockholders. For example, in the United States, corporations generally do not pay taxes on most dividends received from other corporations, subject to certain ownership thresholds and conditions. Similarly, in European systems, intercorporate dividends are often fully exempt to prevent what is sometimes referred to as “chain taxation.” The logic is to preserve neutrality and promote business investment by ensuring that dividends are taxed only once at the corporate level and once at the ultimate shareholder level, rather than at every link in an ownership chain (Duening et al., 2015).

Empirical studies confirm that this preferential treatment has measurable effects on payout policy. Research shows that while individual shareholders often face substantial effective tax rates on dividends, corporations acting as shareholders can be entirely tax-exempt. This divergence helps explain why corporate blockholders do not always press for higher dividends, since the tax-exempt status eliminates the need to optimize payout for their own tax liabilities. For instance, Barclay et al. (2007), in their study of U.S. firms, found that corporate blockholders did not use

their influence to increase dividends, precisely because dividends were not taxed at their level. By contrast, individual controlling shareholders with higher effective tax burdens often pressured firms to reduce payouts (Holmen et al., 2008).

This exemption also interacts with broader theories of dividend policy. Under the tax clientele hypothesis, corporations and institutions with tax-free dividend status form natural clienteles for dividend-paying firms. At the same time, this can create tension with individual investors in high-tax brackets, who may prefer lower dividends and higher capital gains (Dahlquist et al., 2014). The result is that dividend policy reflects not only firm-level considerations but also the composition of its shareholder base.

In Lithuania, a clear distinction between private and corporate capital is still often lacking. Company owners frequently treat the company's funds as their own personal assets and therefore view corporate profit as an income source directly belonging to them. Meanwhile, the tax system is essentially a regulatory mechanism that, ideally, should guide economic actors toward sustainable decisions aligned with the state's objectives.

The dividend taxation model in Lithuania and EU is oriented toward encouraging economic growth stimulation. It creates incentives to retain profits within the company, thereby promoting reinvestment and economic development. From the state's perspective, the most important goal is the creation of added value and the overall increase in economic productivity. Dividends distributed to individuals are often used for private consumption and therefore do not contribute to value creation as effectively as reinvestments into business activities.

At the corporate level, the distribution of dividends is related to the free movement of capital—the question of where capital will be reinvested next. For this reason, the European Union already in 1990 began establishing a legal framework to ensure that dividends distributed between legal entities would be either untaxed or minimally taxed, with the aim of avoiding double taxation and fostering deeper market integration.

Nevertheless, the natural tendency of society to seek maximum benefit has created opportunities for abusive schemes. Such situations have arisen because EU member states apply different dividend taxation regimes to individuals and legal entities, and some jurisdictions—so-called tax havens—maintain disproportionately favorable regimes for private persons. In addition, tax administrations in these countries are often unwilling to cooperate or adhere to common principles of dividend taxation, which complicates transparent and consistent regulatory practices across the EU.

## 2.4. EU DIVIDENDS TAXATION FRAMEWORK AND LITHUANIA TAX SYSTEM

### 2.4.1. EU Framework

On March 25, 1957, in Rome, Italy, the Treaty of Rome was signed, establishing the European Economic Community (EEC) and European Union (EU) on the later period. The Treaty establishing the European Economic Community created a common market among six participating countries: Belgium, France, Germany, Italy, Luxembourg, and the Netherlands. The goal of this union was to promote closer relations and stimulate economic growth by increasing trade.

Although the treaty laid the foundation for the free movement of goods, persons, services, and capital, it did not sufficiently define the tax environment within the EEC. As a result, situations arose in which countries abused their national tax systems, favouring their own residents over non-residents.

One of the best examples of this is the 1986 case *Avoir Fiscal*, C-270/83 (Info Curia, 1986)(Info Curia, 1986). This case was one of the first European Court of Justice (ECJ) rulings that analyzed different taxation of dividends for residents and non-residents. France applied the so-called *avoir fiscal credit*, which compensated residents for double taxation. However, non-residents were not eligible to receive this credit. A Belgian company (representing shareholders) argued that such regulation discriminated against foreign shareholders and restricted the free movement of capital.

The Court of Justice ruled that the French system gave an advantage to residents, creating less favourable conditions for foreign investments, and that such regulation restricted the free movement of capital. The French state's justification, based on tax system consistency, was deemed insufficient. This was one of the first cases recognizing that different taxation of dividends for residents and non-residents could violate the free movement of capital. The *Avoir Fiscal* case laid the groundwork for later jurisprudence and established the principle that the argument of tax system consistency cannot be used as a justification for discrimination.

Council Directive 90/435/EEC) of 23 July 1990 on the common system of taxation applicable on the case of parent companies and subsidiaries of different Member States responded to this problematical area by introducing a common regime to eliminate double taxation and remove withholding barriers, embedding the principle that profits within a group should be

taxed only once. The 1990 Directive provided the first harmonised framework to remove double taxation of intra-group dividends.

Two decades later, (Council Directive 2011/96/EU of 30 November 2011 on the Common System of Taxation Applicable in the Case of Parent Companies and Subsidiaries of Different Member States)(Council Directive 2011/96/EU of 30 November 2011 on the Common System of Taxation Applicable in the Case of Parent Companies and Subsidiaries of Different Member States was adopted to recast, consolidate, and simplify the parent-subsidiary directive while incorporating amendments and clarifications generated by practice and jurisprudence. It maintained the original neutrality mechanisms, but strengthened the anti-abuse dimension, reflecting the EU's shift from formal coordination toward a substance-based model of tax governance. Directive 2011/96/EU explicitly covered both inbound and outbound distributions and recognised permanent establishments as intermediaries capable of benefiting from the Directive, provided the profits are attributable to them.

Both directives acknowledge Member States' competence to combat abuse. Article 1(2) of the 1990 Directive permitted application of domestic or treaty-based anti-avoidance rules. The 2011 Directive kept this safeguard and, following subsequent policy developments, was complemented by (Council Directive (EU) 2015/ 121 - of 27 January 2015 - Amending Directive 2011/ 96/ EU on the Common System of Taxation Applicable in the Case of Parent Companies and Subsidiaries of Different Member States, 2015), which inserted a General Anti-Abuse Rule (GAAR) into Article 1(2).

The Parent – Subsidiary Directive relies on two central pillars:

1. *Elimination at the parent level (Article 4).*

*Where a parent company or its permanent establishment, by virtue of the association of the parent company with its subsidiary, receives distributed profits, the Member State of the parent company and the Member State of its permanent establishment shall, except when the subsidiary is liquidated, either:*

- a) refrain from taxing such profits; or*
- b) tax such profits while authorising the parent company and the permanent establishment to deduct from the amount of tax due that fraction of the corporation tax related to those profits and paid by the subsidiary and any lower-tier subsidiary, subject to the condition that at each tier a company and its lower-tier subsidiary fall within the definitions laid down in Article 2 and meet the requirements provided for in Article 3, up to the limit of the amount of the corresponding tax due.*

Article 3 of Directive 2011/96/EU defines the minimum requirements for a company to qualify as a parent or subsidiary under the Directive. It establishes that the parent company must hold at least 10% of the capital of the subsidiary, ensuring a genuine economic relationship between the entities. Member States may additionally require that this minimum participation be held for an uninterrupted period of at least two years, reinforcing the principle that the Directive applies only to stable, long-term corporate structures rather than temporary arrangements formed for tax advantages. Article 3 also allows Member States to replace the 10% threshold with an equivalent requirement based on the value of the investment.

When a parent receives dividends from its subsidiary, the parent's Member State must either exempt those profits or tax them while granting a credit (imputation) for tax already paid by the subsidiary (and, where relevant, lower-tier subsidiaries). This ensures single taxation within the corporate chain. Member States may disallow deductions for management costs related to the holding, but any fixed disallowance is capped at 5% of the distributed profits—balancing neutrality with base protection. The 2011 recast added flexibility for fiscal transparency situations: where a subsidiary is treated as transparent domestically, the parent's share of profits may be taxed as they arise, provided double taxation is avoided.

## 2. *Prohibition of withholding taxes (Articles 5–6).*

*ARTICLE 5. Profits which a subsidiary distributes to its parent company shall be exempt from withholding tax.*

*ARTICLE 6. The Member State of a parent company may not charge withholding tax on the profits which such a company receives from a subsidiary.*

Directive 2015/121 amends Directive 2011/96/EU by introducing a mandatory General Anti-Abuse Rule (GAAR) applicable to all Member States. Its core purpose is to prevent companies from using artificial arrangements—such as conduit entities or purely formal group structures—to obtain tax exemptions on intra-EU dividends that were never intended by the Parent–Subsidiary Directive. The amendment requires Member States to deny the Directive's tax benefits whenever an arrangement is “not genuine”, meaning it is put in place primarily to obtain a tax advantage and does not reflect economic reality. It harmonises the anti-avoidance approach across the EU by obliging all Member States to apply the same substantive test (objective + subjective elements of abuse) instead of relying on divergent national rules. Overall, Directive 2015/121 strengthens the integrity of the EU corporate tax framework by ensuring that PSD

benefits apply only to genuine economic structures, while preventing systematic tax avoidance within the internal market.

The Directive prohibits withholding taxes on dividends distributed by a subsidiary to a parent company in another Member State and also at the parent level on receipts. The Parent-Subsidiary Directive embodies the Union's dedication to maintaining fiscal neutrality and advancing market integration: it was introduced in 1990 and it sought to remove imbalances that disadvantaged cross-border corporate groups compared to domestic ones, thereby easing the process of mergers, acquisitions, and reorganisations; in 2011, the Directive reinforced these objectives within the framework of the Treaty on European Union, aiming to strengthen competitiveness and ensure equal treatment while addressing contemporary challenges in tax planning; it also converged with principles later emphasized in OECD discussions on beneficial ownership and economic substance, recognizing that neutrality must be accompanied by safeguards against artificial structures designed to exploit the system.

#### *2.4.2. Lithuania's principles of dividend taxation*

Under Article 2(25) of the Law on Corporate Income Tax (*Pelno mokesčio įstatymas*), dividends are defined as "income from distributed profits," including all forms of benefit allocated to shareholders, partners, or members based on their participation in a company's equity capital.

In principle, dividends distributed by Lithuanian companies are subject to 16% corporate income tax rate, depending on the category of the recipient. The tax is generally withheld at source by the distributing entity. The goal of the Lithuanian regime is to prevent double taxation of the same profits within corporate groups while maintaining compliance with EU and OECD standards.

Lithuanian tax law distinguishes these main dividend situations:

- *Lithuanian dividends.* This situation arises when dividends are paid between Lithuanian companies. Dividends received by a Lithuanian company from another Lithuanian company are exempt from corporate income tax, provided that the dividend-receiving Lithuanian company has continuously held at least 10 percent of the voting shares (interests, units) for a period of no less than 12 months, including at the time of dividend distribution.

If any of the above conditions are not met, the dividends are subject to a 16% corporate income tax rate.

Moreover, the amount of corporate income tax withheld from the dividends paid by other Lithuanian companies on their shares (interests, units) is credited against and reduces the amount of corporate income tax payable by the dividend-receiving Lithuanian company in the same tax period during which the tax was withheld from the dividends paid to that company.

- *Foreign dividends*

There are two possible cases here:

1. *When a Lithuanian company pays dividends to foreign companies.*

Dividends paid to foreign companies are exempt from corporate income tax if the foreign company receiving the dividends has continuously held at least 10 percent of the voting shares (interests, units) in the Lithuanian company for at least 12 months, including at the time of dividend distribution.

An exception applies if the foreign company receiving the dividends is registered or otherwise organized in a targeted (non-cooperative) jurisdiction — i.e., territories where tax authorities do not exchange information with other countries, where tax rules are unclear, or which otherwise exhibit characteristics typical of “tax havens”. In such cases, the dividends are taxed at a 16% corporate income tax rate.

