Resources

As a member of the RSM US Alliance, we would like to share the following with you:

Global mergers & acquisitions webcast series- M&A issues across Europe

An independently owned member
RSM US Alliance
RSM

LOCALLY OWNED. NATIONALLY AFFILIATED. GLOBALLY CONNECTED.

BST & Co. LLP. is a proud member of the RSM US Alliance, a premier affiliation of independent accounting and consulting firms in the United States. RSM US Alliance provides our firm with access to resources of RSM US LLP, the leading provider of audit, tax and consulting services focused on the middle market. RSM US LLP is a licensed CPA firm and the U.S. member of RSM International, a global network of independent audit, tax and consulting firms with more than 43,000 people in over 120 countries.

Our membership in RSM US Alliance has elevated our capabilities in the marketplace, helping to differentiate our firm from the competition while allowing us to maintain our independence and entrepreneurial culture. We have access to a valuable peer network of like-sized firms as well as a broad range of tools, expertise and technical resources.

CONTACT BST & Co.
518.459.6700

ALBANY
26 Computer Drive West
Albany, NY 12205

NEW YORK
250 Park Avemue, 7th Floor
Suite 7094
New York, NY 10177

GARDEN CITY
1225 Franklin Avenue
Suite 325
Garden City, NY 11530

RSM

GLOBAL MERGERS & ACQUISITIONS WEBCAST SERIES

M&A issues across Europe

Feb. 24, 2022

Agenda

- European transaction activity update
- Base erosion and profit shifting (BEPS) & other EU developments
- Anti-tax avoidance directive III (ATAD3)
- How the international tax landscape changes the transaction structuring

Intro and welcome

Mitch Siegel

Partner – International Tax
RSM US, NYC office
Mitch.Siegel@rsmus.com

Christopher Knipp

Partner – International Tax
RSM Germany, Düsseldorf office
Christopher.Knipp@rsm.de

Frederik Bos

Manager – International / M&A Tax
RSM Netherlands, Amsterdam office
FBos@rsmnl.nl

EUROPEAN TRANSACTION ACTIVITY UPDATE

A spotlight on European M&A trends in 2021…

- M&A activity in Europe is quite robust → the number of transactions hit an all-time high in 2021
- Some of the drivers behind enhanced M&A activity:
  - Plentiful supply of cash for both Corporate and PE investors
  - Digital technology opportunities
- The COVID-19 pandemic has only accelerated this process
- There is a pressing need for transformation - many corporates had no choice but to begin that journey during the pandemic
- However, plenty of uncertainty and downside risk remains

Note: Information and data taken from Datasite/Mergermarket report „Deal Drivers: EMEA 2022 Outlook“.

RSM

…and what to expect during 2022

- Activity is unlikely to slow down in 2022!
- What are the main drivers?
  - Strong economic outlook
  - Distressed acquisitions and divestments
  - TMT (technology, media and telecommunication) on every company's radar
  - The ESG (environmental, social, and governance) agenda
  - Plenty of capital is still waiting to be deployed

Note: Information and data taken from Datasite/Mergermarket report „Deal Drivers: EMEA 2022 Outlook“.

. . . and what do we see from a tax due diligence and structuring standpoint?

- Changes in due diligence scope
  - Inquiries relating to COVID-19 benefits/aids/subsidies and its financial and tax impact
  - Focus on tax loss carry forwards and their value for the buyer
  - Inquiries around DAC 6 (EU mandatory disclosure regime)
  - The analysis of certain structures is more complex (for example, the ATAD 2 anti-hybrid regulations need to be considered)
  - Transfer pricing remains key area of focus
- Structuring
  - If holding companies are utilized, substance is extremely important
  - Debt limitations around the world need to be carefully navigated
  - The impact of some of the provisions above needs to be analyzed

BASE EROSION AND PROFIT SHIFTING (BEPS) & OTHER EU DEVELOPMENTS

European Union Initiatives

- EU Pillar 1 directive and EU Pillar 2 directive
  - Expected to enter into force in 2023
- ATAD 3 – Abusive use of shell companies
  - Expected to enter into force in 2024
  - ATAD3 quick scan recommended to perform this year to determine impact

Other EU initiatives

- DEBRA – Debt Equity Bias Reduction Allowance (proposal expected Q1 2022) – same treatment equity and debt
- Coordinated treatment of cross-border loss relief within the EU and recommendation on the domestic treatment of losses
- BEFIT – Business in Europe: Framework for income taxation (expected to enter into force in 2023)
- Digital levy (‘independent’ and ‘co-exist’ with Pillar 1) (proposal Q3 2021)
- Transparency rules on taxes paid by large companies (‘using the methodology of Pillar 2’) (proposal 2022)
- Adjust EU Interest & Royalty Directive – subject to tax requirement

