International Tax ERFA Group Meeting
11. maj 2016

International Tax Planning

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Agenda

- General remarks on International Tax Planning
- Analysis of International Tax Planning Models and Indicators
- Tax Strategy

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International Tax Planning

- What is international tax planning?
  - *"International tax planning is a multifaced discipline and may be defined as the lawful structuring (through the legally acceptable use of domestic tax law and tax treaties) of cross-border investments or activities with the objective of optimizing the overall tax burden and maximizing net income."*
  - *See Hoor & Bock in Tax Notes International 2013, p. 913.*
- Includes optimization of effective tax rate (ETR) and mitigation of risks and uncertainty.
- What is agressive international tax planning?
  - *"Taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing tax liability."*
  - *See Commission Reccomendation of 6.12. 2012 on Agressive Tax Planning.*

International Tax Planning

- Nothing wrong in carrying out tax planning
  - Avoid double taxation
  - Direct opportunities in existing tax legislation (e.g. depriciations)
  - Succession on business transactions
  - Effective Tax Rate in competition

- This presentation excludes tax evasion and illegal tax avoidance (this is not ATP)

International Tax Planning

- Which techniques are generally used internationally?
  - Guarding against different position form authority side:
    - Tax clauses in agreements, binding rulings, APAs etc.
  - General overview:
    - Corporate structures, holding companies etc.
    - Avoidance of withholding taxes
    - Double tax relief
    - Tax effective supply tax chain management
    - Placement of production, sales and services
    - Migration and lolocation of companies, including head quarters
    - Transfer pricing
    - Financing structures and financing terms
    - Mobile income
    - Treaty shopping
    - Hybrid entities
    - Hybrid financial instruments
    - Loss utilization, including tax consolidation
    - Double dips
    - Leasing
    - IP tax planning

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The Models - ATP Structures

- Model ATP structures serve as a means of identifying a set of ATP indicators against which the risk exposure of tax systems can be tested.

- OECD Models:
  - A hybrid financing structure
  - A one-tiered IP and cost contribution arrangement
  - A two-tiered IP structure with a cost contribution-arrangement

- Four additional ATP structures:
  1. An offshore loan structure
  2. A hybrid entity ATP structure
  3. An interest free loan
  4. A patent box ATP structure

The Models - ATP Structures

1 Offshore loan

2 Hybrid financing

3 Hybrid entity

4 Interest free loan

IP models

5 Patent box

6 Two-tiered IP

7 IP and CCA

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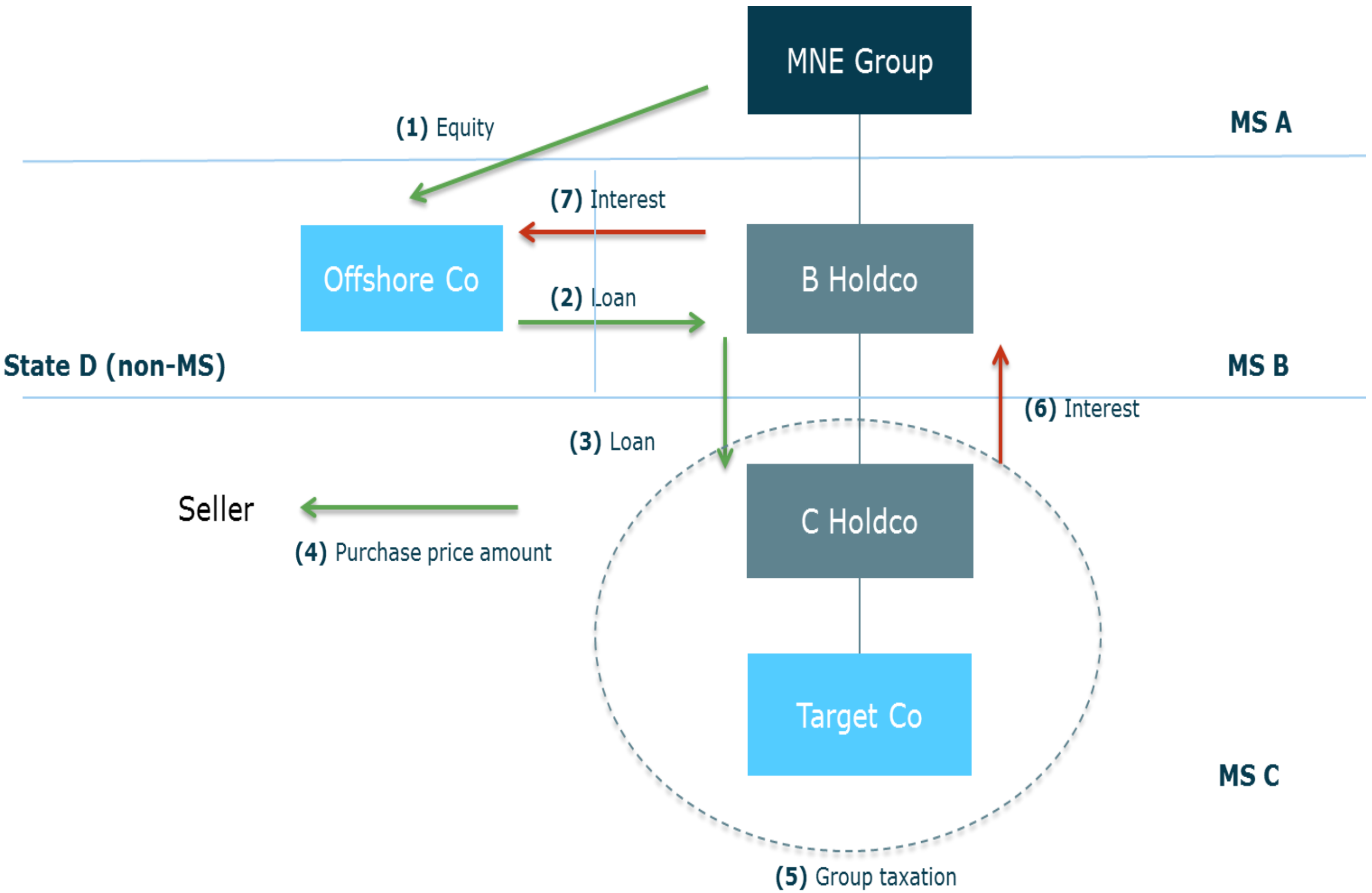
Model 1 – Offshore Loan