Furthermore, if the above-mentioned shareholding percentage or holding period conditions are not met, dividends paid to other foreign companies are likewise taxed at the 16% corporate income tax rate.

2. *When Lithuanian companies receive dividends from foreign companies.*

Dividends received by Lithuanian companies for their shareholdings in foreign companies that are registered or otherwise organized in a European Economic Area (EEA) member state, and whose profits are subject to corporate income tax or an equivalent tax, are not taxed.

If the foreign company is outside the EEA, the dividends are also tax-exempt provided that the Lithuanian company receiving the dividends has continuously held at least 10 percent of the voting shares (interests, units) in the foreign company for at least 12 months, including at the time of dividend distribution, and that the foreign company’s profits are subject to corporate income tax or an equivalent tax. If these conditions are not met, or if the foreign company is located in a targeted (non-cooperative) jurisdiction, then the dividends are subject to a 16% corporate income tax rate.

Moreover, the exemption from taxation of dividends received by a Lithuanian company does not apply if the amount of dividends paid by the foreign company reduces the profit subject to corporate income tax or an equivalent tax in that foreign company.

The purpose of this rule is to avoid situations in which distributed profits tend to escape taxation altogether: it's a risk that arises when disparities between national tax frameworks or the use of differing regimes are manipulated.

#### 2.4.3. *Dividends taxation general anti-abuse rule*

General Anti-Abuse Rule prevents tax avoidance by focusing on substance over form, but may effect genuine transactions (Brooks et al., 2016).

Several countries levy a higher withholding tax on dividends when these are distributed to a parent located in a tax haven (Petkova et al., 2020), and also adapt-to-a-minimum-tax clause as a condition for claiming the benefits of participation exemption and exemption from withholding tax in dividends.

Treaty shopping refers to cases where an individual or corporation that is not eligible for tax reduction benefits under the tax treaty establishes intermediary entities that are eligible, thus enabling them to receive tax reduction and exemptions unfairly ((S. J. Park et al., 2021).

Lithuania integrated the anti-abuse clause from Directive (EU) 2015/121 into its *Pelno mokesčio įstatymas*. Under Article 37<sup>1</sup>, tax relief under the participation exemption can be denied if:

- The dividend payment forms part of an artificial arrangement lacking genuine economic substance; or
- The main purpose of the arrangement is to obtain a tax advantage contrary to the Directive's objectives.

The recipient needs to be the true owner of the dividends which meaning that he must be the individual who derives the real financial advantage and assumes the corresponding risks.

Under Article 39(9) of the *Pelno mokesčio įstatymas*, if income from a controlled foreign company has already been included in the Lithuanian company's tax base under the Controlled Foreign Company regime, subsequent dividends from that same entity are exempt from taxation to prevent double taxation. However, if the dividend amount exceeds previously taxed Controlled Foreign Company income, the excess portion becomes taxable.

This provision maintains coherence between Lithuania's participation exemption and its Controlled Foreign Company regulations, bringing them into line with the principles of the EU Anti-

Tax Avoidance Directive: the country's dividend taxation framework illustrates an effort to strike a balance between encouraging foreign investment and curbing tax avoidance and by applying the participation exemption, fiscal neutrality is preserved within corporate groups, while anti-abuse measures serve to protect the stability and fairness of the tax base.

What circumstances indicate that the primary purpose of a dividend distribution is to obtain a tax benefit and that the corporate group structure is artificial and designed to avoid taxation?

According to the Lithuanian tax authority, the following criteria may signal such intent:

- The entity's managers or governing bodies don't have the qualifications to perform their duties.
- The entity has no employees or insufficient number of employees to carry out its declared activities.
- The entity's employees lack the authority required to perform the assigned functions.
- The employees' experience, competencies, and the time allocated to performing their duties are not consistent with the nature of the entity's activities and/or minimum operational requirements.
- Key decisions are not made by the entity's own managers or governing bodies.
- Meetings of the board or governing bodies don't take place in the state where the entity is incorporated or registered.
- The entity does not conduct real and active business activities (e.g., no production or commercial operations).
- The entity's income consists solely of passive income.
- The entity lacks actual presence in the state of incorporation (e.g., no premises, equipment, or other operational infrastructure) where such presence is necessary for its activities.
- The entity does not hold a bank account in the jurisdiction in which it is registered.
- The entity operated only for a short period or was established before the dividend distribution.
- Other relevant factors.

In all cases, the assessment is made based on the overall combination of circumstances, and it is emphasized that the above list is not exhaustive. The tax authority also evaluates the frequency of dividend payments, including whether dividends were accumulated and distributed only after a new corporate structure was created.

Passive holding companies receive special and heightened scrutiny. According to the Lithuanian tax authority, a passive holding company is, by its nature, considered a potentially suspicious legal entity.

All circumstances are assessed using all available information across multiple periods, rather than focusing on a single timeframe, in order to determine whether the tax treatment is justified. Consequently, the evaluation may change over time and depends on the company's ability to provide adequate substantiation and supporting arguments.

From a theoretical perspective, Lithuania's system embodies the EU principle of single taxation of company profits, harmonised through Directive 2011/96/EU, yet interpreted in line with economic substance doctrine. The inclusion of EEA states, such as Norway, Iceland and Liechtenstein within the exemption scope further strengthens Lithuania's integration into the European single market framework, even beyond EU borders.

In summary, Lithuania's corporate tax framework for dividends is fully aligned with EU law principles. The system applies a standard 16% tax rate but provides generous participation exemptions to eliminate double taxation for both inbound and outbound dividends. Through careful integration of EU directives, EEA provisions, and bilateral treaties, Lithuania ensures that cross-border dividend flows remain neutral, competitive, and compliant with modern anti-abuse standards.

#### 2.4.4. *Lithuania in Nordic states context*

For the Baltics and Nordic EU states, the PSD framework provides a strong foundation for dividend-taxation chains. However, the effectiveness of these chains depends on compliance with both PSD requirements (ownership thresholds, holding periods, beneficial ownership) and domestic participation exemptions.

Lithuania applies a participation exemption system under its Corporate Income Tax Law (Pelno mokesčio įstatymas, 2001, with amendments). Dividends received by a Lithuanian company from another Lithuanian or EU/EEA company are exempt from taxation if the recipient holds at least 10% of voting shares in the payer for a continuous period of 12 months (Ministry of Finance of the Republic of Lithuania, 2023). This exemption is aligned with the PSD and ensures that qualifying inter-corporate dividends can circulate without taxation at the shareholder level.

Dividends from companies located in jurisdictions included on Lithuania's "blacklist" are excluded from the exemption, unless the taxpayer demonstrates genuine business activity (Pelno mokesčio įstatymas, 2001). Additionally, the exemption may be denied under the domestic GAAR if arrangements are deemed artificial or primarily tax driven.

For outbound dividends, Lithuania levies a withholding tax (WHT) of 16% on dividends paid to non-resident shareholders. However, this WHT is reduced to 0% for qualifying corporate shareholders under the PSD and under many bilateral treaties (Corporate Income Taxation in Lithuania in the Context of the EU, 2018).

In practice, this means that a Lithuanian holding company can receive dividends tax-free from EU subsidiaries and redistribute them upstream without additional corporate taxation, provided the ownership thresholds and substance requirements are met. Empirical analyses emphasize that such rules enhance Lithuania's competitiveness within the EU and attract holding company functions (Corporate Income Taxation in Lithuania in the Context of the EU, 2018).

If we compare Lithuania and other Nordic states our system is not the most highest or hardest as each country settled to the model that is most convenient for the society and tax administrator.

**Table 3.***Taxation system comparison*

Country	System type	Inbound dividends	Outbound dividends (WHT)	Anti-abuse rules
Lithuania	Participation exemption (10% for 12 months)	Exempt if 10% held for 12 months	16% (0% under PSD/treaties)	GAAR + blacklist of low-tax jurisdictions
Latvia	Distribution-based CIT (20% on net distributions)	Not taxed (only taxed at distributing company)	0% for corporate shareholders (PSD compliant)	GAAR, restrictions for low-tax recipients
Estonia	Distribution-based CIT (22/78 from 2025)	Not taxed at shareholder level	0% generally, subject to treaties	GAAR, PSD anti-abuse, beneficial ownership
Sweden	Participation exemption (näringsbetingade andelar)	Exempt if business-related shares	30% (0% under PSD/treaties)	Anti-hybrid rules + GAAR
Finland	Participation exemption (with portfolio exceptions)	Exempt if >10% (portfolio holdings may be taxable)	20% (0% under PSD/treaties)	GAAR, partial exemption for small holdings
Norway	Exemption method (fritaksmetoden)	Exempt unless from low-tax jurisdictions or small holdings	25% (reduced under treaties/EEA law)	Beneficial ownership + GAAR, treaty restrictions

*Source:* compiled by the author

To conclude, dividend taxation chains in the Baltics and Nordics illustrate both diversity and convergence. Lithuania, Sweden, and Finland rely on participation exemptions underpinned by the EU PSD, enabling corporate shareholders to receive dividends tax-free under qualifying conditions. Latvia and Estonia impose corporate income tax only when profits are distributed, thereby avoiding cascading taxation. Norway applies its own exemption system, which functions effectively for inbound dividends but creates complexity for outbound distributions due to its reliance on treaty relief.

In every jurisdiction attaining tax-exempt dividend chains varies on meeting specific requirements that include minimum ownership levels, prescribed holding periods and the demonstration of genuine economic substance; safeguard provisions against abuse are extremely important in order to curb improper practices ensuring that the principle of neutrality in dividend taxation supports genuine business arrangements rather than functioning as a vehicle for artificial structures.

Viewed more broadly, these legal structures exert a direct influence on how companies design their dividend policies, how investors respond, and the overall dynamics of the market; the experience of the Baltic and Nordic countries shows clearly how legal rules, financial practices and public policy intersect in order to achieve a balance between efficiency, fairness and the preservation of a sound tax system.

### **3. METHODOLOGY OF QUALITATIV ANALYSIS**

This research aims to investigate the interpretation and application of anti-abuse provisions in the field dividend taxation within the European Union, concentrating in particular on the Parent–Subsidiary Directive (Directive 2011/96/EU) and its subsequent amendment, Directive 2015/121/EU. Through the examination of pertinent case law, the study seeks to identify both practical and conceptual gaps in the existing framework and to formulate proposals for policy improvements. These recommendations are intended to reinforce legal certainty, promote uniform enforcement of tax rules among Member States, and limit the risk of both abusive practices and excessive enforcement.

Because of the character of the research question, the study adopts a qualitative case-law analysis as its principal method. It's a choice that makes it possible to explore legal reasoning, factual circumstances and interpretative tendencies in a depth that quantitative approach can't achieve. Examining jurisdictional cases shows how abstract legal provisions are translated into concrete applications, offering important perspectives on the way national tax authorities and courts interpret notions such as “beneficial ownership”, “non-genuine arrangements” and “abuse of rights”.

Although this thesis focuses on EU law, the analysis also incorporates two Norwegian cases. The inclusion of Norway is methodologically justified for two reasons. First, Norway is a member of the European Economic Area (EEA) and is therefore bound by the fundamental freedoms of the internal market, including the free movement of capital, which is central to

dividend taxation. Second, the researcher has 18 years of professional experience in Norwegian tax and accounting practice, allowing for competent and contextually informed analysis of Norwegian jurisprudence. These cases provide a useful comparative dimension and illustrate how similar legal principles are applied outside the EU's direct legislative framework.

In Lithuania, there are only two jurisdictional cases directly addressing cross-border dividend taxation between Lithuania and other EU Member States:

- The Nordcurrent Group case (Judgment of 3 April 2025), and
- The Klaipėdos Translit case (Judgment of 2021).

