



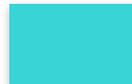
**CURRENT AND PLANNED EU INITIATIVES IN THE
AREA OF DIRECT TAXATION –
HOW TO MATCH THE CONCEPT OF ABUSE OF LAW
AS DEFINED BY THE ECJ WITH MEASURES TO
PROTECT THE EU TAX BASES?**

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***Directorate General for Taxation and the Customs Union
European Commission***

EU Tax policy

- ECJ case law as a driver of tax policy
- Coordination measures/soft law
- Legislative action
- Current EU tax policy as a result of the crisis
- Anti-abuse rules



ECJ case law

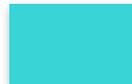
- Less radical judgements
- Accepted disadvantages from the interaction of national tax systems
- Broader acceptance of justifications
- Deriving from new MS and new judges or institutional policy decisions or public pressure? Logical result of grey zone cases presented to the ECJ?





Coordination measures

- Exit tax resolution
- Anti-abuse resolution
- Communications
- Litmus test: Do the Member States adjust their national tax legislation following a discussion of tax law in Council?
- Example: Cancelled double taxation conventions between DK and FR and DK and ES





Legislative action

Four major projects

- FTT
- CCCTB
- Energy Directive
- VAT initiative to be expected

Other pending proposals

- Interest and Royalty Directive
- Savings Directive





EU tax policy

- First appeared in the Europlus Pact

Direct taxation remains a national competence. Pragmatic coordination of tax policies is a necessary element of a stronger economic policy coordination in the euro area to support fiscal consolidation and economic growth. *In this context, Member States commit to engage in structured discussions on tax policy issues, notably to ensure the exchange of best practices, avoidance of harmful practices and proposals to fight against fraud and tax evasion.*

Developing a common corporate tax base could be a revenue neutral way forward to ensure consistency among national tax systems while respecting national tax strategies, and to contribute to fiscal sustainability and the competitiveness of European businesses.

The Commission has presented a legislative proposal on a common consolidated corporate tax base.





EU tax policy

- Second: German French letter – 18.08.2011
Finish the discussions of the CCCTB by the end of 2012
Announcing the DE FR convergence project – harmonised base and rate





EU tax policy

- Third: European Council conclusions 1./2.
March 2012
Points 9 and 21
Tackling tax fraud – concrete measures
Regular reporting on state of play: FTT, Energy Directive, CCCTB and Savings Directive
Starting June 2012





EU tax policy

- Fourth: Resolution by the EP – 19.4.2012

- 1. Welcomes the conclusions of the European Council meeting of 1 and 2 March calling on Member States, where appropriate, to review their tax systems with the aim of making them more effective and efficient, removing unjustified exemptions, broadening the tax base, shifting taxes away from labour, improving the efficiency of tax collection and tackling tax evasion, to rapidly intensify the fight against tax fraud and tax evasion, including in relation to third countries, and to report by June 2012;*
- 2. Calls on the Commission rapidly to address the issues raised by the review of the EU Savings Taxation Directive and to find a swift agreement with Switzerland and the Member States concerned;*
- 3. Highlights the need to generalise automatic information exchange and to extend the scope of the Savings Taxation Directive in order to effectively end banking secrecy;*
- 4. Reiterates the need to keep the focus on the key role that the **Common Consolidated Corporate Tax Base can play against tax fraud**;*
- 5. Considers that strengthening the regulation of, and transparency as regards, company registries and registers of trust is a prerequisite for dealing with tax avoidance;*



EU tax policy

- Fourth: Resolution by the EP – 19.4.2012

6. Welcomes the proposals made by the Commission on country-by-country reporting within the Accounting and Transparency Directives; **recalls that country-by-country reporting requirements for cross-border companies are essential for detecting corporate tax avoidance;**

7. Calls for a review of the Parent-Subsidiary Directive and the Interests and Royalties Directive in order to **eliminate evasion via hybrid financial instruments** in the EU;

8. Calls on the Commission to identify areas in which improvements to both EU legislation and administrative cooperation between Member States **can be implemented in order to reduce tax fraud;**

9. Calls on the Member States to ensure smooth cooperation and coordination between their tax systems in order to avoid unintended non-taxation and tax avoidance and fraud;

10. Calls on the Member States to allocate adequate resources to the national services that are empowered to combat tax fraud;





