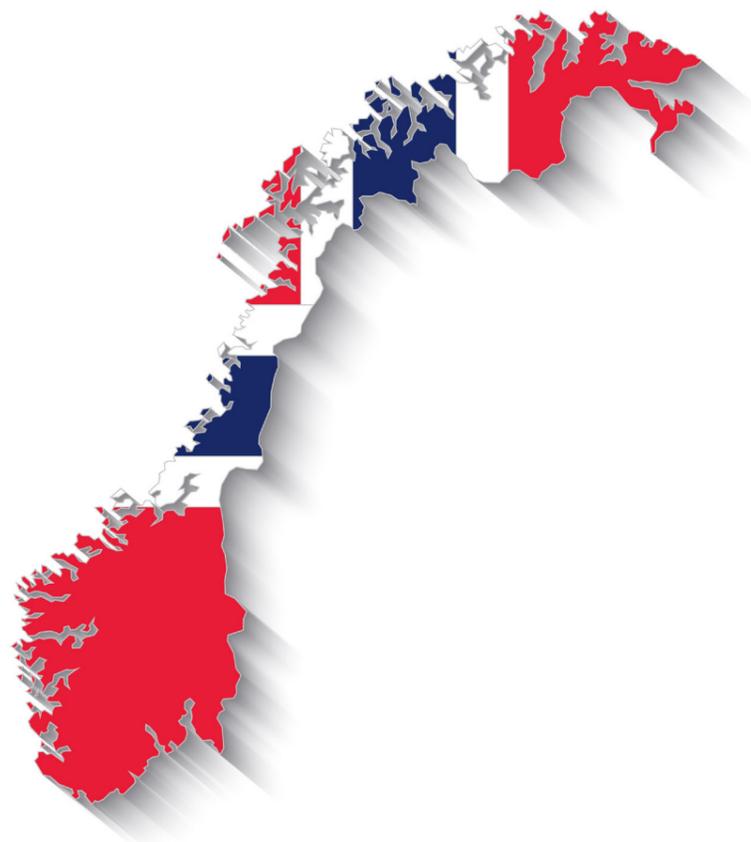


BAKER & MCKENZIE

# Implementation of EU Council Directive 2015/121

A SURVEY OF HOW EU MEMBER STATES HAVE IMPLEMENTED THE GAAR UNDER THE PARENT-SUBSIDIARY DIRECTIVE



# NORWAY

**13.1 Has a new GAAR been implemented in response to Council Directive 2015/121? If so, does the GAAR have worldwide application or is it restricted to EU Member States?**

As Norway is not an EU Member State it is not bound by the PSD and has not implemented legislative measures as a result of Council Directive 2015/121.

Norwegian domestic tax law

contains GAAR provisions which do not discriminate between EU and non-EU Member States.

**13.2 Will the implementation of the PSD GAAR affect the participation exemption in your jurisdiction?**

As Norway is not an EU Member State it is not bound by the PSD and has not implemented legislative measures as a result of Council Directive 2015/121.

**13.3 What are the current domestic substance rules applicable to companies that are tax resident in your jurisdiction (if any)? Will these substance rules change as a result of the introduction of the GAAR?**

Under domestic law, the participation exemption is extended to comprise dividends to EU resident companies receiving dividends from a Norwegian company provided that the recipient is "actually established and

conducts genuine economic activity" within the EU/EEA. The interpretation of this requirement has evolved over time and presently the tax authorities require that the EU shareholder can demonstrate that it is not established in that particular jurisdiction for tax purposes.

There are no substance requirements applicable to domestic companies.

**13.4 Will the implementation of the PSD GAAR have an impact on dividend distributions from Norway to EU shareholders?**

As Norway is not an EU Member State it is not bound by the PSD and has not implemented legislative measures as a result of Council Directive 2015/121.

**13.5 If the direct shareholder of the company in your jurisdiction is an intermediary holding company with minimum or low-substance, would it be possible to attribute the substance of a higher tier parent company to this intermediary holding company?**

As long as the higher tier company is resident within the same jurisdiction the Norwegian tax authorities would likely accept that the substance may be attributed to the intermediary company for Norwegian withholding tax purposes. In these instances, there should be no tax avoidance motive.

**13.6 Are there any safe-haven criteria in respect of the substance a shareholder should have in order to qualify for an exemption from dividend withholding tax under the PSD?**

As Norway is not an EU Member State it is not bound by the PSD and has not implemented legislative measures as a result of Council Directive 2015/121.

**13.7 Has the withholding tax system changed as a result of the GAAR (withholding unless there is a permission to not withhold)?**

Not applicable.

**13.8 Has the PSD GAAR been implemented by the deadline of December 31, 2015?**

As Norway is not an EU Member State it is not bound by the PSD and has not implemented legislative measures as a result of Council Directive 2015/121.

**13.9 Is it possible to apply for an advance tax ruling confirming that the PSD/domestic GAAR does not apply to a particular transaction or structure?**

It is possible to apply for a legally binding advance tax ruling on substance requirements and the applicability of the domestic GAAR to a particular transaction or structure on payment of a small fee. The ruling remains binding for three years from the year in which the ruling was issued, subject to any changes in legislation.