RSM

EU plan: Pillar 1 (P1) and Pillar 2 (P2) directives

- Organization for Economic Co-operation and Development (OECD) P1 and P2 (as of Jan. 1, 2023)
  - OECD reform of the global international corporate tax framework to address the issues linked to the increasing globalization and digitalization of the economy.
  - On Oct. 8, 2021, over 135 countries (representing more than 95% of global GDP), joined a two-pillar solution to reform the international taxation rules and ensure that multinational enterprises pay a fair share of tax, wherever they operate and generate profits, in today’s digitalized and globalized world economy.
  - Besides OECD P1 and P2 initiatives, the EU will also publish mandatory P1 and P2 directives for implementation in the EU.
- EU P1 – as of Jan. 1, 2023
  - Applies to multinationals with global consolidated turnover exceeding EUR 20 billion. Scope may be broadened in the future by decreasing turnover threshold to EUR 10 billion.
  - Partial re-allocation of the taxable base from a corporate income tax (CIT) perspective.
  - Until now, company only pays taxes in country if they have presence via e.g., a legal entity or a branch.
  - However, under P1, multinationals need to also pay CIT in countries where they provide services and products, even without having a physical presence in those countries (e.g., an entity, permanent establishment, branch).

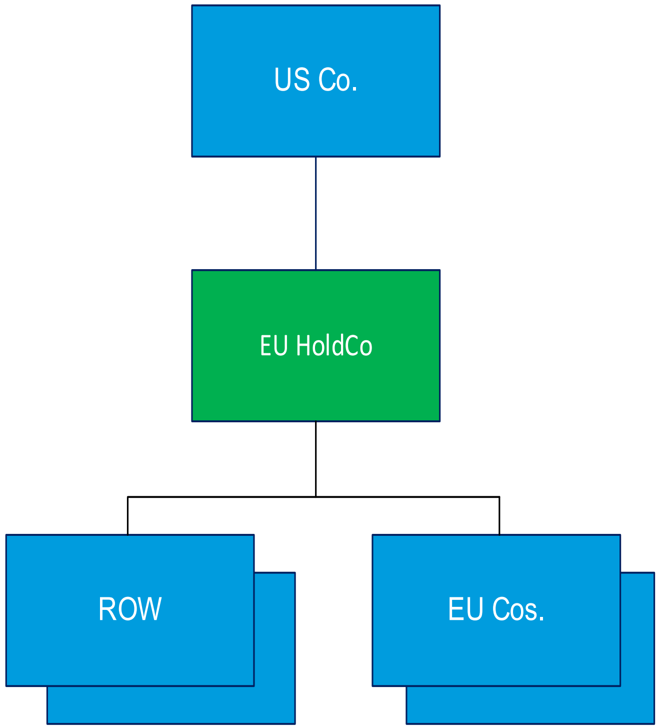
EU plan: Pillar 1 and Pillar 2 directives

- EU Pillar 2 – as of Jan. 1, 2023
  - Applies to multinationals with global consolidated turnover of at least EUR 750 million; lower threshold may be applied at the discretion of implementing countries
  - Seeks to put a floor on tax competition between countries on CIT rates, through the introduction of a global minimum CIT rate of 15%
  - A top-up tax may apply if the 15% rate is not met
  - U.S. global intangible low-taxed income (GILTI) provisions may not be in accordance with the P2 guidance
- Potential impact of these directives – why they're relevant to you
  - Significant impact to national and international tax landscape
  - Increased compliance/advisory costs
  - Increased cost of capital, is expected to have impact to investment decisions
  - Multinationals may need to restructure and/or revise their transfer pricing methodology since the international tax landscape will change (including the TP methodology)

ANTI-TAX AVOIDANCE DIRECTIVE III (ATAD3)

