



AP ICE Webcast
Introduction & Application of EU Tax Law

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Faculty introduction

Today's session



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EU Tax Law

- EU (Tax) Law basics
- EU (Tax) Law - Important Directives
- State Aid
- ATAD
- Transparency (DAC 6, Public CbCR, CSRD)
- Practical examples – Country perspective
- What's next?



Objectives

EU Tax Law Update

By the end of this session, you will be able to...



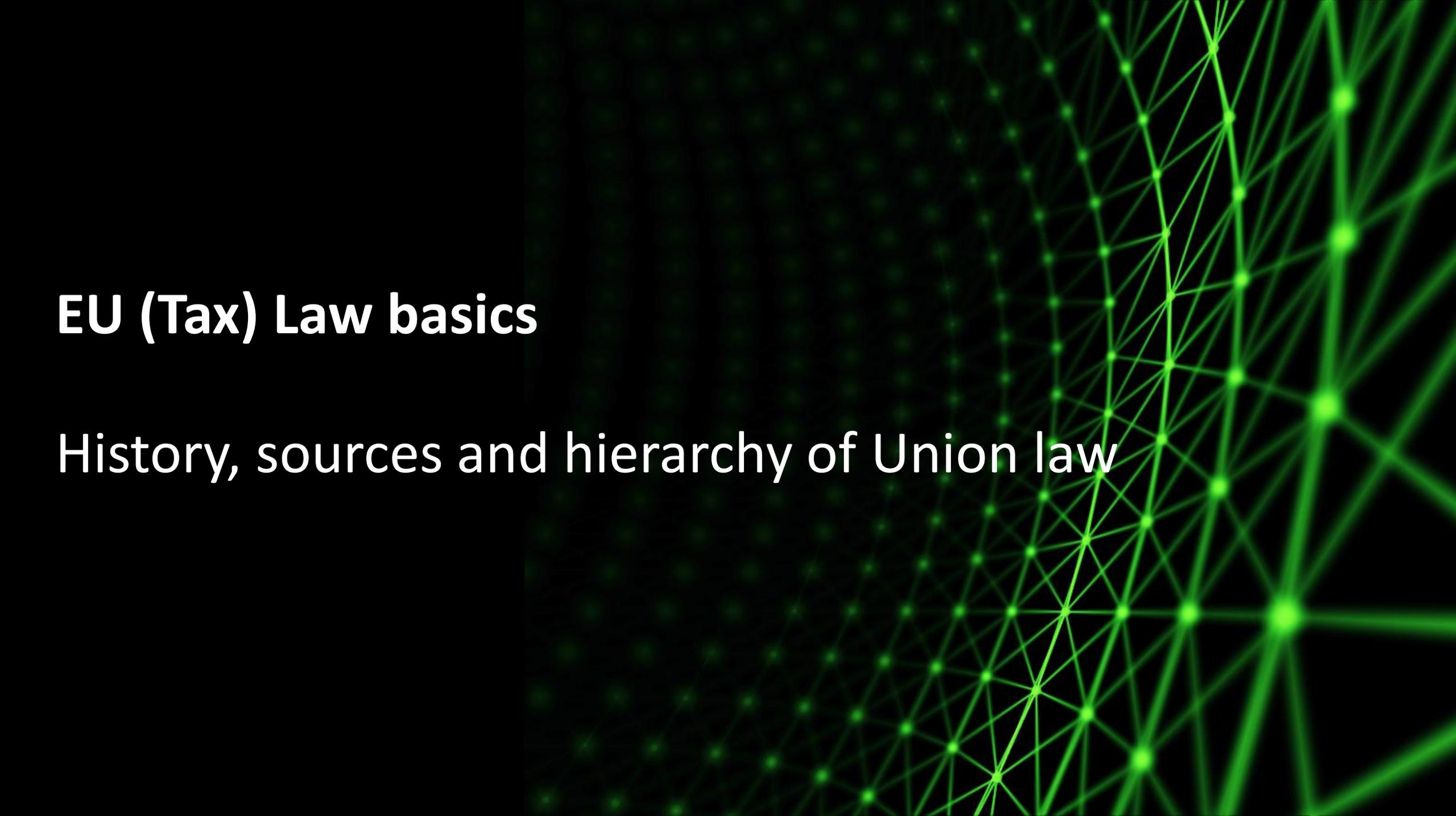
Europe

EU and non-EU members

- Austria
- **Belgium**
- Bulgaria
- Croatia,
- Republic of Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- **France**
- **Germany**
- Greece
- Hungary
- Ireland
- **Italy**
- Latvia
- Lithuania
- **Luxembourg**
- Malta
- **Netherlands**
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden



* source mapofeurope.com



EU (Tax) Law basics

History, sources and hierarchy of Union law

EU (Tax) Law basics

History of the European Union – Development of the Treaties



EU (Tax) Law basics

Hierarchy of EU Law

1

Treaty on European Union (TEU); Treaty on the Functioning of the European Union (TFEU); and their protocols

- The Fundamental Freedoms
- The prohibition of State aid

Charter of Fundamental Rights of the European Union; the Treaty Establishing the European Atomic Energy Community (Euratom) is still in force as a separate treaty; international agreements; general principles of Union law

2

Secondary legislation

- Regulations
- **Directives**
- Decisions, Recommendations and Opinions

CJEU case law

Fiscal autonomy vs. supremacy of EU Tax Law
Personal and territorial scope of EU Tax Law

EU (Tax) Law basics

Sources of Union law – TFEU

1

Treaty on European Union (TEU); Treaty on the Functioning of the European Union (TFEU); and their protocols

- The Fundamental Freedoms
- The prohibition of State aid

Art. 18 TFEU: General non-discrimination

Prohibits any discrimination on grounds of nationality

Art. 21 TFEU: General freedom of establishment

Right of EU citizens to move and reside freely within the EU

Art. 28 TFEU: Free Movements of Goods

Unrestricted cross-border transfer of goods within the EU

Art. 45 TFEU: Free Movement of Workers

Unrestricted cross-border movement of employees for job-related purposes within the EU

Art. 49 TFEU: Freedom of Establishment

Unrestricted cross-border establishment and transfer of businesses within the EU

Art. 56 TFEU: Freedom to Provide Services

Unrestricted cross-border provision of professional services within the EU

Art. 63 TFEU: Free Movement of Capital

Unrestricted cross-border transfer of capital within the EU and between EU member states **and third countries**

Art. 107 TFEU: Prohibition of state aid

New era of state aid investigations

EU (Tax) Law basics

Sources of Union law – Secondary legislation

2

Secondary legislation

- Regulations
- Directives
- Decisions, Recommendations and Opinions

- **Regulations** are of general application, binding in their entirety and directly applicable. They must be complied with fully by those to whom they apply (private persons, Member States, Union institutions). Regulations are directly applicable in all the Member States as soon as they enter into force and do not need to be transposed into national law.
- **Directives** are binding, as to the result to be achieved, upon any or all of the Member States to whom they are addressed, but leave to the national authorities the choice of form and methods. National legislators must adopt a transposing act or national implementing measure to transpose directives and bring national law into line with their objectives. Individual citizens are given rights and bound by the legal act only once the transposing act has been adopted.
- **Decisions** (binding in their entirety), **Recommendations** and **Opinions** (provide guidance).
- EU institutions may adopt legal acts of these kinds only if they are **empowered** to do so by the Treaties. The limits of Union competences are governed by the **principle of conferral**, which is enshrined in Article 5(1) TEU.
- The TFEU defines the scope of Union **competences**, dividing them into three categories: exclusive competences (Article 3), shared competences (Article 4) and supporting competences (Article 6)