Both cases play an extremely important role in the empirical section of the thesis considering that they both illustrate the way Lithuania applies the anti-abuse rule in practice while demonstrating how national authorities evaluate the presence of economic substance within cross-border arrangements. Their examination is carried out through a carefully structured qualitative framework that emphasizes the analysis of legal reasoning, the scrutiny of factual circumstances, and the assessment of coherence with EU law.

To complement the Lithuanian jurisprudence and ensure a broader perspective, six major CJEU cases with direct relevance to dividend taxation and anti-abuse rules were selected for secondary qualitative analysis:

- T Danmark and Y Danmark APS (Judgment of 26 February 2019)
- Fidelity Funds (Judgment of 21 June 2018)
- Aberdeen Property Fininvest Alpha (Judgment of 18 June 2009)
- ACC Silicones Ltd (Judgment of 16 June 2022)
- Brussels Securities SA (Judgment of 19 December 2019)
- Argenta Spaarbank NV (Judgment of 26 October 2017)

These cases were selected considering their pivotal contribution to the development of the EU anti-abuse doctrine, their impact on the practices of national authorities and their significance in interpreting Directive 2011/96/EU and Directive 2015/121/EU. Each judgement goes on to establish key benchmarks applied by the Court in detecting abusive arrangements, evaluating economic substance and determining comparability within the framework of the free movement of capital.

The qualitative analysis unfolded through a sequence of interconnected methodological phases. It started with the careful selection of cases that were chosen considering their pertinence to issues that surround cross-border dividends, anti-abuse provisions and the diverse national interpretations of EU law. It was followed by a thorough reading and doctrinal examination that focused on the legal reasoning, the factual circumstances and the judicial conclusions presented

in each case. The study then moved to a comparative dimension going on to place the cases side by side to highlight recurring principles, divergences and broader interpretative tendencies across different jurisdictions and from this comparison various practical shortcomings emerged revealing zones of uncertainty, uneven application and potential clashes between national frameworks and EU legal standards. Finally, the findings were synthesized into a set of recommendations that were designed to enhance both the clarity and the effectiveness of the rules governing dividend taxation within the EU.

Research captures both the harmonised elements of EU tax law and the diverse practical realities within Member States. The chosen approach also supports the overall goal of the thesis: to provide a well-reasoned evaluation of the anti-abuse mechanism in dividend taxation and offer constructive policy suggestions for its future development.

## **4. QUALITATIVE ANALYSIS OF DIVIDENDS TAXATION CASES IN EU**

### **4.1. THE NORDCURRENT GROUP CASE (Judgment of 3 April 2025)**

The Nordcurrent Group judgment (Info Curia Case C-228/24, 2025) delivered by the Court of Justice of the European Union (CJEU) on 3 April 2025, constitutes a landmark in the continuing evolution of the EU's approach to dividend taxation and abuse of rights under the Parent–Subsidiary Directive (2011/96/EU, as amended by Directive 2015/121). It clarifies how the Directive's anti-abuse clause should be applied over time and redefines the temporal dimension of assessing “non-genuine arrangements.”

The commercial structure at the heart of the dispute dates back to 2009, when Nordcurrent Group UAB, a Lithuanian video-game company, established its UK subsidiary, Nordcurrent Ltd, to gain contractual access to international digital distribution platforms. The company operated successfully for several years, and between 2018 and 2019, Nordcurrent UAB received dividends from the UK subsidiary.

In 2020, following a corporate tax audit, the Lithuanian State Tax Inspectorate (VMI) concluded that Nordcurrent Ltd no longer had genuine economic substance and that its continued existence served primarily to obtain a tax advantage inconsistent with Article 1(2)–(3) of the Directive. On this basis, the VMI reclassified the UK entity as a letterbox company and demanded EUR 3.5 million in back taxes and penalties.

Nordcurrent challenged this decision before the Lithuanian Tax Disputes Commission, which, in 2023, referred three questions to the CJEU for a preliminary ruling. By the time of the Court's deliberation, Nordcurrent Ltd had already been liquidated in 2021, reflecting the

company's internal restructuring. The CJEU judgment of 3 April 2025 thus became the first post-Brexit ruling to examine the Directive's anti-abuse clause in a setting involving a UK-EU corporate relationship.

The CJEU's central task was to determine how national authorities should assess economic genuineness across different periods of a corporate structure's existence. Lithuania argued that the relevant moment was the date of dividend payment (2018–2019), when the UK subsidiary had minimal activity. The Court rejected this static temporal approach, stressing that under Recital 8 of Directive 2015/121, an arrangement may comprise “several steps or parts,” each requiring contextual assessment.

Accordingly, the temporal analysis must consider both the origins (2009 creation), operational phase, and winding-down period (2017–2021) of the entity. A structure originally created for legitimate reasons may later become abusive if maintained beyond its commercial purpose — but equally, a once-genuine arrangement cannot be retroactively deemed artificial. This dynamic interpretation of time marked a doctrinal shift in the EU's abuse jurisprudence.

The Court reaffirmed that Member States may deny Directive benefits when objective and subjective elements of abuse coincide — namely, (1) the absence of commercial justification and (2) the intention to obtain a tax advantage. Yet, these elements must be proven, not presumed. The CJEU drew heavily on its 2019 precedents *T Danmark* and *Y Danmark* (C-116/16 & C-117/16) and 2018 *Fidelity Funds* (C-480/16), embedding *Nordcurrent* within a chronological continuum of anti-abuse jurisprudence stretching from 2018 to 2025.

Importantly, the Court observed that the alleged “advantage” had to be tested against comparative tax realities. Since the UK corporate tax rate (24%) exceeded Lithuania's 15%, *Nordcurrent* could not be presumed to have obtained a harmful tax benefit. This contextual analysis introduced a quantitative, time-sensitive assessment of advantage — evaluating whether any fiscal benefit actually existed during the years in question (2018–2019).

Chronologically, the *Nordcurrent* ruling (2025) builds directly on the Directive's 2015 amendment, which added a General Anti-Abuse Rule (GAAR), and on CJEU case law from 2018–2019, thereby completing a seven-year line of judicial refinement. The Court's method demonstrates how EU tax law has evolved from formal compliance testing to substance-over-time analysis, reflecting the economic lifecycle of corporate arrangements.

For Lithuania, the decision clarifies that Article 32(6) PMJ — implementing the EU GAAR — must be applied proportionately and contextually. National authorities cannot automatically deny exemptions based on superficial indicators such as shared offices or low staffing levels without considering the historical function and economic transformation of the entity.

The 3 April 2025 Nordcurrent judgment reinforces that the EU's anti-abuse doctrine operates not only across borders but also across time. It introduces a temporal proportionality test, ensuring that both past legitimacy and later artificiality are evaluated within their chronological context. By anchoring its reasoning in a precise sequence of events — 2009 establishment, 2018–2019 dividends, 2021 liquidation, and 2025 judgment — the Court affirmed that genuine commercial evolution and gradual restructuring must be distinguished from contrived tax planning.

This decision therefore marks a temporal and substantive consolidation of EU anti-abuse law: a bridge between the static tests of earlier jurisprudence and the dynamic, evidence-based approach that defines the post-2015 GAAR era in dividend taxation.

#### **4.2. UAB “KLAIPĖDOS TRANSLIT” CASE (Judgment of 2021)**

The Klaipėdos Translit case (Lietuvos Vyriausiosios Administracinės Teismas Case no eA-2232-789/2021, 2021) decided by the Lithuanian Supreme Administrative Court (LVAT) in 2021, represents a milestone in the national application of the EU Parent–Subsidiary Directive (2011/96/EU) and its 2015 amendment (Directive 2015/121/EU) introducing the General Anti-Abuse Rule (GAAR). It is one of the earliest Lithuanian decisions to operationalise the EU's anti-abuse principle in dividend taxation, confirming that domestic law must reflect both the objective and subjective elements of abuse defined by the CJEU.

The case arose from dividends of €200,750 distributed in 2016 by UAB “Klaipėdos Translit”, a Lithuanian transport and logistics company, to its newly established Estonian shareholder, EE Varahaldus OÜ. The company sought to apply the 0% participation exemption provided by Article 34(2) of the Lithuanian Corporate Income Tax Law (PMĮ), which transposes the Parent–Subsidiary Directive.

The Lithuanian Tax Authority (VMI) audited the transaction in 2017–2018, concluding that the Estonian company was a non-genuine entity inserted to avoid taxation. The VMI's reasoning drew on Article 32(6) PMĮ, enacted in 2016 to implement the EU GAAR. Its investigation revealed that EE Varahaldus OÜ had no employees, offices, or independent management; it was financed through an interest-free loan from the Lithuanian shareholders (the Vaigauskas family) and had paid only €80,000 of the declared €880,000 share purchase price. Based on these findings, the VMI reassessed €30,113 in tax, interest, and penalties, claiming that the entire structure through a UK partnership (Wunax Ventures LP) and Estonian intermediary was artificial and lacked any commercial purpose.

The taxpayer challenged the assessment in 2019 before the Vilnius Regional Administrative Court, arguing that the Estonian company qualified as a beneficial owner under EU law and that the restructuring had legitimate financial and managerial motives.

In 2020, the Vilnius Regional Administrative Court dismissed the appeal. It found that the arrangement failed the economic purpose test and referenced EU case law — particularly *T Danmark* and *Y Danmark* (C-116/16 & C-117/16, 2019) and *Fidelity Funds* (C-480/16, 2018) — to support the conclusion that the Estonian company was interposed solely to exploit Directive benefits.

The dispute was ultimately brought before the Supreme Administrative Court (LVAT), which in 2021 issued its final ruling upholding the positions of the VMI and the lower courts: it stressed that the prohibition of abuse of rights constitutes a fundamental principle of EU law, applicable even without specific national legislation. It further found that both the subjective requirement which is an intent to secure a tax benefit, and the objective requirement which is an artificial arrangement devoid of genuine substance, were satisfied.

The LVAT's reasoning reflects the chronological evolution of EU jurisprudence on abuse. It directly invoked the 2015 amendment to Directive 2011/96/EU, which codified the GAAR, and applied CJEU precedents from 2018–2019. The Court concluded that the Estonian holding structure was a conduit entity, managed and controlled from Lithuania, and that dividends would not have been exempt if paid directly to Lithuanian shareholders.

Crucially, the LVAT integrated EU anti-abuse doctrine into domestic interpretation of Article 32(6) PMĮ, marking Lithuania's full alignment with post-2015 EU tax law. The Court's analysis shows a systematic adoption of the substance-over-form principle — recognising that formal compliance with Directive conditions is not sufficient if the arrangement lacks commercial reality.

The 2016–2021 timeline of Klaipėdos Translit coincides with a pivotal phase in the EU's tax harmonisation process. The case demonstrates how Member States, soon after transposing Directive 2015/121, applied its GAAR provisions domestically to combat dividend-based tax avoidance. The Lithuanian judiciary, following the CJEU's 2019 reasoning in *T Danmark*, clarified that tax exemptions cannot apply where structures are maintained without genuine business rationale.

However, the case also exposes a temporal and interpretative tension: whereas the CJEU accepts that holding companies may perform limited economic functions while remaining legitimate, Lithuanian courts demanded concrete indicators of activity — employees, premises, and transactions — arguably exceeding EU proportionality standards.

Delivered in 2021, the Klaipėdos Translit judgment stands as a turning point in Lithuania's implementation of the EU's anti-abuse framework. Chronologically following the adoption of the EU GAAR (2015) and preceding the CJEU's Nordcurrent (2025) ruling, it illustrates the gradual convergence between EU and national interpretations of economic substance in dividend taxation. While the case reinforced administrative control and compliance, it also revealed lingering uncertainty over what constitutes "real activity."

This sequence of legal developments shows clearly that it's important to establish a standardized EU definition of economic substance to make sure that national measures against abuse are applied in a way that is proportionate, reliable and in line with the ongoing evolution of EU case law on cross-border dividend taxation.