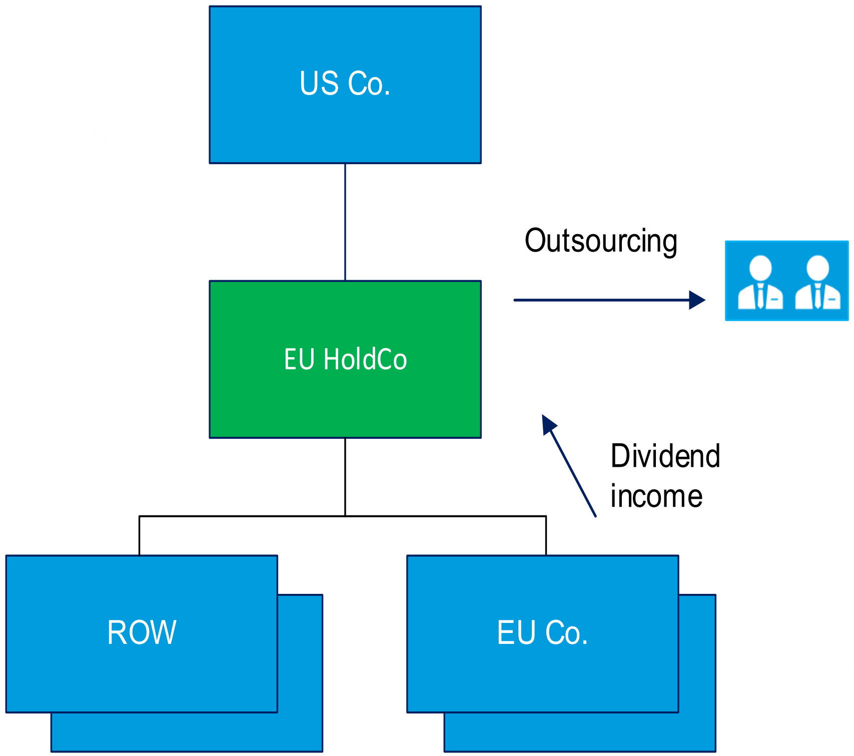
ATAD3: Summary

- What: focus on shell companies (e.g., companies with no or minimum substance)
- Who: companies within EU, meeting gateways.
  - Specifically risk for EU holding companies & joint venture companies
- When: as of Jan. 1, 2024
  - ATAD3 quick scan recommended this year to determine impact and restructure (if required)
- Which income: Dividends, royalties, interest, lease, (im-)movable property, outsourcing
- Substance: Premises + bank account within EU + resident director / majority resident FTEs
- How: reporting obligation activities and substance status. Info will be exchanged within the EU
- Tax consequences: Deny tax (treaty) benefits, double taxation, income inclusion
- Exemptions: Yes, for example five FTE involved, no tax advantage, counterevidence, etc.



Example EU structures with potential ATAD3 risk

Gateways



Conclusion: ATAD3 Gateways met, ATAD3 applies

Gateway 1: relevant income

More than 75% of the revenue accruing to the undertaking in the preceding two tax years is relevant income (e.g., dividends, interest)

Or

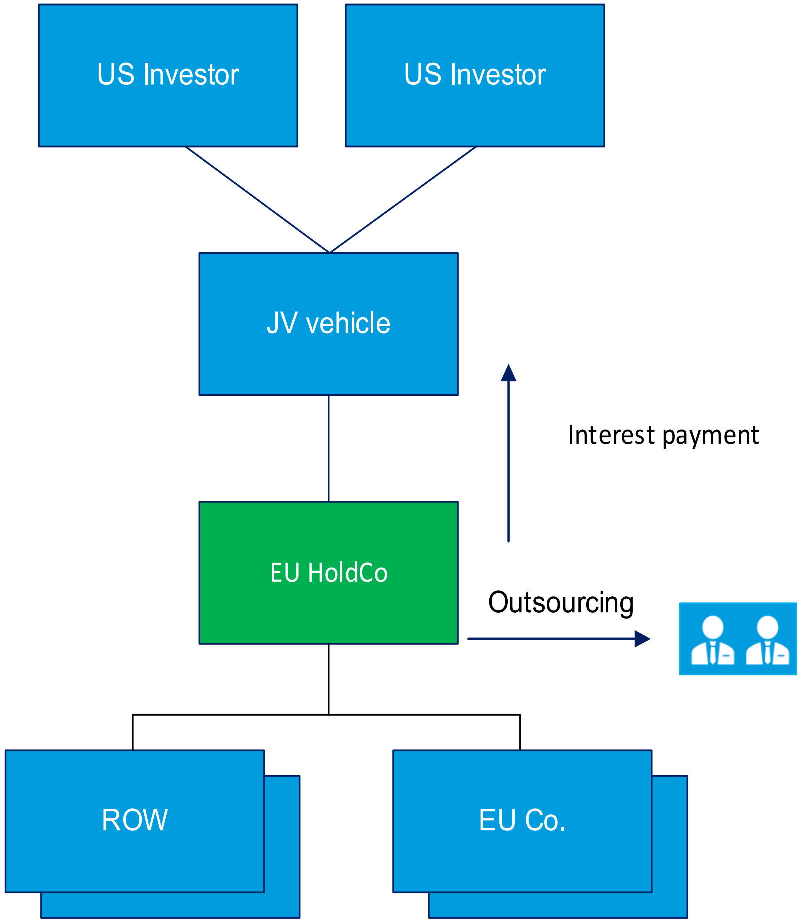
More than 75% of the total book value of the undertaking consists of shares

Gateway 2: cross border

At least 60% of the relevant income (dividend) is earned or paid out via cross-border transactions