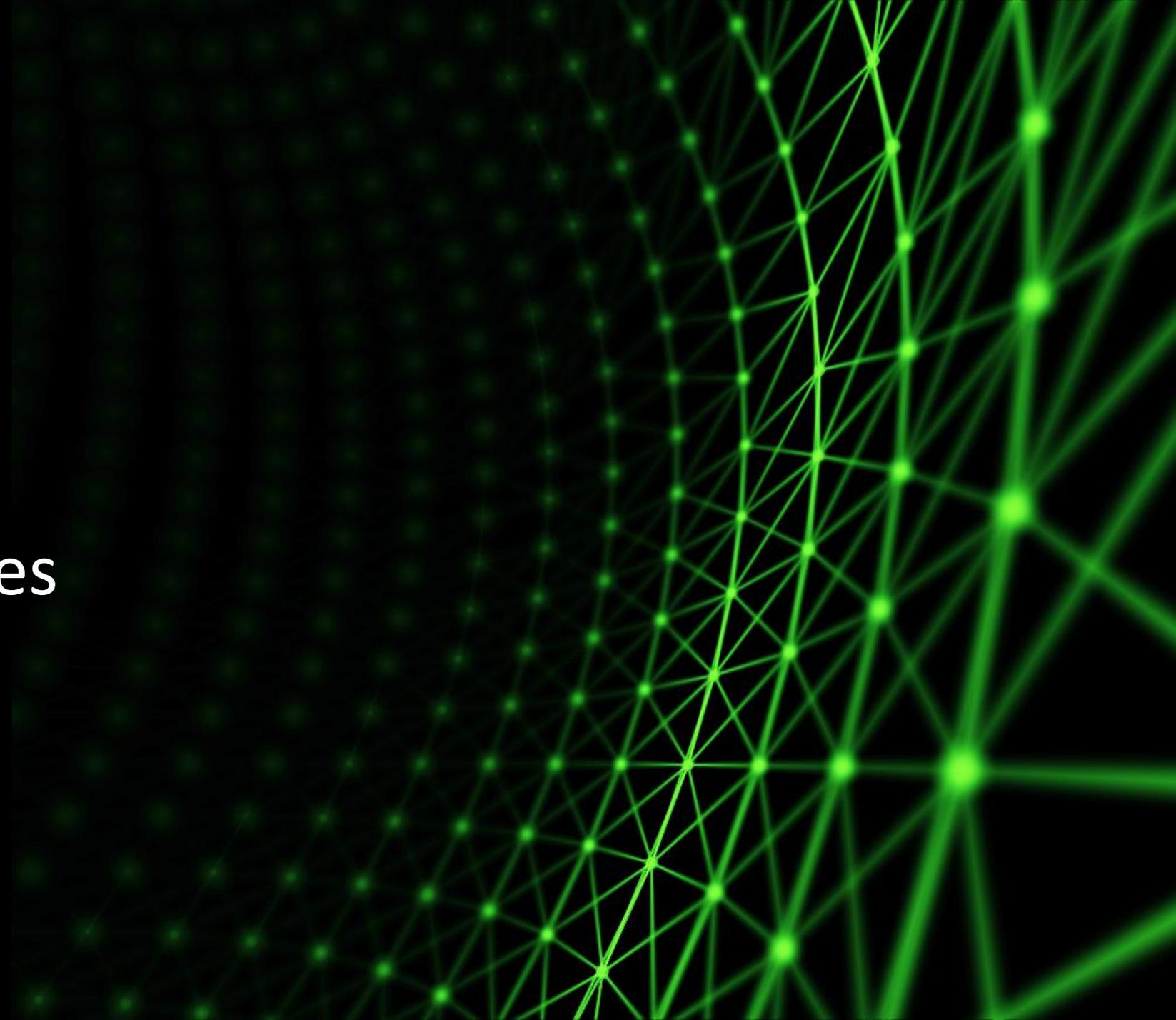
EU (Tax) Law basics

How does the CJEU approach tax cases?



EU (Tax) Law

Important Directives



Important Directives

Parent-Subsidiary Directive (2011/96)

- Purpose is to ensure that the Member State of the parent company either refrains from taxing the profits distributed by a subsidiary that is resident in another Member State or, if taxing such profits, authorizes the parent company to deduct from the amount of tax due the corporate income tax paid by the subsidiary in the other Member State; and to exempt profit distributions by the subsidiary to the parent company from withholding tax. A qualifying Parent-Subsidiary relationship exists if the parent company holds at least 10% of the issued shares of the subsidiary, subject to certain conditions.
- Applies to distributions of profits
 - received by a parent company in one Member State from a subsidiary in another Member State;
 - by a subsidiary in one Member State to its parent company in another Member State;
 - received by a permanent establishment situated in one Member State and by a company of a Member State to a permanent establishment subject to certain conditions
- After the entry into force of the 2015 Amending Protocol to the EU-Switzerland Agreement (2015), dividends paid by subsidiary companies to parent companies, whereby one is established in the European Union and the other in Switzerland, are exempt if the parent company maintains a direct minimum holding of 25% for at least 2 years in the subsidiary (paying) company.

Interest and Royalties Directive (2003/49)

- Aim is to eliminate withholding taxes on interest and royalty payments between related companies of different Member States.
- Under the Directive, interest or royalty payments that arise in a Member State are exempt from any taxes imposed on such payments in that State if the beneficial owner of the interest or royalties is a related company of another Member State (or a permanent establishment thereof), subject to certain conditions, e.g. one company has a direct holding of at least 25% in the capital of the other company (or vice versa) etc.
- In relation to Switzerland, under article 15 of the EU-Switzerland Exchange of Information Agreement (2004) , the EU Member States must exempt interest and royalty payments to companies resident in Switzerland, and vice versa, under essentially the same conditions as those laid down in the Interest and Royalties Directive (2003/49).

Important Directives

Company Law Directive (2017/1132)

- **Codification of 82/891/EEC (concerning the division of public limited liability companies)** and 89/666/EEC (concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State) and **Directives 2005/56/EC (on cross-border mergers of limited liability companies)**, 2009/101/EC (on coordination of safeguards), **2011/35/EU (concerning mergers of public limited liability companies)** and 2012/30/EU (on coordination of safeguards)
- One purpose of EU rules in this area is to enable businesses to be set up anywhere in the EU, enjoying the freedom of movement of persons, services and capital, to provide protection for shareholders and other parties with a particular interest in companies, to make businesses more competitive, and to encourage businesses to cooperate over borders.
- **Company restructuring (mergers and divisions, transfer of seat)**
 - Transferring the registered office of a limited liability company from one Member State to another, as well as merging or dividing it, is an inherent aspect of the freedom of establishment guaranteed by Articles 49 and 54 of the TFEU
 - **Directive (EU) 2019/2121** (amending 2017/1132) as regards cross-border conversions, mergers and divisions

Anti-Tax Avoidance Directive (2016/1164) (**ATAD**) and amending Directive (2017/952) (**ATAD II**)

- This Directive, which applies to all taxpayers subject to corporate income tax (including permanent establishments in EU Member States of companies based on third countries), contains anti avoidance rules covering
 - (i) a limitation on the deduction of interest expense;
 - (ii) exit taxes; (iii) a general anti-abuse rule;
 - (iv) controlled foreign company rules;
 - (v) a hybrid mismatch rule;

Important Directives

DAC6 - Amending Directive 2011/16/EU on Administrative Cooperation [on reportable cross-border arrangements] (2018/822)

DAC7 - Amending Directive 2011/16/EU on Administrative Cooperation [on reporting obligations of digital platforms] (2021/514)