#### **4.3. T DANMARK AND Y DANMARK APS CASE (Judgment of 26 February 2019)**

The T Danmark and Y Danmark judgments (Info Curia Case C-116/16 and C-117/16, 2019) delivered by the Court of Justice of the European Union (CJEU) on 26 February 2019, represent a decisive turning point in EU dividend taxation law. They established a comprehensive framework for applying the anti-abuse principle to the Parent–Subsidiary Directive (2011/96/EU) and the Interest and Royalties Directive (2003/49/EC), reshaping how Member States interpret "beneficial ownership" and "economic substance."

The disputes arose during the 2000s, when Danish subsidiaries paid dividends and interest to Luxembourg and Cypriot parent companies that were part of private equity structures. Between 2005 and 2009, the Danish Tax Authority (SKAT) investigated these transactions and concluded that the intermediary holding companies were conduits, transferring income almost entirely to investors in third countries such as Bermuda and the Cayman Islands.

The Danish legislation at that time exempted dividends paid to EU-resident parent companies under the Parent–Subsidiary Directive, provided the parent held at least 10% of shares. However, Danish authorities argued that the Luxembourg and Cypriot entities lacked real substance and were not the beneficial owners of the income, as they merely channelled payments onward under prearranged contractual obligations.

In 2014, the Danish High Court submitted several questions to the CJEU, seeking clarification on whether the Directive obliged Member States to extend exemptions to conduit companies and whether the application of anti-abuse measures depended on the existence of explicit national legislation: the matter ultimately led to the Grand Chamber's ruling on 26 February 2019, a decision that has since stood out as one of the most significant tax law judgments of the decade.

The Court articulated several key principles in chronological progression:

- Recognition of an implicit EU anti-abuse rule (paras. 73–76).

The Court confirmed that even before the 2015 amendment introducing a formal GAAR, the prohibition of abuse of rights was already a general principle of EU law. Thus, Member States could deny Directive benefits where arrangements were wholly artificial and contrary to its purpose, even without explicit domestic provisions.

- Importation of “beneficial ownership” (paras. 104–109).

Drawing on the OECD Model Tax Convention (1977 and 2014 versions), the Court adopted the concept of beneficial ownership to identify abuse. The judgment marked the first explicit integration of OECD language into EU tax law. Beneficial ownership was not treated as a treaty term, but as a functional test to distinguish legal receipt from actual enjoyment of dividends.

- Two-part abuse test (paras. 97–98).

The Court formalised the now-standard objective/subjective test:

1. Objective element: lack of economic substance and control.
2. Subjective element: intent to obtain a tax advantage defeating the Directive’s purpose.

This dual test became the benchmark for later cases, including *Klaipėdos Translit* (2021) and *Nordcurrent Group* (2025).

The CJEU ruled that tax authorities should base their assessments on objective signs that include the lack of employees, physical offices or independent decision-making, but they are not permitted to impose absolute presumptions: taxpayers must be given the chance to demonstrate legitimate business motives, thereby safeguarding proportionality and fairness in the procedure.

The 2019 *T Danmark* judgment served as the culmination of a decade-long doctrinal evolution. After the 2006 *Halifax* and 2007 *Thin Cap Group Litigation* cases had defined general anti-abuse logic, *T Danmark* translated those principles into the specific context of dividend and interest taxation. Its immediate policy consequence was the adoption of Directive 2015/121/EU, which formally inserted a common anti-abuse rule (CAAR) into the Parent–Subsidiary Directive, codifying the very principles articulated by the Court.

The case was used as a link between the EU tax landscape before and after 2015.

Prior to the amendment, Member States were unsure whether they could refuse benefits in the absence of national GAAR provisions; from 26 February 2019 onward, that uncertainty was dispelled, as CJEU case law provided the necessary legal basis, thereby retroactively validating domestic anti-abuse measures.

Chronologically, *T Danmark* introduced a threefold transformation in EU law between 2019 and 2025:

- It synchronised EU law with OECD standards, incorporating “beneficial ownership” as a universal anti-abuse benchmark.
- It redefined comparability and economic substance, requiring a fact-based assessment rather than reliance on formal legal ownership.

The ruling initiated a process of national alignment, leading countries such as Denmark, Lithuania, and Finland to adjust their anti-avoidance measures in accordance with CJEU principles: from a broader theoretical angle, it redefined the balance between tax sovereignty and the freedoms of the internal market and although it strengthened the capacity of national administrations to address abusive practices, it simultaneously imposed strict requirements for evidence and proportionality, preventing arbitrary refusals of cross-border advantages: it’s an ongoing interplay between administrative authority and the need for legal certainty that remains a defining feature of current tax disputes.

The 26 February 2019 T Danmark ruling redefined the legal landscape of EU dividend taxation by embedding abuse prevention, beneficial ownership, and substance-over-form into the interpretation of tax directives. Chronologically situated between the Fidelity Funds (2018) and Nordcurrent Group (2025) judgments, it stands as the doctrinal midpoint linking earlier formalist approaches with modern, dynamic anti-abuse reasoning.

Through this decision, the CJEU transformed the Parent–Subsidiary Directive from a mechanical instrument of exemption into a substantive legal framework balancing the elimination of double taxation with the protection of fiscal integrity. Its legacy endures as the foundation upon which both national courts and EU institutions continue to construct the evolving doctrine of economic substance and beneficial ownership in cross-border taxation.

#### **4.4. FIDELITY FUNDS CASE (Judgment of 21 June 2018)**

The Fidelity Funds judgment (Info Curia Case C-480/16, 2017) delivered by the Court of Justice of the European Union (CJEU) on 21 June 2018, marked a decisive moment in the evolution of EU case law concerning the free movement of capital (Article 63 TFEU) and the tax treatment of cross-border investment funds. Chronologically, it predates the T Danmark ruling by eight months and laid the groundwork for the CJEU’s later consolidation of the anti-discrimination and proportionality principles in dividend taxation.

The dispute concerned dividends distributed between 2000 and 2009 by Danish-resident companies to three foreign UCITS (Undertakings for Collective Investment in Transferable Securities): Fidelity Funds, Fidelity Investment Funds, and Fidelity Institutional Funds, based in

the United Kingdom and Luxembourg. Under Danish law, dividends paid to resident UCITS were exempt from withholding tax if they met the “distribution fund” conditions in Article 16 C of the Ligningslov (Danish Assessment Act) — notably, the requirement to distribute a minimum amount of income and to withhold tax at source from investors.

However, non-resident UCITS automatically faced a 25–28% withholding tax, as they could not qualify for the exemption due to their non-resident status. The claimants sought repayment of the tax, arguing that this differential treatment violated Article 63 TFEU by restricting cross-border capital flows.

In 2015, the Østre Landsret (High Court of Eastern Denmark) referred the matter to the CJEU for a preliminary ruling. The Court’s judgment in 2018 became a cornerstone for subsequent challenges to discriminatory withholding tax systems across the EU.

The Court’s reasoning unfolded in three key chronological and conceptual steps:

- Identification of the applicable freedom (paras. 40–45).

Since the funds’ holdings in Danish companies were portfolio investments (less than 10% of the share capital), the case fell under the free movement of capital (Article 63 TFEU) rather than the freedom of establishment. The Court thus aligned the case with prior decisions such as *Santander Asset Management* (2012) and *Emerging Markets Series* (2014), reinforcing continuity in its capital movement jurisprudence.

The CJEU found that Denmark’s withholding tax regime created a discriminatory restriction, as resident UCITS enjoyed a tax exemption while non-resident UCITS faced immediate taxation at source. This difference discouraged both foreign funds from investing in Danish companies and Danish investors from choosing foreign funds — precisely the kind of cross-border disincentive Article 63 TFEU prohibits.

- Assessment of justifications (paras. 71–86).

Denmark advanced two main arguments:

- Balanced allocation of taxing rights between Member States; and
- Tax system coherence, ensuring taxation occurred at the investor level.

The Court dismissed both. It held that Denmark had already waived its taxing right over resident UCITS and thus could not invoke fiscal balance. Likewise, coherence failed because Denmark could have achieved the same result through cooperative mechanisms — such as mutual information exchange — instead of excluding foreign funds. The judgment therefore reaffirmed that restrictions may only stand when proportionate and necessary within a coherent domestic system.

The 2018 Fidelity Funds ruling occupies a crucial chronological position within the broader EU jurisprudential sequence. It preceded *T Danmark* and *Y Danmark* (2019) and *Nordcurrent Group* (2025) and effectively laid the legal and conceptual groundwork for both. While Fidelity was grounded in primary law (Article 63 TFEU) rather than a secondary directive, it established a functional test of comparability that the CJEU later extended to corporate relationships under the Parent–Subsidiary Directive.

In the years following 2018, multiple Member States — including Denmark, Finland, and Germany — revised their withholding tax systems on dividends paid to foreign UCITS, reflecting the case’s immediate policy impact. Fidelity thus initiated a cascade of legislative adaptation across the EU, reinforcing fiscal neutrality and removing discriminatory barriers to cross-border investment.

The Fidelity Funds decision crystallised three enduring principles:

- *Comparability and neutrality.*

When a Member State imposes domestic taxation on foreign funds, those funds are placed in a position equivalent to that of resident funds and must therefore be treated in the same way; the notion of comparability, first articulated in 2018, subsequently became a cornerstone of later judicial decisions

- *Functional proportionality.*

The Court further developed the concept of tax coherence, narrowing its scope as a defence for discriminatory systems: it obliged Member States to establish a clear and proportionate connection between any tax benefits granted and the corresponding obligations imposed, a standard later reaffirmed in *Nordcurrent Group* (2025). At the same time, the ruling connected EU law with OECD principles on tax transparency, embedding mechanisms of information exchange and cooperation as practical means to secure fairness while avoiding discriminatory treatment.

The 21 June 2018 Fidelity Funds judgment was the first in a line of cases modernising EU tax law by merging non-discrimination, proportionality, and fiscal neutrality principles. Chronologically, it served as the foundation for the 2019 *T Danmark* decision, which applied similar reasoning in the context of abuse prevention under secondary law.

By removing Denmark’s withholding tax restriction, the Court made clear that the principle of free movement of capital applies in full to collective investment vehicles, regardless of distinctions based on residence or administrative structure within national systems: for both policymakers and academics, the judgment highlighted a persistent legislative shortcoming: the

lack of a unified EU framework governing the taxation of cross-border funds; as of 2025, this gap remains unresolved and continues to be a focal issue in discussions on the future of EU tax integration and scholarly debate.

#### **4.5. ABERDEEN PROPERTY FININVEST ALPHA CASE (Judgment of 18 June 2009)**

The Aberdeen Property Fininvest Alpha Oy (Info Curia Case C-303/07, 2009) ruling, issued by the Court of Justice of the European Union on 18 June 2009, stands as one of the earliest and most influential decisions in the area of EU dividend taxation: it was used to provide the foundation for subsequent case law on non-discrimination, comparability, and the relationship between the fundamental freedoms of the Treaty and secondary directives; in terms of timing, it came before major cases such as Fidelity Funds in 2018 and T Danmark in 2019, setting the initial framework from which contemporary EU principles on tax non-discrimination developed.

The dispute began in 2006 when Aberdeen Property Fininvest Alpha Oy (“Alpha”), a Finnish subsidiary of the Luxembourg-based Aberdeen Property Nordic Fund I SICAV, sought to distribute dividends to its parent fund. The SICAV, an open-ended investment company managed by Aberdeen Property Investors Luxembourg SA, was a typical Luxembourg investment structure — tax-exempt under its domestic regime and legally distinct from a Finnish limited company.

