

Issue: **Withholding Tax on distributions**

Background:

A large Luxembourg based private equity house was intending to pay a number of significant cross-border pre-sale dividends from several local investment companies to their parent company. The PE house considered that the payment of the dividends should be exempt from withholding under the EU Parent Subsidiary Directive.

Issue:

The buyer of the investment companies wanted an indemnity from the PE house in relation to the payment of the dividend in case the local authorities decided to challenge the exempt status of the payment and assess for withholding tax. The buyer's concern was in relation to the quantum of the payments and recent withholding tax case-law in respect of beneficial ownership and substance.

Solution:

We issued a policy to the seller with a limit of £20m backing out the indemnity it had given to the buyer. We issued the policy within 2 business days from being instructed. The policy allowed the seller to distribute the funds to its investors without any concerns there could be a future liability under the indemnity.