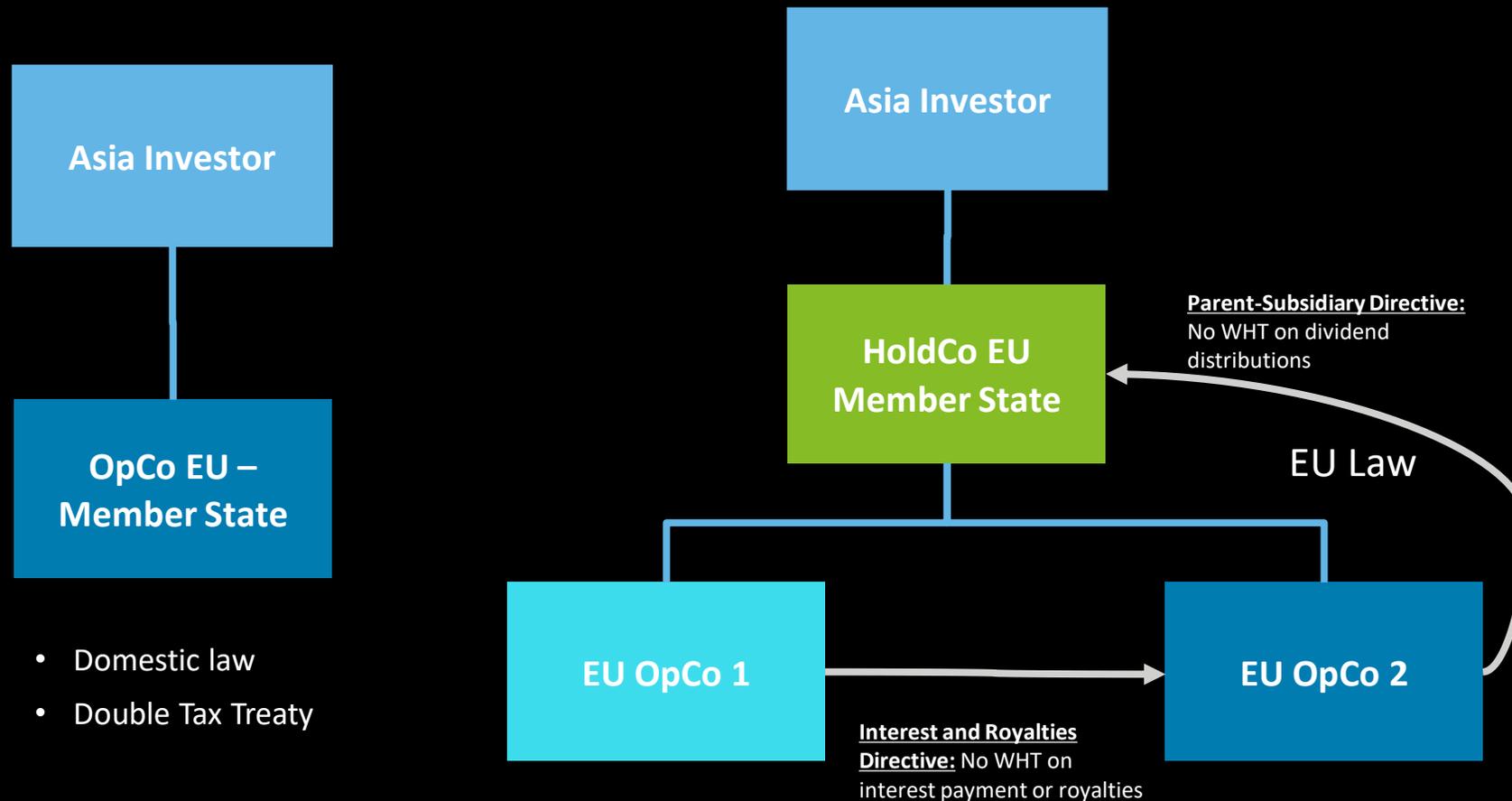
Draft EU Directives
- Minimum Level of Taxation (OECD Pillar 2)
- ATAD III (Unshell)

- The EU Directive 2018/22 of 25 May 2018 (**DAC6**) aims to provide Member States with information in order more rapidly to close loopholes in tax legislation and react against harmful tax practices. While in principle reports were only required to be made as from July 2020, the reporting requirements already apply to RCBA's the first step of which is implemented on or after 25 June 2018. The Directive needs to be implemented into domestic law by all EU Member States by 31 December 2019. Due to the COVID-19 pandemic most Member States postponed the application of DAC6 (30-days reporting deadline) by six months.
- The **DAC7**, adopted on 22 March 2021, amends the Directive on Administrative Cooperation (2011/16) to address the challenges arising from the digital platform economy. It creates an obligation for digital platform operators to report the income earned by sellers on their platforms and for Member States to automatically exchange this information. The new rules will apply as of 1 January 2023 and will cover digital platforms located both inside and outside the European Union.
- Pillar Two, adopted on 14 December 2022, aims to put a floor on competition over corporate income tax rates through the establishment of a global minimum level of taxation. By removing a substantial part of the advantages of shifting profits to jurisdictions with no or very low taxation, the global minimum tax reform will level the playing field for businesses worldwide and allow jurisdictions to better protect their tax bases.
- ATAD III - Unshelling the European Union': On 22 December 2021, the European Commission released a draft for a new directive laying down rules to prevent the misuse of so-called "shell" entities for tax purposes in the EU. The draft requires undertakings to report information that will enable the respective competent authority to assess whether the undertaking has a real and substantial presence and economic activity in the respective jurisdiction.

Parent-Subsidiary Directive / Interest and Royalties Directive

EU Inbound – EU Law can be favorable

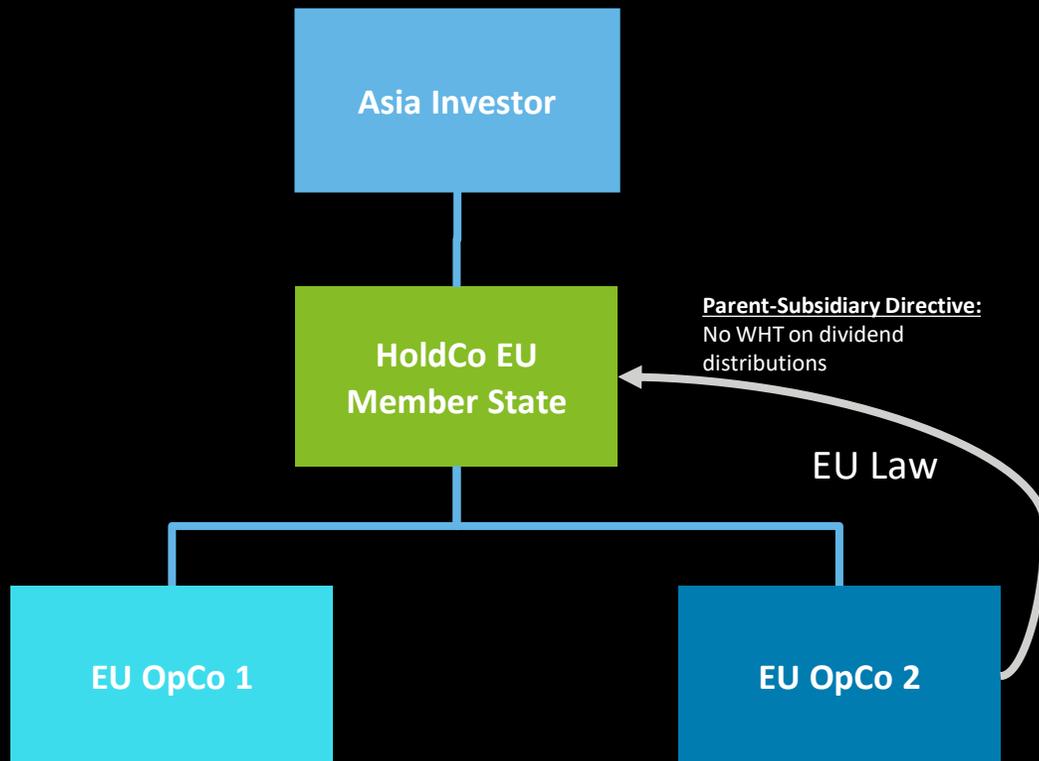
Parent-Subsidiary Directive: Interest and Royalties Directive