Under Finnish law, dividends paid to resident companies were exempt from withholding tax, provided certain participation and tax conditions were met. However, dividends paid to non-resident entities were subject to a 28% withholding tax, unless the recipient fell under Article 2 of the Parent–Subsidiary Directive (90/435/EEC). Because the Luxembourg SICAV was not listed among the Directive’s qualifying corporate forms and was exempt from tax in Luxembourg, the Finnish authorities denied the exemption and imposed withholding tax.

The Finnish Central Tax Board confirmed this interpretation, finding the SICAV incomparable to a domestic entity. Alpha appealed, arguing that such differential treatment violated the freedom of establishment (Articles 43 and 48 EC) and free movement of capital (Articles 56 and 58 EC). In 2008, the Finnish Supreme Administrative Court (Korkein hallinto-oikeus) referred the matter to the CJEU for a preliminary ruling.

The central legal question before the CJEU in 2009 was whether Finland could lawfully impose withholding tax on dividends paid to a non-resident SICAV when comparable dividends to resident companies were exempt. The case thus tested the scope of the Parent–Subsidiary Directive and the direct applicability of Treaty freedoms to entities that fell outside its enumerated scope.

The Court was tasked with assessing whether the Luxembourg SICAV and Finnish resident companies could be regarded as comparable, and whether limitations on cross-border dividend distributions might be justified by aims such as maintaining tax system coherence, ensuring a fair allocation of taxing rights, or preventing abusive practices.

The CJEU began by clarifying that the freedom of establishment applied because the Luxembourg SICAV held 100% of Alpha's shares, thereby exercising definitive influence over its subsidiary's management. The Court found that Finland's withholding tax constituted a restriction on this freedom (paras. 39–41).

The Court rejected Finland's argument that the SICAV was not comparable due to its different legal form and tax-exempt status. It held that legal form and domestic tax treatment are irrelevant for establishing comparability within the meaning of EU law (para. 50). What mattered was the economic function of the entity — in this case, a genuine holding company controlling a subsidiary.

Finland and Italy argued that the tax measure was justified by the need to prevent tax avoidance, safeguard fiscal balance, and maintain tax system coherence. The Court dismissed all three justifications:

- Tax avoidance: There was no evidence of artificiality or abuse (para. 65).
- Fiscal balance: Finland had voluntarily waived domestic taxation on resident dividends, so it could not rely on “balanced allocation” to tax non-residents differently (para. 67).
- Coherence: No direct link existed between the exemption and shareholder-level taxation (para. 74).

Accordingly, the withholding tax violated Articles 43 and 48 EC, dissuading cross-border investment and establishment within the EU.

In its judgment of 18 June 2009, the CJEU ruled that national legislation violating the freedom of establishment cannot be justified merely because the non-resident entity's legal form is unfamiliar or tax-exempt in its home state. The Finnish government was subsequently obliged to amend its legislation, extending withholding tax relief to comparable non-resident investment vehicles.

The case thus extended EU law protection beyond the strict boundaries of the Parent–Subsidiary Directive, establishing that Treaty freedoms can fill legislative gaps where directives do not apply. This outcome directly influenced *Fidelity Funds* (C-480/16, 2018), which addressed similar discrimination against UCITS, and indirectly shaped the proportionality approach later developed in *Nordcurrent Group* (2025).

Chronologically, Aberdeen (2009) represents the first wave of EU dividend taxation cases dealing with investment funds rather than traditional corporate groups. It introduced the principle of functional equivalence, assessing comparability by economic role rather than legal classification. The judgment demonstrated that tax transparency or exemption in the investor's home state cannot justify discriminatory treatment in the source state.

From a doctrinal perspective, the judgment closed the gap between EU primary law and corporate tax directives, confirming that Treaty freedoms guarantee equal treatment even in situations where secondary legislation is insufficient. It also laid the groundwork for subsequent CJEU rulings on beneficial ownership and economic substance, notably the T Danmark and Y Danmark decisions in 2019.

Delivered on 18 June 2009, the Aberdeen Property Fininvest Alpha Oy judgment stands as a cornerstone of EU dividend taxation jurisprudence. It clarified that Member States cannot discriminate against non-resident entities solely on the basis of form or residence and that Treaty freedoms supplement EU directives in ensuring equal treatment.

By establishing this principle more than a decade before Nordcurrent and Fidelity Funds, Aberdeen marks the starting point of the modern EU tax non-discrimination doctrine, anchoring the 2009–2025 timeline of CJEU case law on cross-border dividend taxation.

#### **4.6. ACC SILICONES LTD CASE (judgment of 16 June 2022)**

The ACC Silicones Ltd v Bundeszentralamt für Steuern judgment (Info Curia Case C-572/20, 2022) delivered by the Court of Justice of the European Union (CJEU) on 16 June 2022, constitutes a decisive moment in the ongoing development of EU jurisprudence on discriminatory dividend taxation under Article 63 TFEU. Chronologically positioned after Fidelity Funds (2018) and before Nordcurrent Group (2025), it represents a maturing phase of the Court's doctrine on proportionality, procedural equality, and the effectiveness of EU rights in cross-border taxation. The ruling closed a long-standing loophole in Member States' administrative practices — namely, the use of excessive evidentiary burdens on non-resident investors as an indirect restriction on the free movement of capital.

The dispute originated between 2006 and 2008, when ACC Silicones Ltd, a UK-based company, held a 5.26% stake in Ambratec GmbH, a German corporation. Ambratec distributed dividends subject to a 20% withholding tax, plus a 5.5% solidarity surcharge. Although the Germany–UK Double Taxation Convention (DTC) capped Germany's taxing right at 15%, the German authorities refunded only the excess above that rate.

ACC Silicones then sought reimbursement of the remaining withholding tax under Paragraph 32(5) of the German Corporation Tax Act (KStG), which imposed highly restrictive conditions. To obtain a refund, non-resident companies had to prove — through certification from their domestic tax authorities — that the withheld tax could not be offset, deducted, or carried forward, either by the company itself or any of its direct or indirect shareholders.

This evidentiary burden proved practically impossible to meet, especially where the investor's ownership structure included multiple tiers or publicly traded entities. By contrast, resident companies were automatically refunded or credited through Germany's internal corporate tax system, without any equivalent documentation requirement.

Following the failure of the administrative process, the Finance Court of Cologne (Finanzgericht Köln) brought the matter before the Court of Justice of the EU in 2020 trying to clarify whether the differing refund requirements infringed upon the free movement of capital and breached the principle of proportionality.

The CJEU's 2022 judgment must be read as a continuation of a jurisprudential line beginning with *Amurta* (C-379/05, 2007), refined through *Miljoen* (C-10/14, 2015) and *Sofina* (C-575/17, 2018), and culminating in *ACC Silicones* (2022). Across this fifteen-year period, the Court progressively strengthened the procedural dimension of fiscal equality.

Following the logic of *Amurta* and *Commission v Germany* (C-284/09), the Court reaffirmed that once a Member State taxes both resident and non-resident companies on domestic dividends, the two categories are comparable. Germany's choice to levy withholding tax on non-residents therefore triggered an obligation of equal treatment. The asymmetric refund mechanism — requiring proof of non-offsetting for foreigners only — constituted a restriction under Article 63 TFEU (paras. 40–50).

Germany invoked two standard justifications:

- Balanced allocation of taxing powers, and
- Avoidance of double deduction.

The Court dismissed both. Echoing its reasoning in *Fidelity Funds* (2018), it held that a Member State cannot claim to preserve fiscal balance when it already exempts resident dividends (para. 55). Similarly, the double-deduction concern lacked systematic consistency, since resident companies could also have non-resident shareholders capable of claiming deductions abroad (para. 56).

The CJEU's central innovation in 2022 was its explicit linkage between substantive equality and procedural proportionality. The certification requirement imposed on *ACC Silicones* was deemed disproportionate and practically impossible to satisfy, especially for companies with

complex shareholder chains. By conditioning reimbursement on unattainable documentation, Germany violated the principle of effectiveness, which requires that EU rights be exercisable in fact, not merely in law (paras. 57–58).

In its operative ruling, the CJEU declared Paragraph 32(5) KStG incompatible with Article 63 TFEU, as it made refunds contingent on proof requirements that did not apply to resident companies. Consequently, ACC Silicones Ltd was entitled to a full refund of withholding tax beyond the 15% already reimbursed under the DTC.

After the 2022 ruling, Germany's Federal Tax Office (Bundeszentralamt für Steuern, BZSt) was obliged to amend its refund procedures. The judgment also spurred reforms in other Member States with comparable certification-based refund regimes, notably Austria and France, which moved toward streamlining refund mechanisms for non-resident portfolio investors.

Chronologically, ACC Silicones (2022) represents the maturation of the CJEU's dividend taxation doctrine. Earlier cases such as Aberdeen (2009) and Fidelity Funds (2018) addressed substantive discrimination in tax outcomes; ACC Silicones extended the same reasoning to procedural discrimination — the administrative architecture of refund mechanisms.

Doctrinally, the case underscored three interlocking principles:

- Procedural equivalence — foreign investors must enjoy the same ease of reimbursement as residents.
- Substantive neutrality — the tax burden must not differ solely due to residence.
- Proportionality and effectiveness — administrative formalities can't make Treaty rights illusory.

The ruling also highlighted an emerging research and policy gap: the absence of EU-wide standards governing the evidentiary proportionality of refund procedures. While the CJEU's decision ensures equality ex post, it leaves unresolved how Member States should design ex ante administrative frameworks that comply with EU law.

Delivered on 16 June 2022, the ACC Silicones judgment reaffirmed the EU's long-standing trajectory toward full fiscal neutrality and procedural fairness in cross-border dividend taxation. Situated chronologically between Fidelity Funds (2018) and Nordcurrent Group (2025), it consolidated the principle that administrative burdens themselves can constitute barriers to capital mobility.

By invalidating Germany's excessive documentation rules, the Court moved the European legal framework beyond mere formal equality toward genuine, practical equality. This ensured that the free movement of capital under Article 63 TFEU functions not just in principle but in the daily realities of tax administration throughout the Union.

#### **4.7. BRUSSELS SECURITIES SA CASE (Judgment of 19 December 2019)**

The Brussels Securities SA v État Belge ruling (Info Curia Case C-389/18, 2019) that was issued by the Court of Justice of the EU on 19 December 2019, stands as an important milestone in the development of EU tax jurisprudence in regard to the Parent–Subsidiary Directive (90/435/EEC) and the effort to eliminate economic double taxation in cross-border corporate groups. It's positioned chronologically between Fidelity Funds (2018) and ACC Silicones (2022), and it signals an important shift in the Court's approach from focusing on the formal exemption of dividends to ensuring their genuine tax neutrality in practice.

The dispute arose from Belgium's corporate tax system during the 2011 financial year, when Brussels Securities SA, a Belgian resident company, received dividends from a subsidiary established in another Member State. Belgium implemented the Parent–Subsidiary Directive through its Definitely Taxed Income (DTI) mechanism, under which 95% of qualifying dividends were deductible from the taxable base. However, the DTI system interacted with two additional deductions: the Deduction for Risk Capital (DRC) — also known as the notional interest deduction — and the carry-forward of tax losses.

The Royal Decree implementing the Income Tax Code (RD/ITC 1992) required that deductions be applied in a strict order:

- DTI carried forward,
- DRC carried forward, and
- Tax losses carried forward.

Because DTI could be carried forward indefinitely, while DRC expired after seven years, applying DTI first risked eroding DRC benefits. In 2011, when Brussels Securities applied DRC before DTI, the Belgian tax authorities reversed the order, resulting in loss of DRC entitlement and an increased effective tax burden. The company challenged this before the Belgian courts, claiming the rule violated Article 4(1) of the Directive, which requires Member States to refrain from taxing intra-group dividends.

The Tribunal de première instance de Bruxelles referred the question to the CJEU in 2018.

The judgment was delivered on 19 December 2019.

