This article first appeared in the October 2026 issue of Financier Worldwide magazine.

FINANCIER WORLDWIDE corporatefinanceintelligence

SPECIAL REPORT Q&A **REPRINT** October 2026

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THE RESPONDENT

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Romain Tiffon is a partner in ATOZ's international and corporate tax department. A tax professional since 2006, he advises on structuring pan-European alternative investment funds across asset classes and coordinates tax structuring for institutional investors. He also has extensive experience in structured finance, M&A and sovereign wealth funds. Mr Tiffon co-heads ATOZ's technological initiatives through ATOZ Solutions and serves as chief executive of Equinodes.

FW: How have the key trends, risks, challenges and opportunities around anti-tax avoidance and economic substance evolved in recent years?

Tiffon: The focus has shifted from purely legal compliance toward demonstrating genuine commercial rationale and operational substance. Tax authorities increasingly assess whether entities perform real functions, assume actual risks and make meaningful decisions, rather than simply meeting formal requirements. Key trends include a greater scrutiny of holding, financing, intellectual property and investment structures. There is also increasing exchange of information between tax authorities through initiatives such as the Directive on Administrative Cooperation 6 (DAC6) regarding mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. Common reporting standards and country by country reportings, as well as more aggressive application of anti-abuse rules, principal purpose tests (PPTs), beneficial ownership requirements and general anti-avoidance rules, are also having an impact. The main challenge for multinational groups is that substance is no longer a 'check the box' exercise. The risk now lies not only in technical tax disputes but also in reputational damage, denial of treaty benefits, withholding tax exposure and transfer pricing (TP) challenges. Conversely, organisations with genuinely aligned operating models have an opportunity to simplify structures, improve governance and reduce controversy risk.

FW: How has the withdrawal of the Anti-Tax Avoidance Directive 3 (ATAD 3) reshaped expectations for holding structures and cross-border tax planning within the EU?

Tiffon: The abandonment of ATAD 3 – the 'Unshell' proposal – by the Economic and Financial Affairs Council in June 2025 removed the prospect of a harmonised European Union-wide framework for identifying and penalising entities lacking sufficient substance. The removal of the Unshell proposal eliminates the inconvenience arising from the application of fixed substance criteria to various business profiles and permits substance analysis to be conducted on a case by case basis. However, it does not reduce the importance of substance. Taxpayers must contend with domestic anti-abuse provisions, treaty-based beneficial ownership requirements, PPT provisions under the Organisation for Economic Co-operation and Development (OECD) Multilateral Instrument and existing ATAD, TP and controlled foreign company rules. As a result, holding structures cannot rely on the absence of ATAD 3 as a safe harbour. Tax authorities continue to expect commercial justification, local decision-making capacity and demonstrable economic activity. The emphasis has moved from compliance with a future directive to ensuring resilience under multiple existing frameworks.

FW: To what extent are substance requirements converging across jurisdictions, despite the absence of a harmonised EU framework?

Tiffon: There is significant practical convergence, even without formal harmonisation. Across most jurisdictions, tax authorities increasingly focus on similar indicators. Substance is not explicitly defined in a single rule, but emerges from a combination of criteria consistently used by tax authorities and courts. These include the existence of human and material resources, such as qualified directors with genuine involvement, adequate employees and resources, and physical presence with appropriate premises, as well as the performance of actual economic activities, active management of assets and risks, the incurrence of operational costs and risks, and the presence of decision-making capabilities at the level of the entity. It is particularly crucial that the relevant entity, with specific regard to holding companies, possesses appropriate substance to make its own informed decisions. It is also important that businesses maintain appropriate documentation supporting business purpose and activities. While specific legal tests differ, the underlying question is becoming remarkably consistent: does this entity perform a genuine economic function within the group structure? Differences remain regarding thresholds, documentation requirements and enforcement approaches, but the concept is broadly aligned due to OECD base erosion and profit shifting (BEPS) initiatives, international tax transparency measures and extensive exchange of information between tax authorities.

**FW: What does 'genuine economic substance' mean in

practice today, and how has that definition evolved?

Tiffon: Historically, substance often focused on formal indicators such as local directors, office space and board meetings. Today, the concept is much broader. Genuine economic substance requires evidence that the entity performs real functions, exercises meaningful control over key decisions, bears and manages risks associated with its activities, has access to the personnel, expertise and resources needed to perform its role, and creates commercial value consistent with its position in the structure. The evolution reflects a shift from form to behaviour. Tax authorities increasingly examine who actually makes decisions, where those decisions are made, and whether operational reality matches legal documentation. In practice, a company is more likely to be viewed as having substance when its people, governance processes, assets and decision-making authority are aligned with its economic role.

FW: How are organisations re-engineering their holding structures and operating models to align with evolving expectations?

Tiffon: Many organisations are moving away from purely tax-driven structures and toward models that better reflect operational reality. Rather than adding superficial substance indicators, leading organisations are redesigning governance and operating models so that legal structures genuinely reflect how the business operates and creates value. Common actions include rationalising legacy holding entities and consolidating structures into fewer jurisdictions, relocating decision makers closer to business activities, and enhancing regional management functions. It also includes increasing local board engagement and oversight, strengthening TP governance, and aligning legal ownership of assets with operational control and strategic management.

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FW: What are the most critical governance, operational and documentation elements required to demonstrate substance effectively?

Tiffon: The governance framework should at least encompass the following elements: competent and actively engaged directors, clear delegation of authority, evidence of informed decision making, regular board meetings characterised by substantive discussions, and appropriate management oversight of risks and investments. It is recommended that operations be conducted with adequate personnel possessing the requisite expertise, a physical presence where relevant, local execution of key functions, and control over assets, financing arrangements and strategic decisions. Documentation includes detailed board minutes, comprehensive policies and governance frameworks, functional analyses and TP documentation, commercial rationale for structures, contracts that reflect actual conduct, and evidence supporting key decisions and activities. The strongest case is consistency. Documentation, operating reality and tax positions must all tell the same story.

FW: Looking ahead, how do you expect the EU and global landscape around economic substance to evolve over the next three to five years?

Tiffon: Over the next three to five years, we can expect substance requirements to become more integrated with broader tax transparency and compliance frameworks rather than through a standalone 'Unshell' regime. This evolution will be influenced by several key developments, including the further refinement of DAC6 and information exchange mechanisms, notably with the DAC recast proposal introducing substance criteria within hallmarks, the increased use of data analytics by tax authorities, more coordinated cross-border audits, and greater interaction between TP, beneficial ownership and substance assessments. Continued influence of OECD Pillar Two and BEPS initiatives on governance expectations, as well as growing attention to the alignment between value creation, decision making and reported profits, will further shape this landscape. The overall trend is clear: economic substance will increasingly be evaluated through a holistic lens. Businesses that embed substance into governance, operating models and decision-making processes will be better positioned than those relying on formal legal structures alone. ■