Parent-Subsidiary Directive

EU Inbound – EU Law can be favorable

Parent-Subsidiary Directive



Treaty rates Netherlands	Other State
Dividends* 5%	Germany
Dividends* 5%	
Dividends* 5%	Italy
Dividends* 5%	Poland

Domestic rates	Other State
Dividends** 26%	Germany
Dividends** 26%	
Dividends** 15%	Netherlands
Dividends** 19%	Poland

- Parent-Subsidiary Directive provides for - in most cases - the favourable rate **(0%)** – subject to certain conditions
- **IMPORTANT:** Application of Directive rate might be subject to
 - Availability of Certificate of Tax Residency
 - Upfront treaty clearance and/or tax refund application
 - Anti-treaty shopping rules
 - Monitor ATAD 3 (Unshell)

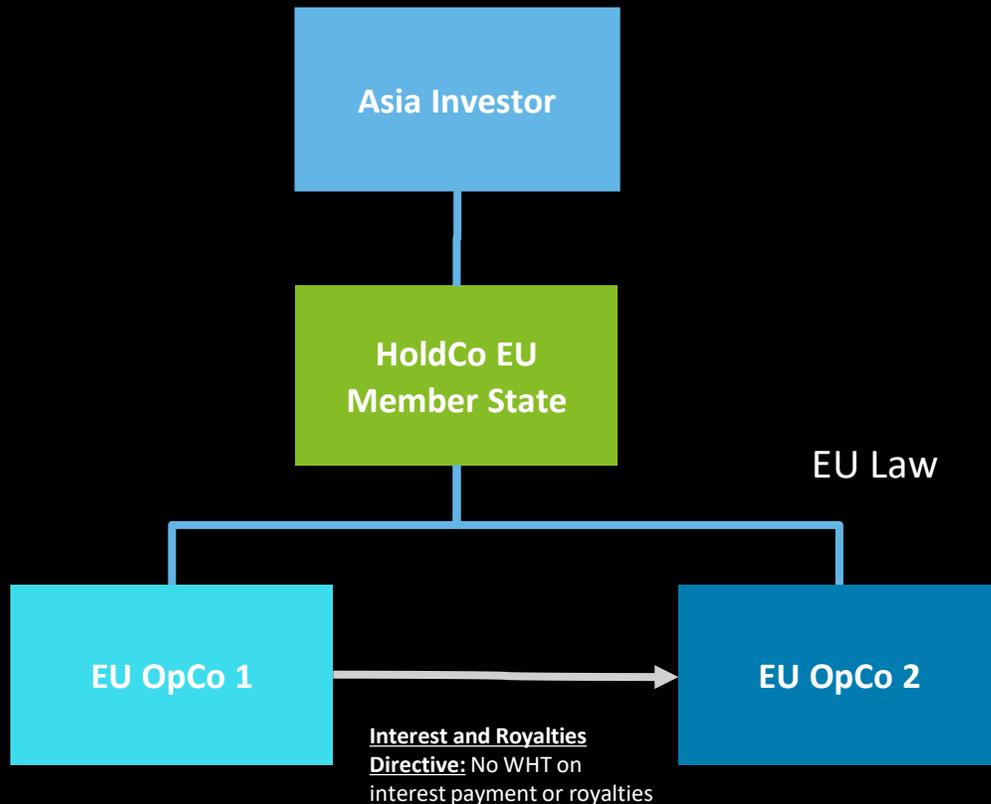
* Qualifying dividend according to DTT

** Standard domestic rate

Interest and Royalties Directive

EU Inbound – EU Law can be favorable

Interest and Royalties Directive



Treaty rates Netherlands		Other State
Interest+	0%	Germany
Interest+	10%	Italy
Interest+	5%	Poland

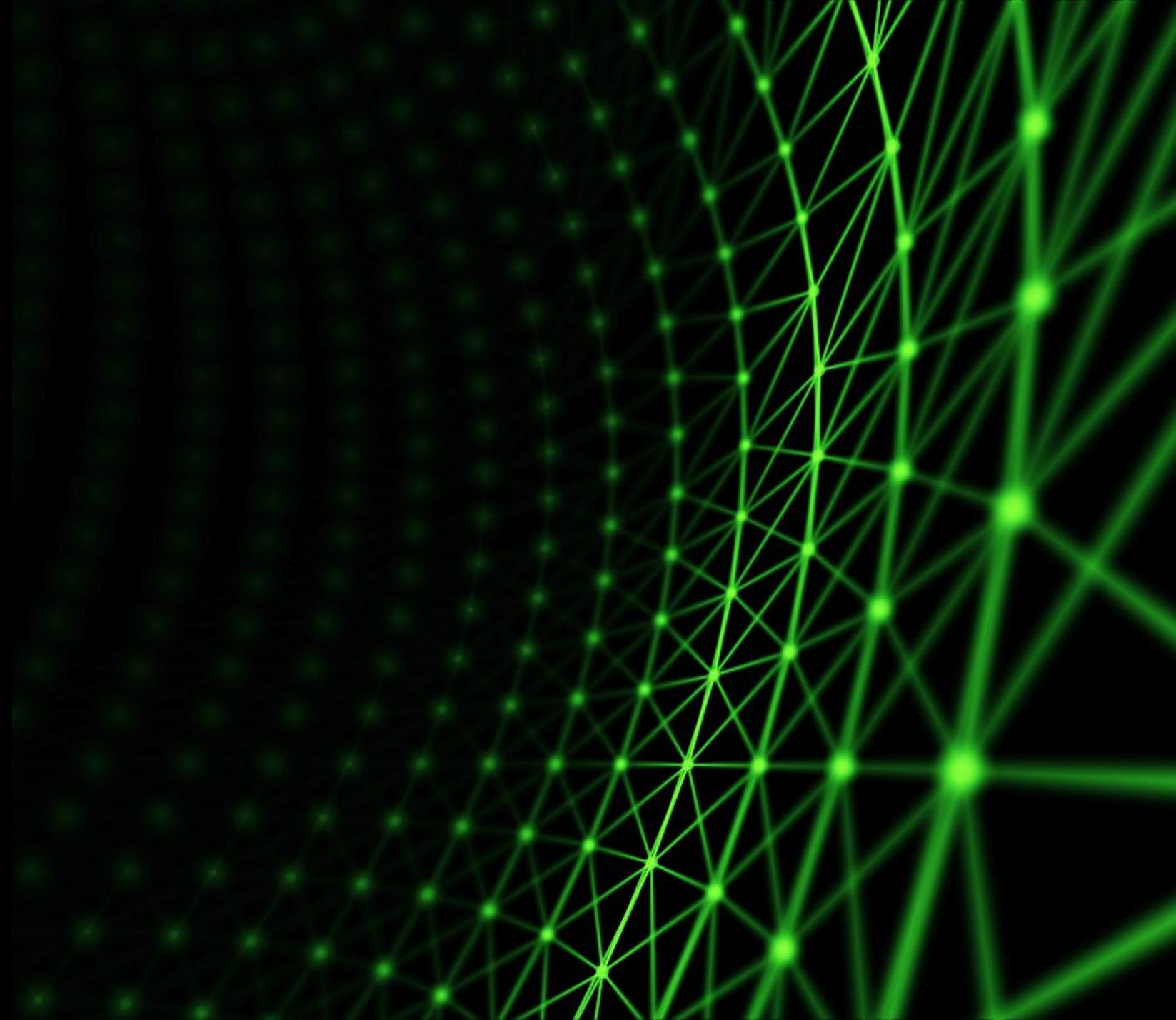
Domestic rates		Other State
Interest+	0%	Germany
Interest+	26%	Italy
Interest+	0%	Netherlands
Interest+	20%	Poland

- Interest and Royalties Directive provides for - in most cases - the favourable rate (**0%**) – subject to certain conditions
- IMPORTANT: Application of Directive rate might be subject to
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 - Monitor ATAD 3 (Unshell)