The CJEU reaffirmed that the Directive's objective, since its adoption in 1990, is to eliminate economic double taxation of profits distributed between companies in different Member States. Article 4(1) requires the parent company's Member State to exempt such dividends or

grant an equivalent tax credit. Belgium had chosen the exemption method, so dividends received by the parent should be fully tax-free.

The Court accepted that including dividends in taxable profits before deducting them (the DTI technique) is not inherently contrary to the Directive, provided that the end result is complete exemption. However, the interaction of deductions created a situation where receiving dividends indirectly increased the company's tax burden — a result incompatible with the Directive's purpose.

The Court referenced its earlier 2008 ruling in *Cobelfret* (C-138/07), which had already found Belgium's earlier DTI model inconsistent with EU law. While Belgium subsequently allowed indefinite carry-forward of DTI to correct this flaw, the sequencing rule continued to distort neutrality. By forcing companies to deduct DTI before DRC, Belgium caused them to lose expiring DRC rights, making dividend income economically disadvantageous (paras. 41–46).

The Court broadened the interpretation of "taxation" under Article 4(1) to include indirect or consequential burdens, not merely direct levies. Even though dividends were formally exempt, the required deduction order meant that the act of receiving dividends caused the forfeiture of another tax advantage. This amounted to indirect taxation — inconsistent with the Directive's aim of fiscal neutrality (para. 53).

The Court rejected Belgium's argument that the issue stemmed from neutral administrative sequencing rather than taxation, clarifying that Member States' fiscal autonomy cannot undermine EU law's effectiveness. Once a Member State opts for the exemption system, it must ensure that dividends remain entirely tax-free in both form and substance (para. 48).

In its operative ruling, the CJEU held that Article 4(1) of the Directive precludes national rules requiring dividends to be deducted first as DTI, where this priority causes partial loss of other deductions such as DRC. The Court thus confirmed Brussels Securities SA's position, obliging Belgium to adjust its tax mechanism to avoid indirect double taxation. Practically, the ruling:

- Reinstated the company's entitlement to full DRC benefits;
- Required Belgium to reform its deduction hierarchy; and
- Clarified that national procedural choices (like deduction order) fall within the Directive's scrutiny if they distort its effects.

Chronologically, the 2019 Brussels Securities ruling bridges two major lines of CJEU jurisprudence:

- The substantive neutrality approach of *Aberdeen Property Fininvest Alpha Oy* (2009) and *Fidelity Funds* (2018); and

- The case demonstrates the CJEU's evolution from focusing solely on whether dividends are formally exempt to assessing whether national deduction mechanisms achieve true economic neutrality. It expands the Directive's scope by confirming that even indirect erosion of tax benefits breaches EU law.

The judgment also has systemic implications: it limits Member States' discretion in structuring corporate tax deductions and reinforces the principle of effectiveness, ensuring EU rights are not neutralised by technical sequencing rules.

Delivered on 19 December 2019, *Brussels Securities SA v État Belge* consolidated the CJEU's shift toward functional and economic interpretation of the Parent–Subsidiary Directive. By prohibiting indirect taxation through the interaction of deductions, the Court ensured that intercompany dividends remain fiscally neutral in both design and effect.

The case represents a landmark precedent within the 2010–2025 trajectory of EU dividend taxation case law, connecting earlier formalistic judgments with more recent rulings grounded in proportionality. It established that economic double taxation may result not only from direct levies but also from structural aspects of national tax regimes — a doctrinal development that continues to influence the EU's path toward corporate tax harmonisation.

#### **4.8. ARGENTA SPAARBANK NV CASE (judgment of 26 october 2017)**

The *Argenta Spaarbank NV v Belgische Staat* (Info Curia Case C-39/16, 2017) ruling, issued by the CJEU on 26 October 2017, stands as a crucial clarification of how anti-abuse provisions interact with the principle of fiscal neutrality under the Parent–Subsidiary Directive (90/435/EEC): positioned after *Les Vergers du Vieux Tauves* (2008) and *Gaz de France – Berliner Investissement* (2009), and before *Brussels Securities* (2019), it marks a decisive stage in the Court's consolidation of proportionality as a guiding doctrine in EU tax jurisprudence.

The dispute dates back to 1999–2000, when *Argenta Spaarbank NV*, a Belgian credit institution, received dividends from both Belgian and EU-based subsidiaries. Belgium's Definitely Taxed Income (DTI) system, established in Articles 202–204 of the 1992 Income Tax Code (ITC), implemented the Parent–Subsidiary Directive's goal of avoiding double taxation by allowing parent companies to deduct 95% of qualifying dividends from taxable income.

However, Article 198(10) ITC restricted the deductibility of interest payments by denying deductions equal to the amount of tax-exempt dividends when the shares had been held for less than one year. Crucially, the rule applied automatically — even when the interest had no connection with financing those shareholdings. For financial institutions like *Argenta*, where

interest arose from client deposits rather than acquisition loans, this resulted in an artificial increase in the taxable base.

In 2004, the Belgian tax authorities reclassified several of Argenta's interest payments as non-deductible under Article 198(10), leading to amended corporate tax assessments. Argenta appealed to the Antwerp Court of First Instance, which in 2015 referred two questions to the CJEU under Article 267 TFEU. The Court was asked to interpret Articles 1(2) (anti-abuse clause) and 4(2) (limiting expense deductibility) of the Directive, culminating in the CJEU's judgment of 26 October 2017.

The central question was whether Belgium's blanket denial of interest deductibility was compatible with EU law. Specifically:

- Could Article 4(2) justify non-deductibility of interest unrelated to the financing of participations?
- Could Article 1(2) (anti-abuse) legitimize a measure intended to prevent double deductions but applied indiscriminately?

This issue was part of a broader EU trend: during the 2000s–2010s, Member States increasingly introduced anti-avoidance clauses to limit the perceived abuse of dividend exemptions, prompting the CJEU to refine the limits of such discretion under EU law.

The Court began by stressing that Article 4(2), being a derogation, must be interpreted strictly (paras. 44–45). The provision allows Member States to deny deduction of charges relating to the holding, i.e. expenses directly linked to acquiring, holding, or managing a participation.

Belgium's Article 198(10) went beyond this scope. It automatically disallowed all interest up to the dividend amount — regardless of any causal relationship with the holding. The CJEU found this over-inclusive and disproportionate, as it disallowed ordinary business expenses unrelated to exempt dividends (paras. 52–53). In doing so, Belgium effectively reintroduced double taxation, contradicting the Directive's core aim of fiscal neutrality.

Reaffirming its case law since *Cobelfret* (2008), the Court held that the Directive's purpose is to eliminate economic double taxation between parent and subsidiary companies (para. 47). Any measure that indirectly increases the parent's taxable income due to the receipt of dividends — even without a direct tax — violates Article 4(1). By expanding the disallowance of interest beyond the "holding-related" threshold, Belgium undermined this objective.

Belgium argued that Article 198(10) ITC pursued legitimate anti-abuse goals — preventing companies from borrowing to finance short-term shareholdings, deducting interest, and simultaneously claiming dividend exemptions. The CJEU accepted that anti-abuse measures are

permissible under Article 1(2), but emphasized that they must be specific, necessary, and proportionate (paras. 60–63).

The Belgian rule failed this test because it automatically presumed abuse, applying even where there was no connection between borrowing and share acquisitions. The CJEU concluded that such blanket disallowances go beyond what is required to prevent abuse and thus infringe EU law.

In its 26 October 2017 judgment, the CJEU held that:

- Article 4(2) precludes disallowing interest deductions unrelated to the financing of the holding; and
- Article 1(2) does not justify such a measure, as it exceeds what is necessary to prevent abuse.

Consequently, Argenta Spaarbank NV succeeded. Belgium’s Article 198(10) was declared incompatible with EU law, compelling the government to amend its tax code.

When viewed in sequence, the Argenta Spaarbank decision of 2017 represents a pivotal moment in the evolution of the Court of Justice of the European Union’s tax case law; this ruling consolidated three closely connected principles:

- Strict interpretation of derogations — Member States must narrowly apply Article 4(2), limiting disallowances to demonstrably related expenses.
- Proportionality and evidentiary precision — Anti-abuse provisions can’t be based on assumptions but must instead rest on concrete and well-substantiated facts.
- Indirect taxation as infringement — The Court broadened “taxation” under Article 4(1) to include rules that indirectly increase the parent’s taxable burden due to the receipt of exempt dividends.

The decision’s influence extended into later cases, notably Brussels Securities (2019) and ACC Silicones (2022), which built upon its reasoning to address indirect taxation and procedural discrimination.

Delivered on 26 October 2017, the Argenta Spaarbank judgment firmly established that Member States cannot use generalized anti-abuse rules to dilute the fiscal neutrality guaranteed by the Parent–Subsidiary Directive. It clarified the limits of Articles 1(2) and 4(2), demanding a direct causal nexus between disallowed expenses and the exempt dividends.

The case thus anchors a key moment in the 1990–2025 evolution of EU dividend taxation law — transitioning from formal exemption to substantive and proportionate neutrality. It stands as a doctrinal cornerstone ensuring that anti-abuse rules remain targeted, proportionate, and compatible with the fundamental objectives of EU fiscal integration.

#### **4.9. NORWEGIAN DIVIDENDS TAXATION PRACTICES**

Dividend taxation in Norway is based on a mixed but coherent system designed to balance corporate-level taxation with shareholder-level taxation, while ensuring compliance with the principles of the European Economic Area (EEA). Although Norway is not a member of the European Union, it participates in the internal market through the EEA Agreement, which requires adherence to the free movement of capital and the prohibition of unjustified discrimination. As a result, Norway's dividend taxation framework must operate consistently with both domestic fiscal objectives and the broader legal standards governing cross-border economic activity within the EEA.

Within Norway, dividends paid between companies are generally exempt from taxation. This approach—referred to as the exemption method—is conceptually like the EU Parent–Subsidiary Directive's objective of preventing economic double taxation within corporate groups. To maintain a minimal level of taxation and protect the national tax base, Norway applies a 3 percent inclusion rule: although intercorporate dividends are exempt, 3 percent of the received dividends are added to taxable income. The rule functions as a safeguard against complete tax neutrality, ensuring that dividends flowing through corporate structures contribute, at least marginally, to the tax system while still avoiding double taxation of underlying profits.

Norway's framework is designed specifically to bring the taxation of capital income in line with the wider principle of horizontal equity on to reduce the possibility of shifting labour earnings into categories of capital income that are subjected to lower tax rates.

The treatment of dividends from foreign sources depends on whether the distributing company is located within the EEA or outside it. Dividends received from companies resident in EEA Member States are, in principle, treated similarly to domestic intercorporate dividends: they fall under the exemption method, subject to the same 3 percent inclusion rule. However, this preferential treatment is conditional. The distributing company must not be subject to significantly lighter taxation than a comparable Norwegian company, and the corporate structure must have genuine economic substance. These conditions reflect the broader anti-abuse standards derived from EFTA Court and CJEU case law, which prevent the use of artificial arrangements for tax avoidance purposes.

Dividend income received from companies established outside the EEA is not automatically exempt. In such cases, Norway applies the credit method, allowing the Norwegian company to credit foreign corporate taxes paid against its own tax liability. Double taxation is thus mitigated, but the outcome depends on the level of taxation in the source country. The Norwegian

controlled foreign company (CFC) regime also applies: if a Norwegian company controls an entity in a low-tax jurisdiction, profits that would otherwise be deferred may be taxed currently in Norway.

With respect to outbound dividends, Norway does not levy withholding tax on dividends paid to corporate shareholders resident in EEA Member States, ensuring compliance with the free movement of capital and non-discrimination obligations. Dividends paid to non-EEA shareholders are subject to a 25 percent withholding tax, though this rate is frequently reduced through bilateral double taxation treaties, often to between 10 and 15 percent.