EU tax policy

Fourth: Draft resolution by the EP – 19.4.2012

11. *Calls on the Member States, in accordance with Article 65 of the TFEU, in close cooperation with the Commission and in liaison with the ECB, to take measures to prevent infringements of national law and regulations, in particular in the field of taxation; notes that this is of particular importance as regards Member States experiencing, or threatened with, serious difficulties with respect to their financial stability in the euro area;*
12. *Stresses the importance of implementing new and innovative strategies for combating VAT fraud across the EU;*
13. *Calls on the Member States to review bilateral agreements currently in force between Member States and bilateral agreements between Member States and third countries, insofar as they contribute to tax avoidance and complicate effective source taxation in certain Member States;*
14. ***Calls on the Commission to report on the possibility of EU coordination in changing bilateral agreements between Member States with a view to bringing them into line with the objectives of the European Council, thus making tax avoidance more difficult;***
15. *Recalls its request for increased transparency and tighter control to prevent the use of tax havens, **which are foreign non-cooperative jurisdictions characterised in particular by no or nominal taxes, a lack of effective exchange of information with foreign tax authorities and a lack of transparency in legislative, legal or administrative provisions,** or identified as such by the Organisation for Economic Cooperation and Development or the Financial Action Task Force;*
16. *Instructs its President to forward this resolution to the Council and the Commission.*





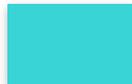
EU tax policy

Future EU tax policy:

What will be outcome of the policy line proposed by the EP?

In which direction will the Council and Member States go?

Any indication of priorities?



EU tax policy

- A) Mismatches*
- B) Patent boxes*
- C) Transparency*
- D) Inbound/Outbound Dividends*
- E) Double non-taxation consultation – schemes*
- F) Anti-avoidance rules*



Anti-abuse rules CCCTB GAAR

Artificial transactions carried out for the sole purpose of avoiding taxation shall be ignored for the purposes of calculating the tax base.

The first paragraph shall not apply to genuine commercial activities where the taxpayer is able to choose between two or more possible transactions which have the same commercial result but which produce different taxable amounts.



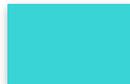


Anti-abuse rules CCCTB GAAR – Presidency proposal

A transaction or series of transactions carried out for the sole or main purpose of avoiding taxation shall be ignored for the purposes of calculating the tax base.

The first paragraph shall not apply to genuine commercial activities carried out for valid commercial reasons.

Where the first paragraph applies, the tax base shall be calculated in accordance with the economic substance of the transactions involved in accordance with Chapter IV of this directive.

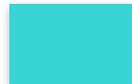


GAAR - purpose

What is the purpose of a GAAR:

SE – Security net or

*UK – revenue generating tax provision –
example company loan*



GAAR - problems

Impact on Treaty freedoms when there is an implicit solely cross-border structure tackled

Has a GAAR always to treat domestic and cross-border cases in the same manner? Or EU Member States and third countries [EEA countries]?

CCCTB Directive is a "shall" Directive, Interest and Royalty Directive and Parent-Subsidiary Directive are "may" Directives.

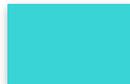




Subject to tax questions - GAAR – problem?

Interest and Royalty Directive Recast Commission Proposal Article 1 (1)

*1. Interest or royalty payments arising in a Member State shall be exempt from any taxes imposed on those payments in that Member State, whether by deduction at source or by assessment, provided that the beneficial owner of the interest or royalties is a company of another Member State or a permanent establishment situated in another Member State of a company of a Member State and **is effectively subject to tax on the income deriving from those payments in that other Member State.***





Subject to tax questions - GAAR – problem?

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Example – a typical tax planning scheme

PPL financing

- Group company A in MS II grants a Profit Participating Loan (PPL) to group company B in MS I.
- Group company B uses the funds received from the PPL to grant a loan to company P in MS III.
- The profits of company A are distributed as dividends to company P in the following year.
- Companies A and B are both subsidiaries of company P.
- The PPL is a loan arrangement with specific features which is for tax purposes in MS II considered as equity and in MS I as debt.