+ In case of plain vanilla loan

State Aid

BEPS on steroids

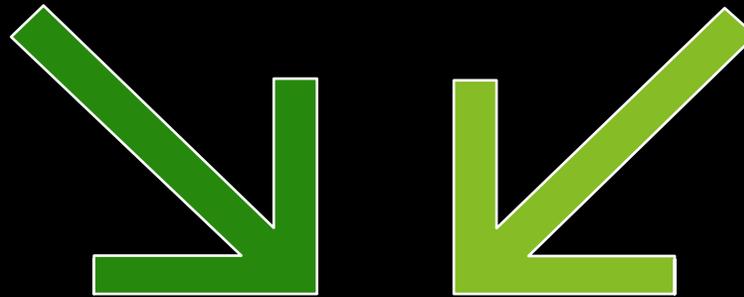


State aid

Prohibition of state aid (Art. 107 TFEU)

Art. 107 (1) TFEU: Save as otherwise provided in the Treaties, any aid granted by a Member State or through **State resources** in any form whatsoever which **distorts or threatens to distort competition** by **favoring certain undertakings** or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

1 **Intervention by the State or through State resources**



State Aid

2 **Giving rise to an advantage on a selective basis**

*A tax measure may be **selective** if it derogates from common regime in as much as it differentiates between economic operators who, in the light of the objective assigned to the tax system of the Member State concerned, are in a comparable factual and legal situation*

*CJEU, Cases C-78/08 to C-80/08, **Paint Graphos and Others**, para. 49*

3 **Competition has been or may be distorted**

4 **Intervention is likely to affect trade between Member States**

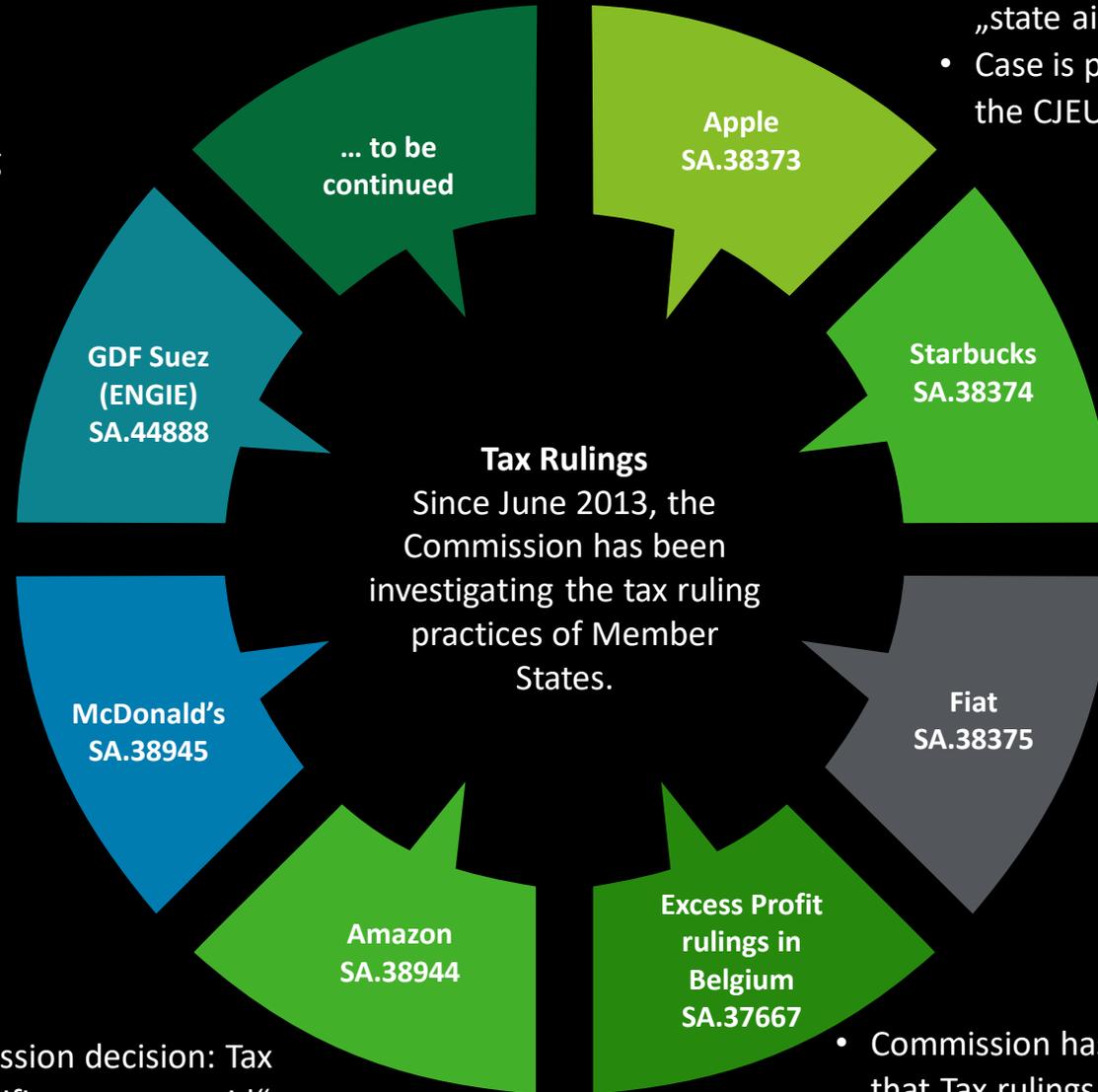
State aid

Tax rulings

- EU Commission decision: Tax ruling qualifies as „state aid“
- Case is pending before the CJEU

- EU Commission decision: Tax ruling does **not** qualify as „state aid“

- EU Commission decision: Tax ruling qualifies as „state aid“
- Case is pending before the CJEU



- EU Commission decision: Tax ruling qualifies as „state aid“
- Case is pending before the CJEU

- EU Commission decision: Tax ruling qualifies as state aid
- Overturned by CJEU

- EU-Commission decision: Tax ruling qualifies as „state aid“
- Confirmed by CJEU decision

- Commission has decided that Tax rulings qualify as „state aid“
- Overturned by CJEU