Norway's dividend taxation regime rests on three guiding pillars: avoiding double taxation within corporate groups, maintaining shareholder neutrality through consistently high personal tax rates, and supporting the free flow of capital in accordance with EEA law. Alongside these principles, Norway enforces strong anti-abuse safeguards to prevent the misuse of preferential rules through artificial structures or profit-shifting. The outcome is a system that both reflects European internal market standards and protects Norway's fiscal integrity.

#### *4.9.1. Case De Residential Co-Invest AS (no LB-2016-98343 – UTV-2018-1207)*

The De Residential Co-Invest AS judgment (Lovdata LB-2016-98343 – UTV-2018-1207, 2018) is a significant Norwegian case illustrating how EEA states apply anti-abuse reasoning within dividend exemption regimes. Although Norway is not bound by Directive 2011/96/EU, the Court's approach to assessing whether a corporate structure qualifies for dividend exemption parallels the substantive EU anti-abuse principles developed in PSD jurisprudence and strengthened through Directive 2015/121.

De Residential Co-Invest AS, a Norwegian company, received NOK 317 million in dividends from GS LEG Investors Euro Company Ltd, a Cayman-based investment company used in a wider real-estate and private equity structure. The Norwegian Tax Act §2-38 grants a participation exemption for dividends where the Norwegian shareholder holds:

1. at least 10% of the capital, and
2. 10% of the voting rights at the general meeting of the distributing company.

It was undisputed that De Residential exceeded the 10% capital requirement. The dispute centred on whether the company held 10% of the voting rights.

GS LEG had a three-class share structure: Voting Shares – held entirely by a Goldman Sachs entity; full voting rights; no economic rights; Participating Shares Class A – held by De Residential; economic rights only; no votes at the general meeting; Participating Shares Class B – special rights; no general voting rights.

Although De Residential had substantial economic interest, it had zero voting power in the company's formal general meeting.

De Residential argued that the relevant "general meeting" should be interpreted functionally as the "Class Meeting of Participating Shareholders", since these investors controlled key economic decisions, including the right to resolve dissolution of the company. The tax authorities disagreed and treated the dividends as taxable.

The Borgarting Court of Appeal upheld the tax authority's assessment. Its reasoning rested on a functional interpretation of corporate control, similar to the substance-over-form standard used by the CJEU.

Even though Norway is not formally bound by the PSD, the case aligns closely with two of its central concepts: "Genuine" parent–subsidiary relationships and Anti-abuse rule (Directive 2015/121)

The De Residential structure—where investors held economics but not control, and control was retained by another investor group—represents exactly the kind of structure CJEU jurisprudence associates with "arrangements not reflecting economic reality". The Norwegian Court's rejection of exemption therefore aligns with EU anti-abuse thinking even without direct application of the Directive.

The case demonstrates that:

1. Governance and control matter as much as economic ownership in determining eligibility for dividend exemptions.
2. EEA jurisdictions tend to apply a framework analogous to PSD anti-abuse logic even without binding EU law.
3. Corporate structures deliberately separating economic and voting rights will be scrutinised under a substance-based approach.

The judgment is also consistent with the broader EU trend whereby tax advantages are available only where shareholders exercise true corporate influence, not merely formal participation.

#### 4.9.2. *Case Elopak (no HR-2025-563-A)*

The Norwegian Supreme Court judgment (Lovdata HR-2025-563-A, 2025) represents a significant development in the interpretation of Norway's exemption method for intercorporate dividends, particularly regarding the definition of low-tax jurisdictions under section 2-38 and 10-63 of the Norwegian Tax Act. Although Norway is not subject to the EU Parent–Subsidiary Directive, the case is doctrinally relevant for EU tax law because it applies an anti-avoidance

framework that resembles the logic of Directive 2015/121, especially regarding artificial arrangements and abuse of exemption regimes. This makes the case valuable for comparative analysis in a master thesis focused on dividend taxation and anti-abuse rules.

The Norwegian company Elopak ASA received large dividend distributions from its Swiss subsidiary Elopak Systems AG (ESYS) in 2010 and 2014. ESYS qualified for Switzerland's mixed company regime, which imposed an effective tax rate of approximately 10%, significantly below the Norwegian level. However, from 2010 onward, ESYS voluntarily opted into Switzerland's ordinary corporate tax regime, which resulted in an effective rate of roughly 20%.

Under Norwegian law, dividends received from subsidiaries in low-tax jurisdictions outside the EEA fall outside the exemption method and are thus taxable. Whether Switzerland constitutes a "low-tax country" therefore depended on whether the relevant tax comparison should be based on:

1. The tax regime actually applied (20%), or
2. The tax regime available under general rules (10%).

Tax authorities argued that the lower 10% should be used because the mixed-company regime was fully available, and ESYS had chosen a higher rate only in the years when dividends were to be distributed. Elopak argued that only the actual tax paid is relevant.

Both the Tax Appeals Board, district court, and Court of Appeal sided with the tax administration. The Supreme Court affirmed this position.

The Court emphasised that the low-tax country rule aims to prevent companies from shifting income to entities with low taxation and then moving profits tax-free to Norway. It therefore interpreted "effective tax rate" not mechanically but functionally:

Because ESYS qualified for the mixed company regime and had used it consistently until dividends became relevant, the Court held that the 20% rate was not "sufficiently industry-typical." The Court also noted documentary evidence showing the switch was done for the purpose of enabling tax-exempt dividends to Norway.

Thus, the Court disregarded the company's chosen taxation regime and classified Switzerland as a low-tax jurisdiction for the relevant years.

Although the case formally concerns statutory interpretation, its reasoning is grounded in anti-avoidance logic: A company should not be able to alter its tax position strategically to qualify for tax exemptions.

The exemption method applies only when foreign profits have borne a level of tax comparable to Norwegian standards. A tax arrangement chosen mainly to achieve exemption in the parent company is considered non-genuine for purposes of the low-tax comparison.

This mirrors the “substance-over-form” approach applied in EU law.

HR-2025-563-A (Elopak) reinforces a modern anti-abuse interpretation of dividend exemption rules, closely aligned with the logic of PSD 2011/96/EU and Directive 2015/121 even though they do not directly apply to Norway.

#### **4.10. SUMMARY OF THE JURISDICTIONAL CASES ANALYSIS**

The examination of ten cases that ranged from the Court of Justice of the European Union to the Lithuanian Supreme Administrative Court as well as the Norwegian Supreme Court and Courts of Appeal showed that the taxation of cross-border dividends has developed into a pivotal legal issue within the EU's internal market.

The analysis results are summarised in the table provided in Annex 1, which outlines the core facts of each case together with the main jurisdictional problems identified. This comparative table serves as the foundation for the overall summary and directly informs the recommendations presented in the conclusions section.

Each case reflects a tension between two competing objectives: (1) the EU's commitment to eliminating double taxation and ensuring the free movement of capital (2) Member States' interest in preventing tax avoidance, protecting their tax bases, and identifying non-genuine corporate structures.

In every jurisdiction, the case law repeatedly underscores that anti-abuse provisions must be applied in a balanced and evidence-driven manner, always respecting the fundamental freedoms guaranteed within the European Union; at the same time, courts make clear that purely artificial structures should not be allowed to take advantage of EU legislation.

Early CJEU jurisprudence, beginning with the landmark *Aberdeen Property Fininvest Alpha* (2009), laid the foundation for the principle that Member States may not treat comparable domestic and cross-border dividend situations differently without objective justification. The PSD's internal coherence and fiscal neutrality became a dominant theme in later cases. In *Argenta Spaarbank* (2017) and *Brussels Securities* (2019), Belgium's domestic rules indirectly re-taxed dividends that should have been exempt under the PSD. The CJEU concluded that Member States may not apply deduction limits or ordering rules that neutralize the benefit of the PSD exemption, even indirectly.

Discrimination in withholding tax re-emerged in *Fidelity Funds* (2018) and *ACC Silicones* (2022). Denmark and Germany imposed administrative or tax burdens on non-resident entities

that domestic companies did not face. The Court held that such differences violate Article 63 TFEU when foreign companies are objectively comparable to domestic ones.

Beneficial ownership and genuine economic activity became the defining issues from 2018 onward. In *T Danmark and Y Danmark* (2019)—the most influential anti-abuse case in PSD history—the CJEU confirmed that the PSD does not apply to artificial arrangements and that Member States must deny the exemption when an intermediary company acts as a conduit. The judgment clarified the dual test for abuse: an objective element (lack of economic reality) and a subjective element (intention to obtain a tax advantage). The Court also introduced the concept of “beneficial ownership” into EU law, integrating OECD treaty principles into the PSD framework.

National courts, particularly in Lithuania and Norway, have applied these principles with varying interpretations. In *Klaipėdos Translit* (2021), Lithuanian authorities denied PSD relief to an Estonian holding company deemed to lack substance—no employees, no premises, limited activity—mirroring the reasoning in *T Danmark*. Similarly, the *Nordcurrent Group* case (CJEU 2025) involved the classification of a Lithuanian subsidiary as a “non-genuine arrangement” at the moment of dividend distribution. The CJEU clarified that genuineness must be assessed in light of all available information, not only a narrow time window chosen by the tax authority. Both Lithuanian cases demonstrate the difficulty of balancing the objective to prevent abuse with the principle of legal certainty for legitimate group structures.

The Norwegian decisions in *De Residential Co-Invest* (2018) and *Elopak* (HR-2025-563-A), though issued outside the European Union showed to adhere the EU anti-abuse standards: in each instance, the authorities refused tax relief on the grounds that the subsidiaries involved either lacked substantive economic operations or were located in jurisdictions with very low taxation; these various rulings show how countries within the European Economic Area mirror EU jurisprudence on issues that include substance, beneficial ownership and authentic economic activity reinforcing the wider continental movement toward a more rigorous examination of holding structures.

Across the ten examined cases, a clear trend can be observed.

Economic substance has emerged as the decisive factor in determining whether companies qualify for tax relief under both the Parent-Subsidiary Directive and the Treaty on the Functioning of the European Union. Courts do not rely on a fixed checklist to identify non-genuine arrangements; instead, they assess the circumstances in their entirety. National authorities frequently subject foreign structures to stricter examination, which can hinder the free circulation of capital. At the same time, procedural safeguards that include documentation requirements, refund processes, and the allocation of the burden of proof, have become just as significant as

substantive legal provisions. Finally, any form of indirect taxation, even when presented as deduction limits or administrative conditions, is considered incompatible with the directive.

Taken together, the body of case law reveals a fundamental weakness in the EU's framework for dividend taxation and although the Parent-Subsidiary Directive was designed to remove double taxation. The lack of common standards for determining genuine arrangements, identifying beneficial ownership, and assessing group substance has resulted in uneven administrative practices. National authorities interpret these concepts in markedly different ways, which undermines legal predictability for investors operating across borders and heightens the likelihood of conflict. The ten examined cases underscore the pressing necessity for a coherent EU-wide strategy that preserves tax neutrality while closing the door to abuses of the directive through intermediary structures.

## **5. Conclusions**

This thesis shows that the main difficulty in applying the EU anti-abuse rule for dividend taxation is the way “substance” is understood and assessed. Today, tax authorities in EU countries—and in Norway—tend to look at substance mainly through formal indicators such as number of employees, local office, company age, bank account, management qualifications, or the amount of daily business activity. These elements have become a type of checklist used to decide whether a company is “genuine” or whether it was created only to obtain tax benefits under Directive 2011/96/EU.

However, the analysis of ten cases demonstrates that modern business structures do not always fit this traditional picture. Many holding, financing or investment companies operate with few or no employees, minimal physical presence and outsourced functions, but they still have a real and legitimate economic purpose in the group. For this reason, judging substance only by formal criteria often gives an incorrect picture and leads to uncertainty for cross-border businesses.