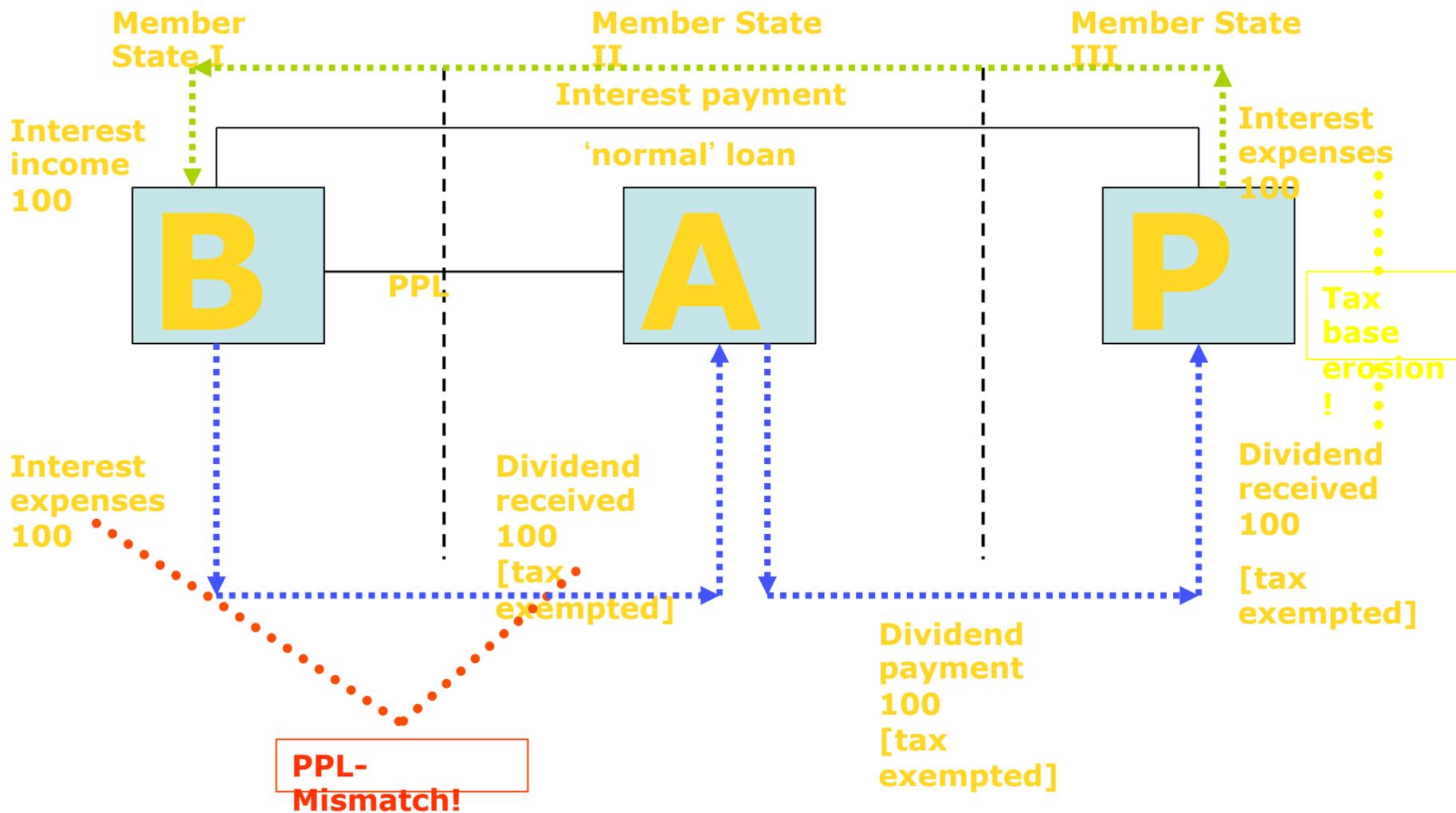


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Example – a typical tax planning scheme

Group company A realises a tax exempted profit of 100 (due to the exemption of dividends received)!

Group company B realises a taxable profit of 0 (100 interest income are matched with 100 interest expenses)!

Parent company P has tax deductible interest expenses of 100 in one year and receives a tax exempted dividend of 100 in another year.

The transfer of funds from P to A, from A to B and then back to P results in a tax deductible expense of 100 in MS III in one year and tax free income of 100 in the subsequent year. The tax base of MS III is reduced by 100.





Example – a typical tax planning scheme

Can a GAAR in MS III tackle this?

If yes, what is needed – transparency

If no, coordinated measures by Member States necessary!

Coordinated measures on base or on minimum rates as well as required by EP?

Coordinated measures on taxation principles (example Swiss Dutch sandwich)?

Mutual recognition on hybrid entities or financing?

What to do with the rest of the world?





Questions?

Comments?

Thank you for your attention!

