

Tax Abuse in Case of Dividend Flows under the PSD: AG Opinion in *Neo Group*

EU Tax Focus, 20/2026 (11 September 2026)

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In May 2026, Advocate General Kokott (AG) [delivered](#) her [opinion](#) in the case of *Neo Group* (Case C-203/25), following a request of the Lithuanian Tax Authorities (LTAs) for a preliminary ruling regarding the anti-abuse clause in the [Parent-Subsidiary Directive \(2011/96\)](#) (PSD).

The case examines whether a Member State could deny the withholding tax (WHT) exemption enshrined in the PSD in multi-tier corporate structures where the parent company receiving dividends has actual economic activity and is recognized as the beneficial owner of the dividends paid, yet those dividends are subsequently distributed through a chain of intermediate companies to an ultimate beneficial owner (UBO) different from the one immediately receiving the dividends. In other words, the case explores whether the selected structure and movement of funds could be considered as an artificial arrangement aiming to avoid the payment of taxes.

1. Factual Background

In 2016 and 2017 a Lithuanian company (Neo or Neo Group UAB) distributed dividends to its Cypriot shareholder (CyCo1: Retal Industries), which was the undisputed beneficial owner of the dividends. Subsequently, in years 2017 and 2018, CyCo1 distributed the dividends to its shareholder (CyCo2: Polymer Products Holding Ltd.), which was a newly incorporated Cypriot company that acquired the former's shares from a Belizean company. For completeness, the "historical" shareholder of CyCo1 was an entity established in Belize which then sold CyCo1 shares to CyCo2. CyCo2 (owned by an individual resident in Belize) (PG) transferred the relevant amounts to PG as repayment of a debt (and not in the form of dividends) which, according to the LTAs, had been artificially arranged.

Following a tax audit, the LTAs considered Neo's dividends to be taxable at 15%, and therefore not qualifying for the exemption of the PSD under the national anti-abuse rule, on the basis that, economically, the payments were channeled through intermediate companies to a non-resident and non-qualifying for PSD individual. In light of this, the LTAs characterized the chain of transactions that took place as artificial. However, Neo supported that the intermediary companies were not artificial but had substance.

2. Legal Issues Referred to the ECJ

Based on the above facts, the LTAs disallowed the WHT exemption on the dividend payments by Neo to CyCo1, alleging abuse of rights under the PSD. The competent national court referred the case to the ECJ, essentially asking whether the source state may deny the WHT exemption in cases where a genuine European parent company forming part of a broader arrangement passed on the dividends to an ultimate individual beneficiary.

The court also sought clarification on whether such non-genuine arrangements, taking place partly in another Member State, could justify refusal of the PSD and whether the tax advantage materializing only at a later stage in

the chain was relevant for applying WHT. Finally, it asked to what extent the knowledge, or possible knowledge, of the dividend payer regarding the wider structure had to be assessed by the national authorities.

3. The AG Opinion

The AG initiated her legal opinion by reaffirming that the aim of the PSD is to eliminate economic double taxation of group profit distributions within the European Union, hence, and under specific conditions, the source State exempts dividends from WHT and the State of the parent/recipient State avoids multiple taxation of same profits.

> Abuse and beneficial ownership

The tax neutrality of intra-group distributions rests on the assumption that the State in which the ultimate distribution to an individual takes place will tax that income subject to its domestic legislation, but the PSD itself does not determine whether and how that final distribution should be taxed.

The AG further analysed that the PSD benefits should be denied in cases of arrangements where transactions between the group occur only on paper and do not serve genuine economic or business purpose. To conclude, though, whether a circumvention exists, all relevant circumstances should be taken into consideration.

In addition, the AG mentioned that, in cases in which the conditions for relief under the PSD are genuinely met in economic terms, there is in principle the presumption that no abuse exists, as taxpayers are entitled to lawfully structure their transactions with the aim of minimizing their tax exposure. Nevertheless, the PSD benefits could be denied exceptionally, i.e. where non-genuine tax arrangements aiming at obtaining a tax advantage contrary to the PSD are entered into.