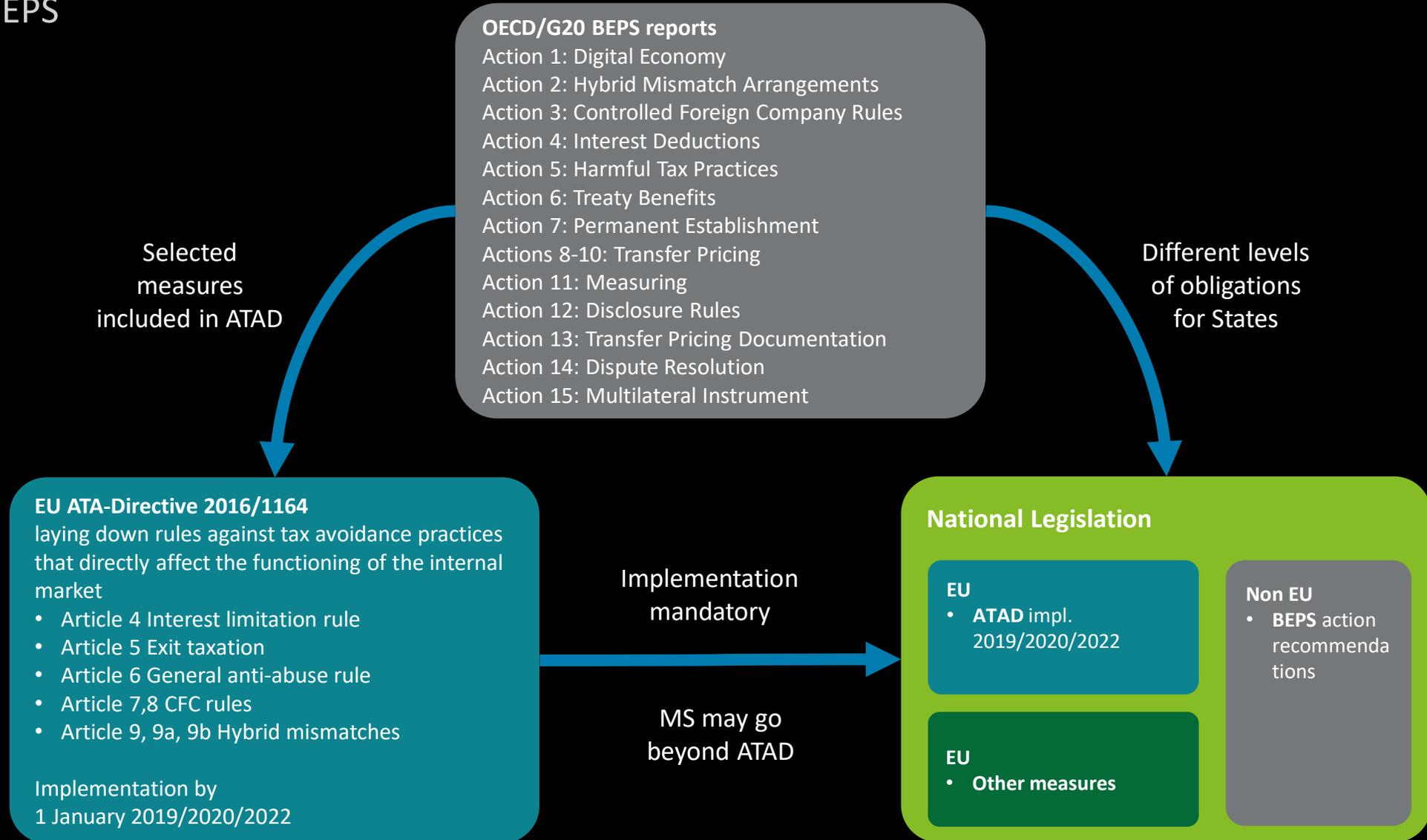
ATAD

A global tax reset (in the EU)



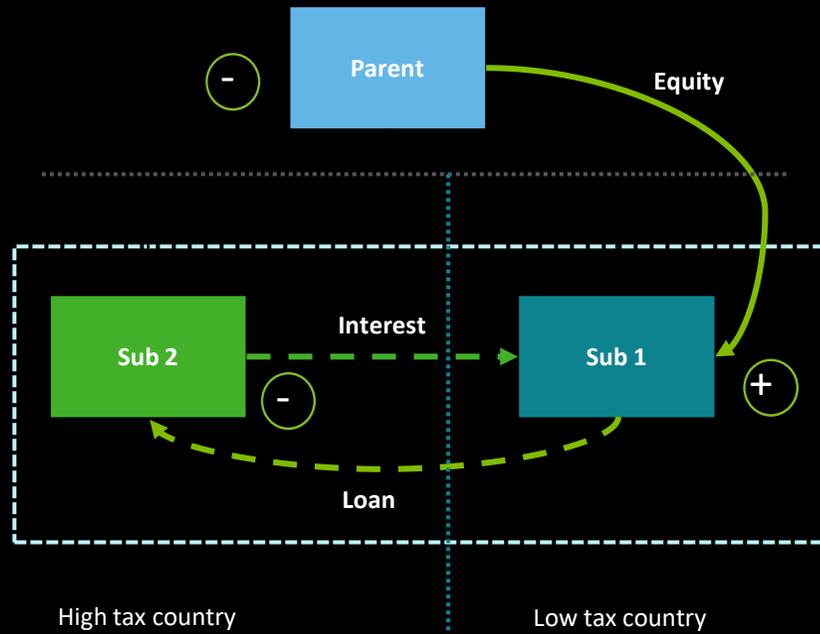
ATAD

ATAD and BEPS



ATAD

EU ATAD – Article 4 Interest limitation rule

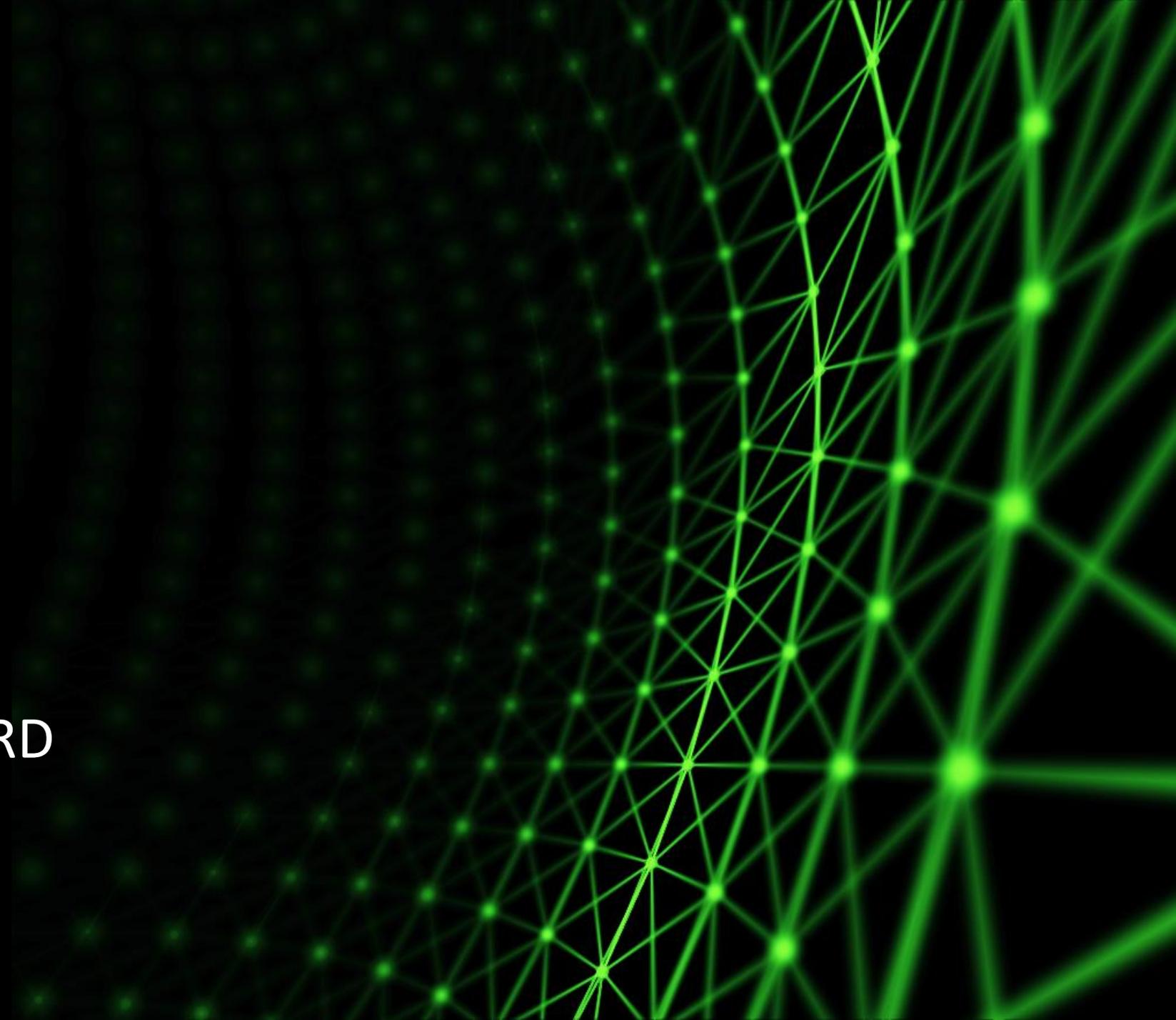


Art. 4 Interest limitation rule

- Interest expenses will only be deductible up to **30 % of EBITDA** (fixed ratio rule)
- Apart from that, right to fully deduct exceeding borrowing costs if **not part of a group** (standalone entity) alternatively below a **EUR 3 million threshold**, which should be considered for the entire group.
- Option for Member States to choose between two different group exclusion provisions based on either an “equity/total assets”-ratio or a group EBITDA-test.
- Option for grandfathering loans that were concluded before 17 June 2016 (and not modified thereafter) and an exclusion for third party loans used to fund a qualifying long-term public infrastructure project.
- Option for carry forward of non-deductible exceeding borrowing costs.
- Certain financial undertakings can also be excluded from the interest limitation rule.