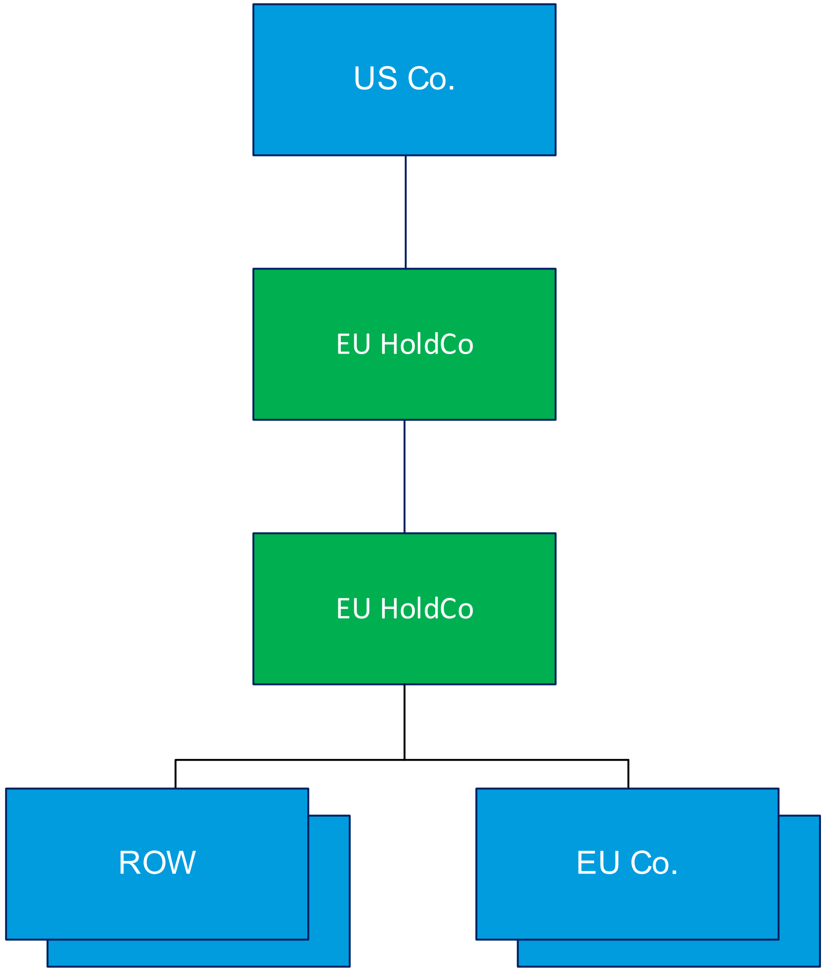
Gateway 3: outsourcing

In the preceding two years the undertaking outsourced the administration of day-to-day operations and the decision-making on significant functions.



Adverse tax consequences

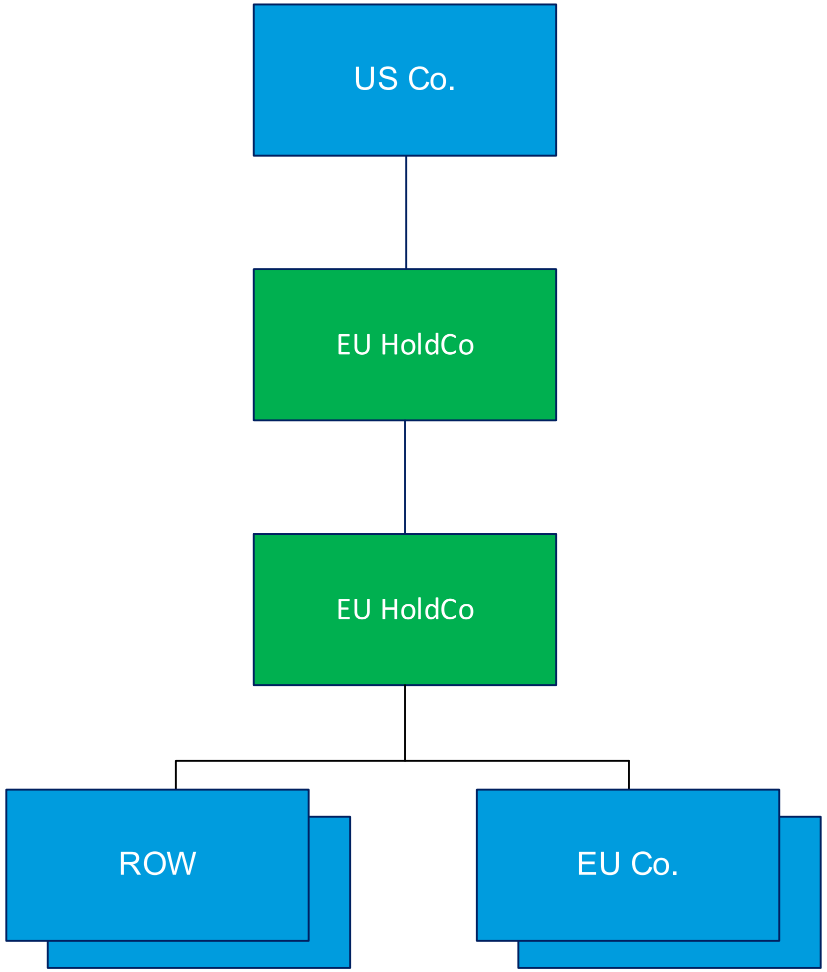
- Following tax consequences may apply:
  - Tax treaties and EU directives that provide for the elimination of double taxation may not apply anymore
  - The relevant income may be included in the taxable income of the EU shareholder
  - Member state may be obligated to impose withholding taxes on qualifying payments
  - Income from immovable property may be subject to tax as if the EU shareholder would own this directly
  - The member state has the option not to provide a certificate of residence anymore, or to provide a certificate with a warning statement
- Penalties of at least 5% of turnover for improper reporting
- Exchange of information requirements