> Irrelevance of matching amounts and timing

The AG also dismissed the LTAs' argumentation that matching amounts of onwards dividend distributions and close timing of receipt (in 2016 and 2017) and onward payment (in 2017 and 2018) were, by themselves, decisive for tax abuse. She supported that such patterns may be indications but that they were neither sufficient nor necessary to establish a non-genuine arrangement. The assessment should remain holistic, considering all factual circumstances, including commercial rationale and the real rights and obligations of the entities involved.

> Abuse through an "overall plan"

Further, the AG clarified that, in principle, in cases where a subsidiary distributes profits to its parent company, the latter being the beneficial owner of such dividends, there seem to be no grounds to support that there is a non-genuine arrangement. The fact that the parent company subsequently passed those profits up to the shareholding structure should not, on its own, be regarded as an abusive practice, as the PSD does restrict onward distributions.

In [T Denmark \(C-116/16\)](#) and [Y Denmark \(C-117/16\)](#), the Court held that tax authorities do not need to identify the UBO and may deny a tax benefit simply by showing that the immediate recipient is a shell or conduit company. The approach in *Neo Group* is more nuanced. The AG considered that the mere fact that dividends are passed through should not automatically be treated as abuse of the PSD. Instead, the entire corporate structure must be examined to determine whether there is a genuine business justification behind the interposed intermediate companies.

However, the AG mentioned that abuse under the PSD could still exist in cases where distributions, although reflecting economic reality, constitute part of an abusive overall plan. An abusive overall plan could exist, for example, in cases where dividend distributions are made to the beneficial owner but are then passed on to entities

based in non-cooperative offshore jurisdictions so that the state of residence of the beneficial owner is in no position to know about the “final” dividend payment and cannot tax it.

> Abuse of national law in another State

The AG took a restrained view on allowing one Member State to refuse PSD relief on the basis of alleged abuse of another Member State’s tax system. As a rule, each State should address abuse with respect to its own law; a broad approach whereby any perceived abuse at the level of the ultimate shareholder could trigger denial of benefits by the source State would create uncertainty for cross-border transactions and undermine the internal market function. Only where the facts clearly show that the structure was designed to avoid tax on the final distribution in the shareholder’s State, and that the exempt dividend is an integral element of that avoidance, may the anti-abuse clause be activated.

> Whose intent and knowledge matters?

Finally, the AG addressed whether it is necessary to show that the dividend-paying subsidiary was aware, or should have been aware, of any abusive arrangement higher up the chain and concluded that this is not required. In a multi-step arrangement, what matters is the purpose of the arrangement as determined by the person(s) who decide(s) to implement it. Therefore, a subsidiary acting in “good faith” cannot legitimize an abusive overall plan designed/as put in place by the ultimate owner.

4. Key Highlights

In essence the AG’s opinion in *Neo Group* defines a relatively narrow scope for the application of the PSD anti-abuse clause. More specifically:

- the WHT exemption may be denied where the distribution is part of a broader scheme to avoid tax at the level of the UBO, particularly through non-cooperative jurisdictions in a way that deprives the state of the UBO of taxing the dividends channeled;
- suspected abuse of another Member State’s domestic rules does not, by itself, justify refusal of PSD’s tax benefits by the source State;
- Identical amounts or close timing of dividend flows are only indicators but are not decisive on their own; the assessment must reflect economic reality and commercial reasons; and
- for tax abuse, what matters is the knowledge or intent of those controlling the group’s decisions, not necessarily that of the dividend-paying subsidiary as there needs to be a deliberate link between the artificial arrangement structured by the UBO and the EU tax advantage obtained by the intermediate companies.

The AG’s opinion is not binding for the ECJ. In case the ECJ sides with the AG, *Neo Group* is likely to become a key reference on the interaction between the PSD, domestic anti-abuse rules and cross-border group planning.

IBFD references:

- > EU tax law developments are reported on the daily IBFD [Tax News Service](#) page.
- > A. Medeliené, [Advocate General Kokott’s Opinion in NEO Group \(Case C-203/25\): Key Clarifications on the Anti-Abuse Rule under the EU Parent-Subsidiary Directive](#), 66 European Taxation 9 (2026), Journal Articles & Opinion Pieces IBFD.
- > DK: ECJ, 26 Feb. 2019, [Case C-116/16](#), *Skatteministeriet v. T Danmark*, Case Law IBFD.
- > For IBFD summaries of ECJ judgments, see the [ECJ Case Law](#) IBFD collection.