Transparency

DAC 6, Public CbCR, CSRD



Broad disclosure rules

Rules

- V6 of the EU Directive on administrative cooperation (EU MDR, DAC6)
- Aims to provide new information on potentially harmful tax practices
- New disclosure obligations for EU intermediaries and taxpayers in relation to reportable cross-border arrangements (RCBA)

- An EU entity is an **Intermediary** where it acts as a promoter or service provider of an **RCBA** towards **relevant taxpayers** (including group entities)

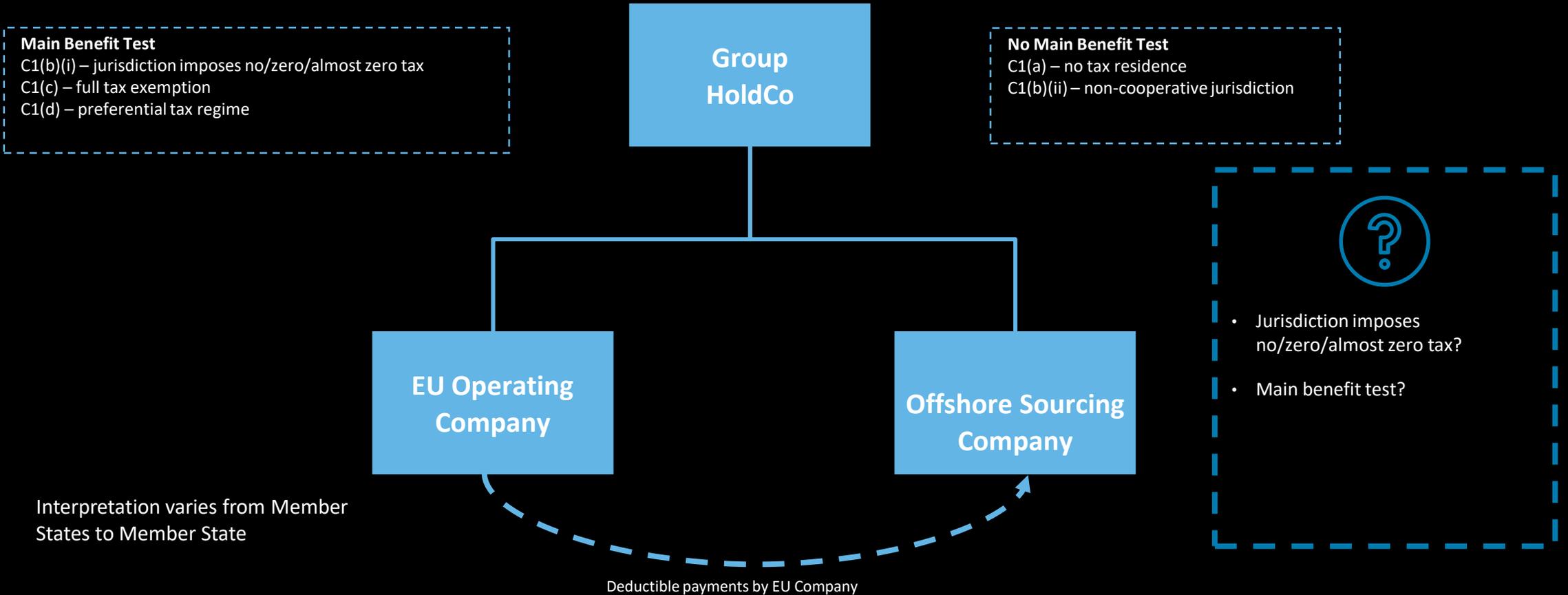


- An entity is a **relevant taxpayer** where it benefits from **RCBAs** and may have to report if the intermediary does not or cannot (e.g. non-EU)

Payment to offshore company

Hallmark C1 – Deductible Cross Border Payments

Hallmark C1 – Deductible Cross Border Payments



Payment to offshore company

Hallmark C1 – Deductible Cross Border Payments

Example: German DAC6 report: Intercompany loan transferred from German entity to Singaporean entity

2/24/2021 BOP - Transmission of data for the Directive on Administrative Cooperation (DAC) 6 - Transmission of data for the Directive on Administrative Cooperation (DAC) 6

Submit form

Please check your details one more time. You can then **submit the form below**.

Transmission of data for the Directive on Administrative Cooperation (DAC) 6

General information on the Disclosure

MessageRefID	DEM20210205BZ10030549 [REDACTED] 001V01
Initial Disclosure of a marketable Arrangement	Nein
Language	German

- Multinational group (US HQ)
- German subsidiary borrowed funds from US entity
- In course of a group-wide reorganisation: IC-loans have been transferred to the new lender resident in Singapore
- Interest expense are not subject to tax in Singapore
- Deloitte Germany filed the report with the German Federal Tax Office (Deloitte Germany's obligation)
- The client waived legal professional privilege so that the arrangement was fully disclosed, otherwise Deloitte Germany would have made an anonymous filing

Public Country-by-Country Reporting

New EU public disclosure rules from FY25

OECD CbC Reporting

- Under **BEPS Action 13**, all large MNEs (group sales > €750m) must prepare **Country-by-Country (“CbC”) Reporting**.
- **CbC Reporting** under **OECD rules** to the **tax administrations** applied for **all financial years** starting after **31.12.2015**

Final EU Directive

- In **April 2016**, the **European Commission** first proposed a [Directive](#) for **Public CbC Reporting** in the **European Union**.
- Final **EU Directive 2021/2101** (“Amending Directive”), which introduces an **EU Public CbC Reporting**, was officially published in the [EU Official Journal](#) on **01.12.2021**.
- Amending Directive entered into force 20 days after its publication (i.e. on 21.12.2021). The EU Member States have until **22.06.2023** for **transposition** into **national law**.
- Public CbC Reporting will apply in the EU (at the latest) for **all financial years** beginning after **21.06.2024** (i.e. FY25).

Scope of Public CbC Report

- Public CbC Reporting is for **Constituent Entities** (Art. 48b).
- **Data and information** included in the report (Art. 48c):
 - (1) name of the company;
 - (2) brief description of the nature of its activities;
 - (3) number of employees;
 - (4) net sales;
 - (5) profit or loss before tax;
 - (6) income taxes due based on the current year's profit earned in the respective country;
 - (7) income taxes paid in the respective country in the current year; and
 - (8) amount of undistributed profits.
- Public CbC Reporting is published **separately** for **each EU Member State** (Art. 48c (5)) and **EU blacklist jurisdiction**.
- For **other non-EU jurisdictions**, data may be **aggregated**.
- EU Member States may **defer** the **publication of confidential information** by up to 5 years (Art. 48c (6)).

Public Country-by-Country Reporting

Approach to disclosure and data preparation

Disclosure process

- Public CbC Reporting data and information are prepared using a **common template** and **electronic reporting formats**, which are **machine-readable** (Art. 48c (4)).
- Public CbC Reporting must be **published** within **12 months** from the **balance sheet date** of the **financial year** for which the Public CbC Reporting is drawn up (Art. 48d (1)).
- Public CbC Report must be made accessible - free of charge - to the **public** in **at least one** of the **EU official languages** no later than 12 months after the balance sheet date on a **website** of (Art. 48d (2))
 - the Ultimate Parent;
 - the delegated subsidiary; or
 - the publishing branch or subsidiary.
- Public CbC Report must be **accessible** on the website for a **minimum of 5 consecutive years** (Art. 48d (4)).
- **Management** have **collective responsibility** for the Report being drawn up, published and accessible (Art. 48e).