Solutions

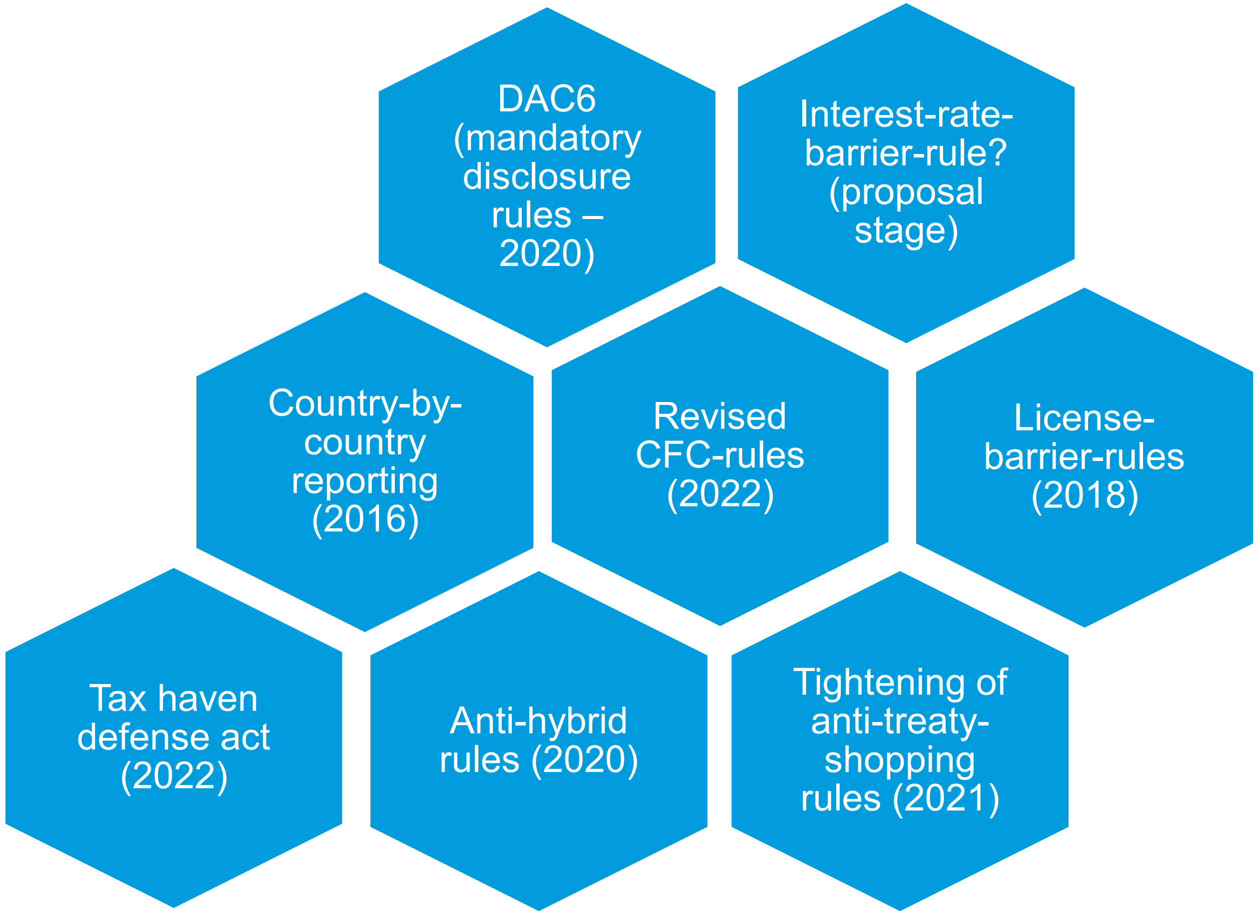
- Not meeting gateways > not in ATAD3 scope
  - Relevant income + cross border + outsourcing
- Meet substance requirements > no adverse tax consequences
  - Premises + bank account within EU + resident director/majority resident FTEs
- If gateways are passed, several exceptions (i.e., no reporting obligation)
  - Beneficial owner exception
  - Shareholder exception
  - FTE exception: at least five own full-time employees or members of staff, exclusively carrying out activities generating relevant income
- Advantage Exemption > no reporting obligation
  - If interposition has no actual advantage on the overall tax position of the undertaking's group, or of the beneficial owner(s)
  - Comparison tax due between situation (1) with interposition, and (2) without interposition