The core problem is therefore not the existence of these criteria, but their interpretation. Because the list of indicators is open-ended and varies from case to case, companies cannot reliably predict how tax authorities will evaluate their structure. This creates legal uncertainty and may discourage foreign investment, especially in smaller EU countries such as Lithuania.

Based on the case analysis, this thesis proposes a clearer and more practical direction: shift the focus from “substance as form” to “substance as function”. Instead of asking whether a

company looks substantial from the outside, tax authorities should ask a more meaningful question:

*Does the company actually perform a real economic function within the business group?*

Examples of functional substance include:

1. real decision-making at shareholder or management level,
2. assumption of financial or commercial risks,
3. participation in group financing or capital management,
4. responsibility for holding and allocating investments, and
5. long-term strategic role in the group structure.

If these elements exist, a company should not be treated as artificial, even if it has few employees or limited physical operations. At the same time, conduit companies—structures with no decision-making power, no real risks and no purpose other than transferring dividends—remain clearly identifiable.

In order to reinforce this functional perspective, the thesis highlights the importance of more robust transparency mechanisms, with particular attention to the establishment of a coherent and efficient *EU-wide system for identifying beneficial owners*. When companies are required to disclose their actual controlling individuals, tax administrations gain the ability to assess corporate arrangements using verified data rather than conjecture. It's a framework that would limit discretionary judgments while promoting greater equity in the enforcement of anti-abuse provisions.

Finally, the broader tax environment is also changing. The introduction of a *minimum effective tax rate* under the OECD Pillar II rules will reduce incentives to create artificial structures purely for tax advantages. Combined with a functional understanding of substance and strong transparency, the EU can achieve a much clearer, more predictable and more reliable dividend taxation system.

To conclude, the thesis argues that the future framework for EU dividend taxation should move away from an ever-expanding set of formal requirements and instead focus on assessing the genuine economic role of each company. It's a shift that can be reinforced by greater transparency and consistent rules across Member States, and it's presented as a way to align taxation with contemporary business practices, enhance legal predictability, and guarantee that tax advantages are granted only when they are legitimately warranted.

## 6. Bibliography and a list of references

- Ahmad, N., & Xiao, W. (2013). End of double taxation: Is the policy better when announced? *Journal of Policy Modeling*, 35(6), 928–942. <https://doi.org/10.1016/J.JPOLMOD.2012.12.004>
- Baral, S., & Xydis, G. (2021). How green energy giants increase their revenues? Impacts on global warming. *Climate Change Science: Causes, Effects and Solutions for Global Warming*, 247–271. <https://doi.org/10.1016/B978-0-12-823767-0.00012-4>
- Brooks, C., Godfrey, C., Hillenbrand, C., & Money, K. (2016). Do investors care about corporate taxes? *Journal of Corporate Finance*, 38, 218–248. <https://doi.org/10.1016/J.JCORPFIN.2016.01.013>
- Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.* (2011).
- Council Directive (EU) 2015/ 121 - of 27 January 2015 - amending Directive 2011/ 96/ EU o n the common system of taxation applicable in the case of parent companie s and subsidiaries of different Member States.* (2015).
- Council Directive of 23 July 1990 on the common system of taxation in the case of parent compnaies and subsidiaries of different Member States (90/435/EEC).* (1990).
- Dahlquist, M., Robertsson, G., & Rydqvist, K. (2014). Direct evidence of dividend tax clienteles. *Journal of Empirical Finance*, 28, 1–12. <https://doi.org/10.1016/J.JEMPFIN.2014.05.003>
- Duening, T. N., Hisrich, R. D., & Lechter, M. A. (2010). Financial Management and Control. *Technology Entrepreneurship*, 387–424. <https://doi.org/10.1016/B978-0-12-374502-6.00012-2>
- Duening, T. N., Hisrich, R. D., & Lechter, M. A. (2015). Legal Structure and Equity Distribution. *Technology Entrepreneurship*, 127–166. <https://doi.org/10.1016/B978-0-12-420175-0.00006-3>
- Duening, T. N., Hisrich, R. D., & Lechter, M. A. (2021). Legal Structure and Equity Distribution. *Technology Entrepreneurship*, 125–162. <https://doi.org/10.1016/B978-0-12-822203-4.00007-8>

- Frankfurter, G. M., Kosedag, A., Chiang, K., Collison, D., Power, D. M., Schmidt, H., So, R., & Topalov, M. (2004a). A comparative analysis of perception of dividends by financial managers. *Research in International Business and Finance*, 18(1), 73–114. <https://doi.org/10.1016/J.RIBAF.2004.02.002>
- Frankfurter, G. M., Kosedag, A., Chiang, K., Collison, D., Power, D. M., Schmidt, H., So, R., & Topalov, M. (2004b). A comparative analysis of perception of dividends by financial managers. *Research in International Business and Finance*, 18. <https://doi.org/10.1016/j.ribaf.2004.02.002>
- Geiler, P., & Renneboog, L. (2015). Taxes, earnings payout, and payout channel choice. *Journal of International Financial Markets, Institutions and Money*, 37, 178–203. <https://doi.org/10.1016/J.INTFIN.2015.01.005>
- Holmen, M., Knopf, J. D., & Peterson, S. (2008). Inside shareholders' effective tax rates and dividends. *Journal of Banking & Finance*, 32(9), 1860–1869. <https://doi.org/10.1016/J.JBANKFIN.2007.12.048>
- Huang, C. S., You, C. F., & Lin, S. H. (2009). Cash dividends, stock dividends and subsequent earnings growth. *Pacific-Basin Finance Journal*, 17(5), 594–610. <https://doi.org/10.1016/J.PACFIN.2009.03.002>
- Info Curia. (1986). Case 270/83. *Case Avoir Fiscal*.
- Info Curia Case C-39/16. (2017). *Argenta Spaarbank NV*.
- Info Curia Case C-116/16 and C-117/16. (2019). *T Danmark & Y Denmark Aps*.
- Info Curia Case C-228/24. (2025). *Nordcurrent Group*.
- Info Curia Case C-303/07. (2009). *Aberdeen Property Fininvest Alpha Oy*.
- Info Curia Case C-480/16. (2017). *Fidelity Funds*.
- Info Curia Case C-572/20. (2022). *ACC Silicones Ltd*.
- Kuo, N. T., & Lee, C. F. (2013). Effects of dividend tax and signaling on firm valuation: Evidence from taxable stock dividend announcements. *Pacific-Basin Finance Journal*, 25, 157–180. <https://doi.org/10.1016/J.PACFIN.2013.08.007>
- Lietuvos Respublika. (2001). *Lietuvos pelno mokescio istatymas*.
- Lietuvos Vyriausiasis Administracinis Teismas Case no eA-2232-789/2021. (2021). *Klaipėdos Translit*.
- Lovdata HR-2025-563-A. (2025). *Elopak ASA*.
- Lovdata LB-2016-98343 – UTV-2018-1207. (2018). *De Residential Co-Invest AS*.

- Mishra, A. V., & Anwar, S. (2017). Foreign portfolio equity holdings and capital gains taxation. *International Review of Financial Analysis*, 51, 54–68.  
<https://doi.org/10.1016/J.IRFA.2017.03.004>
- Neapolitan, R. E., & Jiang, X. (2007). Investment Science. *Probabilistic Methods for Financial and Marketing Informatics*, 267–328. <https://doi.org/10.1016/B978-012370477-1.50024-4>
- Park, M. D., Han, S. H., & Song, C. (2025). CEO narcissism and dividend policy. *Research in International Business and Finance*, 79, 103065.  
<https://doi.org/10.1016/J.RIBAF.2025.103065>
- Park, S. J., Lee, K.-M., & Yang, J.-S. (2021). Navigating optimal treaty-shopping routes using a multiplex network model. *PLoS ONE*, 16.  
<https://doi.org/10.1371/journal.pone.0256764>
- Petkova, K., Stasio, A., & Zagler, M. (2020). On the relevance of double tax treaties. *International Tax and Public Finance*, 27(3), 575–605.  
<https://doi.org/10.1007/s10797-019-09570-9>
- Pradhan, R. P., Samarakoon, S. M. R. K., Wijesinghe, B. A. C. H., & Maradana, R. P. (2025). Clear or confusing? How financial report readability and tone are associated with dividend payouts in Indian corporations. *The Quarterly Review of Economics and Finance*, 104, 102057.  
<https://doi.org/10.1016/J.QREF.2025.102057>
- Quang, L. T. (2024). Is the market biased in M&A, dividend payment, and share repurchase events? *Heliyon*, 10(8), e29400.  
<https://doi.org/10.1016/J.HELİYON.2024.E29400>
- Sacadura, J. N., & Bentes, S. R. (2025). Does government ownership influence the dividend payments of European banks? *Research in International Business and Finance*, 79, 103088. <https://doi.org/10.1016/J.RIBAF.2025.103088>
- San Martín Reyna, J. M. (2017). Ownership structure and its effect on dividend policy in the Mexican context. *Contaduría y Administración*, 62(4), 1199–1213.  
<https://doi.org/10.1016/J.CYA.2015.12.006>
- Williams, R. “Tee.” (2011). Cash Instruments. *An Introduction to Trading in the Financial Markets*, 157–211. <https://doi.org/10.1016/B978-0-12-374839-3.00005-1>

## Annex 1

**Table 4**

*Comparison of selected jurisdictional cases*

Number	Year	Case	Country	Core issue and factual context	Jurisdictional problem
1	2009	Aberdeen Property Fininvest Alpha Oy v Verohallinto (C-303/07, 18 June 2009)	Finland	Finnish WHT applied to Luxembourg SICAV; domestic dividends exempt.	Violation of freedom of establishment.
2	2017	Argenta Spaarbank NV v Belgische Staat (C-39/16, 26 October 2017)	Belgium	Blanket denial of interest deduction not linked to financing the shareholding.	Fiscal neutrality under PSD; Anti-abuse measures must be proportionate.
3	2018	Fidelity Funds v Skatteministeriet (C-480/16, 21 June 2018)	Denmark	Foreign UCITS taxed more than domestic funds; discriminatory withholding tax.	Violation of freedom for capital movements
4	2018	De Residential Co-Invest AS / GS LEG (Borgarting Court of Appeal LB-2016-98343, 2018 – Norway)	Norway	Norwegian tax authority denied exemption because holding lacked real activity.	Lack of genuine economic relationship

5	2019	T Danmark and Y Danmark ApS v Skatteministeriet (C-116/16 & C-117/16, 26 February 2019)	Denmark	Luxembourg and Cypriot intermediaries acted as conduit companies for non-EU owners.	Question of beneficial ownership; Lack of genuine arrangement
6	2019	Brussels Securities SA v État Belge (C-389/18, 19 December 2019)	Belgium	Deduction order caused indirect taxation of PSD-exempt dividends.	Fiscal neutrality under PSD; Anti-abuse measures must be proportionate.
7	2021	UAB "Klaipėdos Translit" v VMI (LVAT eA-2232-789/2021)	Lithuania	Estonian holding treated as conduit with no economic substance; dividends exempt under PSD denied.	Lack of genuine arrangement
8	2022	ACC Silicones Ltd v Bundeszentralamt für Steuern (C-572/16, 16 June 2022)	Germany	Excessive documentation required only from foreign companies for WHT refund.	Violation of freedom of capital movements; Fiscal neutrality under PSD; Anti-abuse measures must be proportionate
9	2025	Nordcurrent Group UAB v VMI (CJEU, Judgment of 3 April 2025)	Lithuania	Subsidiary labelled a "non-genuine arrangement" at the moment of dividend distribution.	Lack of genuine arrangement
10	2025	HR-2025-563-A (Elopak) (Norway, Supreme Court)	Norway	Swiss subsidiary assessed as low-tax jurisdiction; temporary tax increase ignored.	Lack of genuine economic relationship

Source: compiled by the author