Approaches to disclosure

- Two main disclosure approaches:
 - **Stand-alone Public CbC Reporting** (i.e. new disclosure to the general public like financial statement publication); or
 - **Integrated Public CbC Reporting** (e.g. in "Sustainability" and/or "Environment/Social/Governance" ("ESG")).
- Suitable approach depends on **industry, product/service offering, customer profile/portfolio**, and/or **new interested parties** (e.g. lobby groups, activist or pressure groups).

Public Country-by-Country Reporting

Romanian Case

Regulation

- Romania transposed the Public CbC Directive requirements regarding the “Report on income tax information”. According to this new piece of legislation, the branches/subsidiaries of big multinationals must disclose publicly (e.g., websites, publicly available consolidated reports, etc.) details about their profits and taxes paid in each jurisdiction.

Who needs to report?

- Final parent companies with total (global) consolidated revenue exceeding RON 3,700,000,000 (equivalent to approx. €747,474,740) for each of the last two financial years and that is active in more than one jurisdiction;
- Standalone entities (entities that are not part of a group), with total revenues that exceed RON 3,700,000,000 (equivalent to approx. €747,474,740) for each of the last two financial years and that is active in more than one jurisdiction;
- Medium and large subsidiaries, (entities that, at the balance sheet date, exceed the limits of at least two of the following three criteria: a) total assets: **17,500,000 lei (the equivalent of 3,946,953 EUR)**; b) net turnover: **35,000,000 lei (the equivalent of 7,893,906 EUR)**; c) the average number of **employees** during the financial year: **50.**), **controlled by a final parent company that is not covered by these regulations - with total (global) consolidated revenue exceeding RON 3,700,000,000 (equivalent to approx. €747,474,740) for each of the last two financial years and that is active in more than one jurisdiction;**
- Romanian branches (established by entities that are not subject to the laws of a Member State)

Public Country-by-Country Reporting

Romanian Case

When and Where

These provisions are applicable starting the 1st of January 2023 and have a publishing deadline within 12 months from the balance sheet date of the financial year for which it is prepared. Therefore, the first report is due on the 31st of December 2024 → The report must be published in the Romanian language on the website of the entity, subsidiary of an affiliated entity (or the website of the branch, the entity that opened the branch, or an affiliated entity, respectively) and it shall remain accessible on the said website for at least 5 consecutive years.

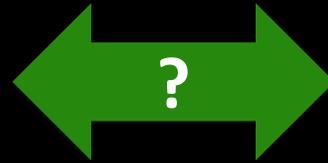
What's next? At this stage, there are no available instructions regarding the declaration procedure or templates of this report or expressly mentioned penalty for not declaring the Public CbC Report (so far). As soon as the official instructions regarding the preparation and publishing of this report will be provided by the Minister of Finance, we will revert to you with details.

Corporate Sustainability Reporting Directive

Impact on Tax Transparency Reporting?

Corporate Sustainability Reporting Directive

On the 21st of April 2021, the EU commission announced the adoption of the Corporate Sustainability Reporting Directive (CSRD) in line with the commitment made under the European Green Deal.



GRI 207 – TAXATION

Approach to tax (GRI 207-1)

- Tax strategy publication
- Accountability (roles & responsibilities)
- Regulatory compliance
- Linking tax to broader sustainability reporting

Tax stakeholders (GRI 207-3)

- Tax authorities
- Tax policy advocacy
- Gaining stakeholder views

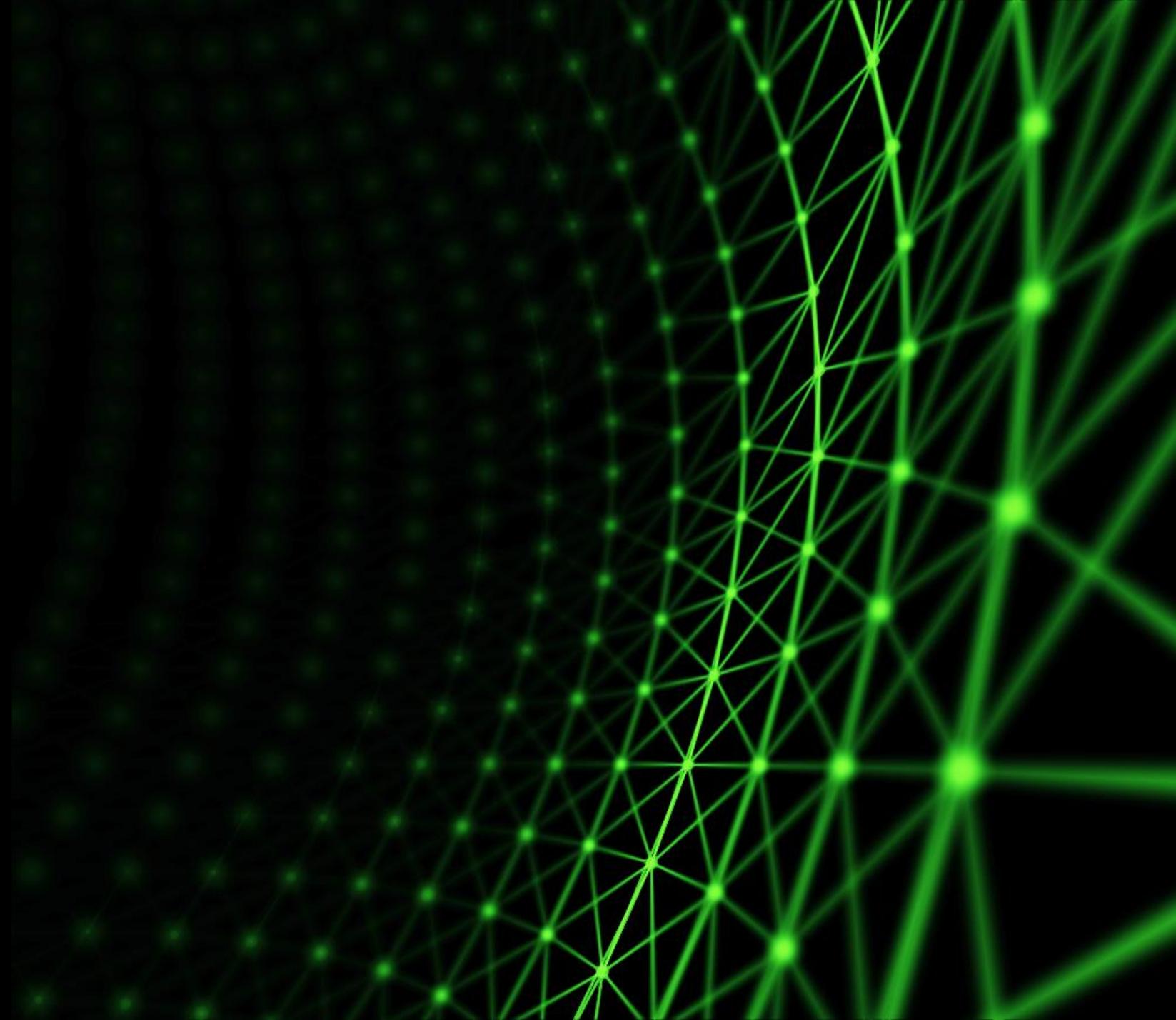
Tax governance, control & risk management (GRI 207-2)

- Tax governance & control framework narrative
- Assurance provided

Country by country tax reporting (GRI 207-4)

- All countries, all taxes

What's next?



'Unshell' – Rules to prevent the misuse of shell entities for tax purposes

Tax transparency rules for crypto-asset transactions (DAC8)

Debt-equity bias reduction allowance (DEBRA)

BEFIT and the future of the common consolidated corporate tax base

European trust and cooperation approach (ETACA)

Important Directives What's next?

Questions?



Contact Us

Today's session



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