Takeaway
Perform ATAD3 assessment ASAP to verify tax impact on your structure

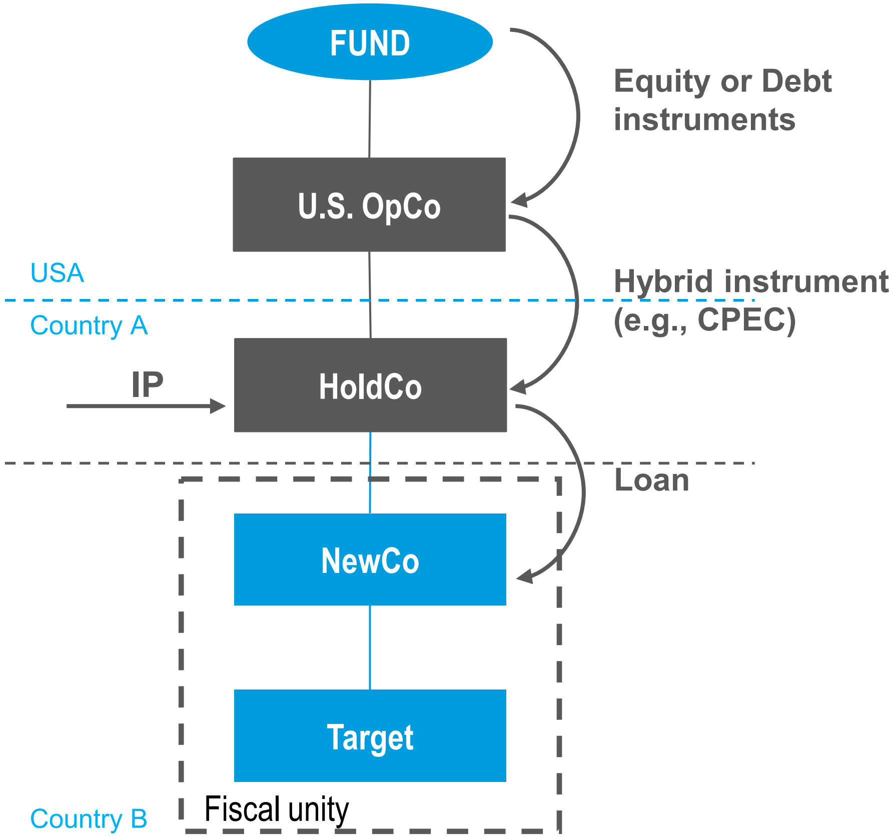


HOW THE INTERNATIONAL TAX LANDSCAPE CHANGES THE TRANSACTION STRUCTURING

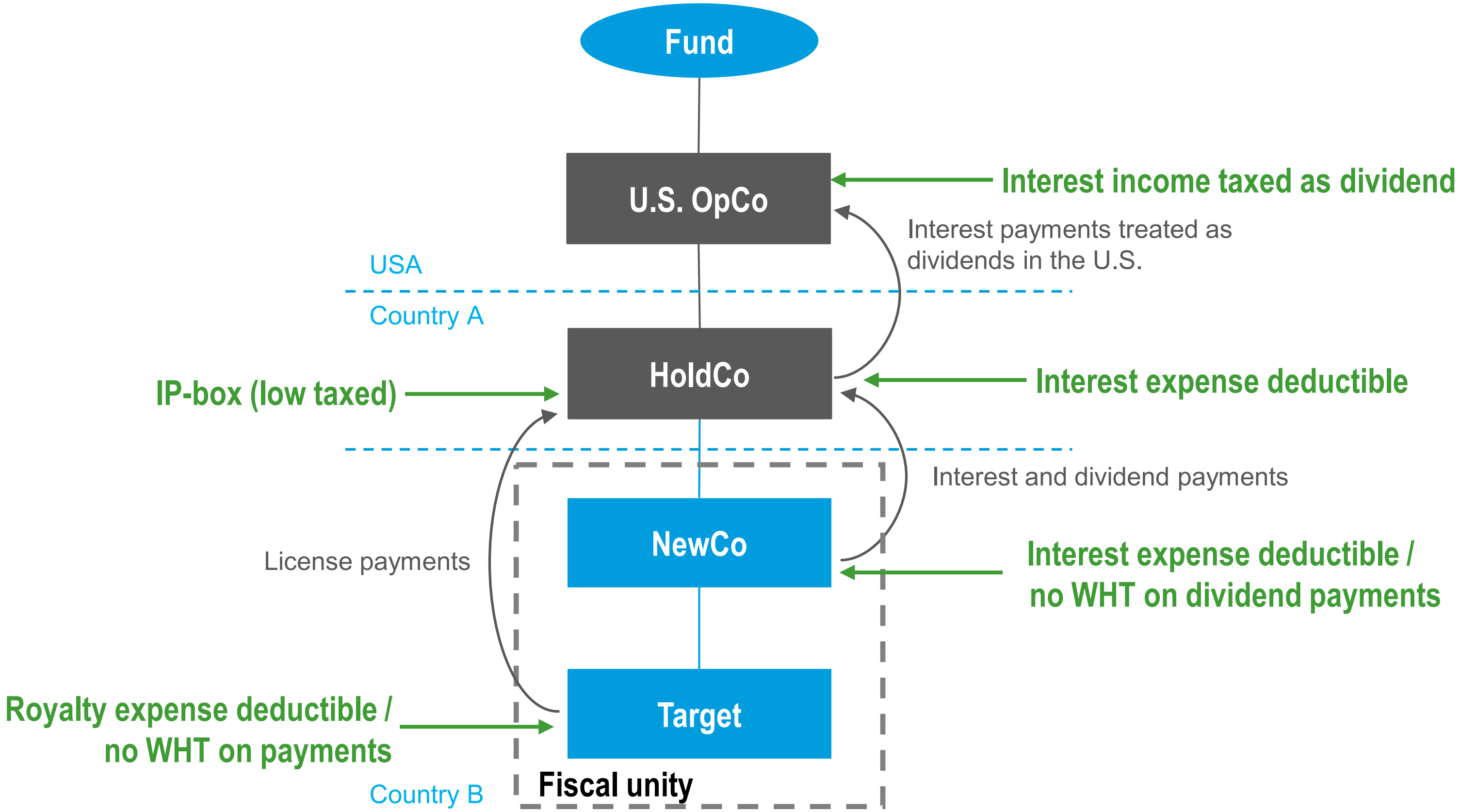
Example: Snapshot on German tax law changes impacting international structuring



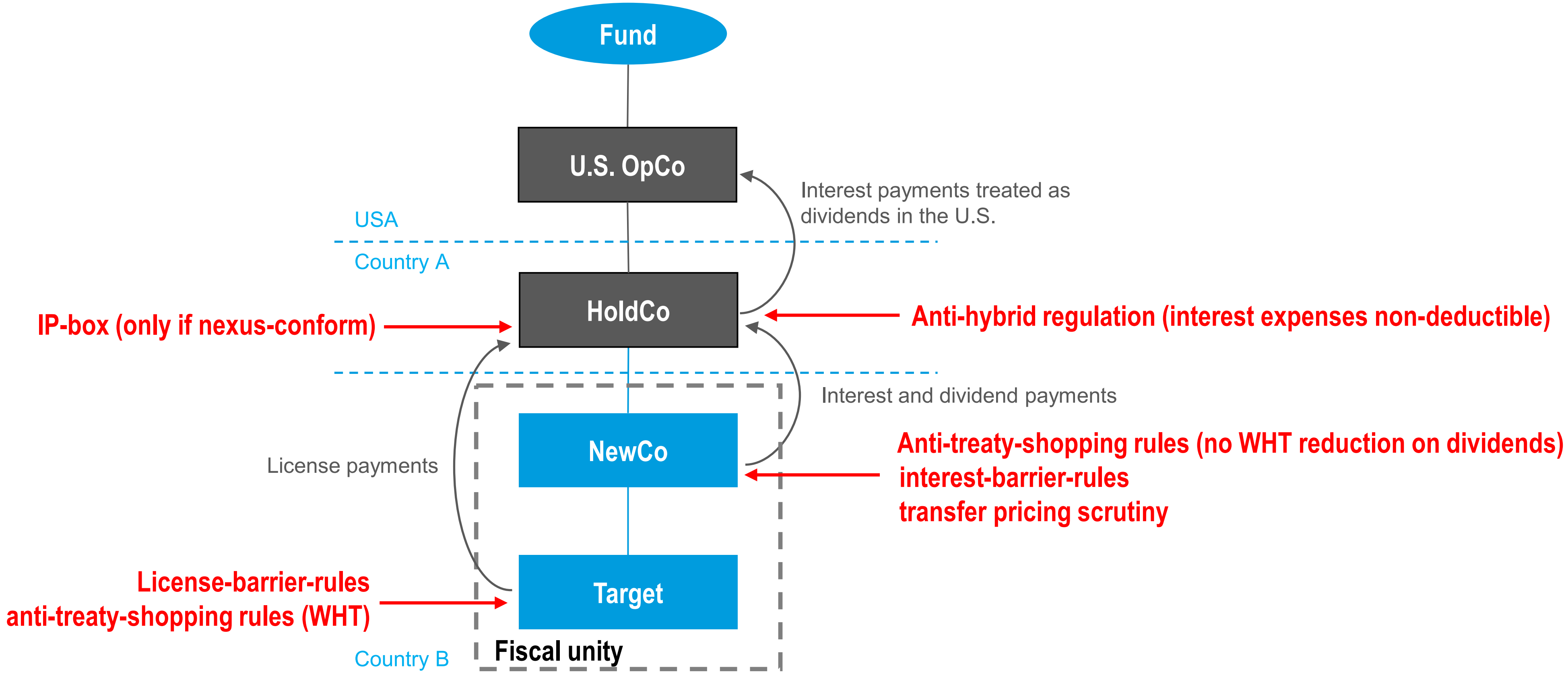
Which structures worked in the past?



What was the benefit?

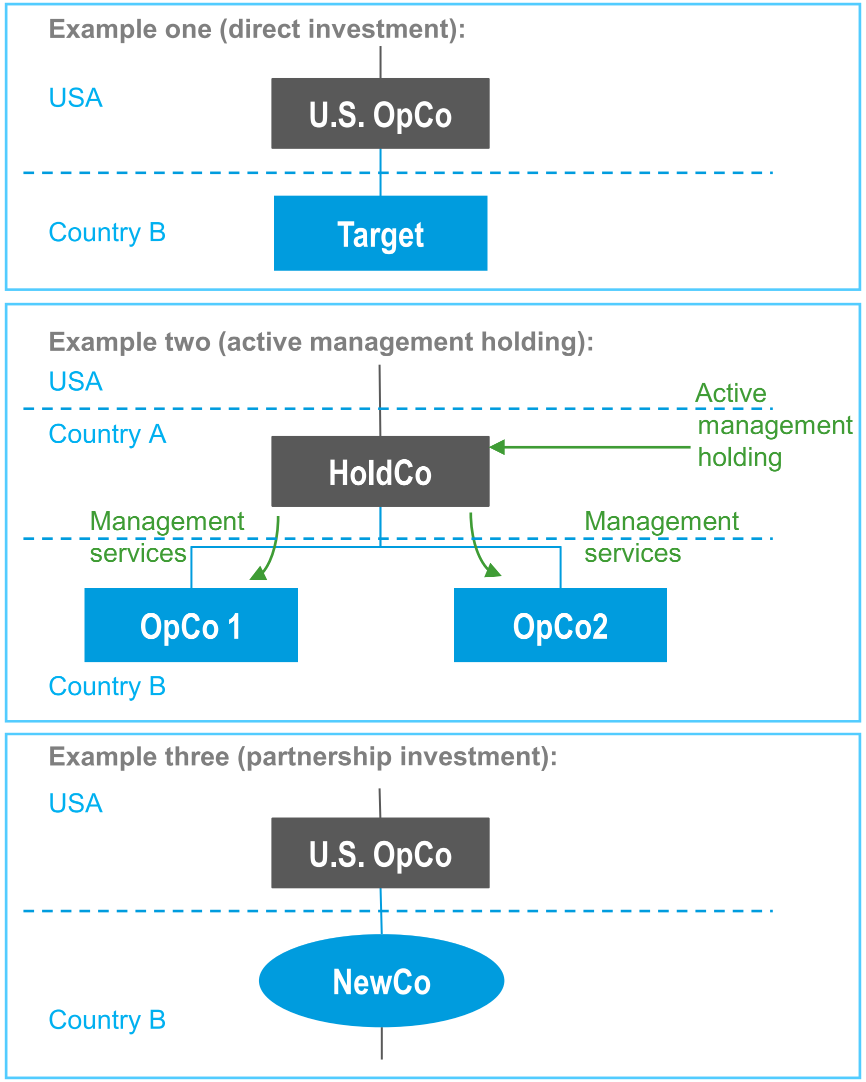


What are the issues now?



What can we do now?

- Avoid artificial structures that lack substance
- Align income stream with functions and risks and appropriate documentation (transfer pricing)
- Think of direct investment rather than using (low-substance) holding companies (example one)
- If the holding company isn't conducting the trade, the HoldCo needs to conduct active management activities (example two)
- Think of alternatives to corporate structures (e.g., using partnerships to avoid WHT issues on dividends – example three)
- Avoid financial instruments with hybrid character
- If using IP-Box jurisdictions equip entity with personnel to carry out R&D activities or oversight functions
- Document that a tax advantage is not the main purpose for interposing entities into the structure
- Remember: Every investment is unique and requires adaption to the actual facts and circumstances



QUESTIONS AND ANSWERS

THANK YOU FOR YOUR TIME AND ATTENTION

RSM US LLP

30 S Wacker Dr.,
Chicago, IL 60606

+1 800 274 3978
rsmus.com