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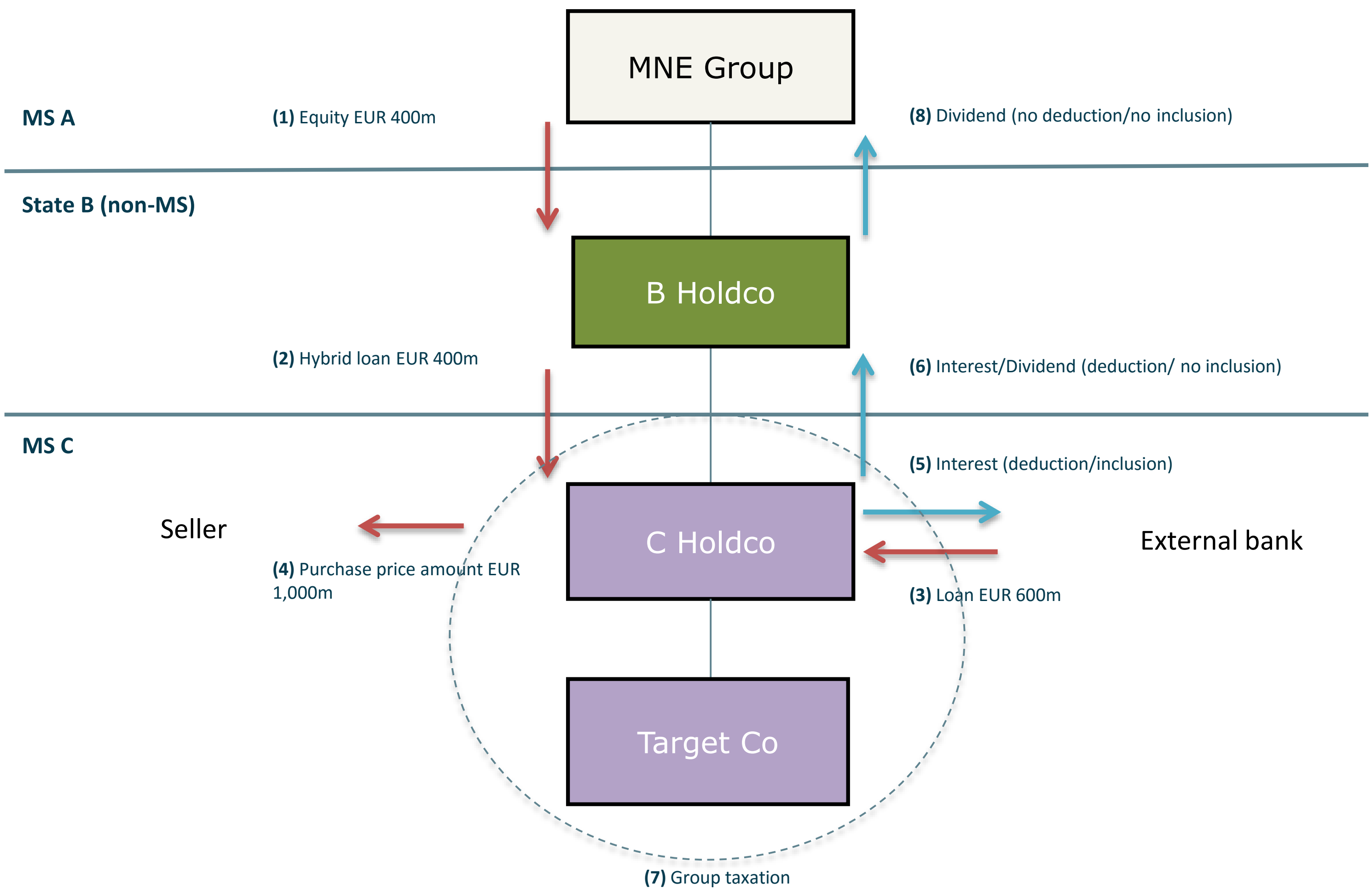
Model 1 - Indicators

MS A	MS B	MS C	State D
No taxation of dividends received. No CFC Rules.	Tax deduction for interest costs. Tax deduction does not depend on the tax treatment in the creditor's state. No thin cap/interest limitation-rules. No withholding tax on interest payments. Unilateral ruling on interest spread. No general or specific anti-avoidance rules to counter the structure.	Tax deduction for interest costs. No thin cap/interest limitation-rules. No withholding tax on interest payments. No beneficial owner-test for reduction of withholding tax. Group taxation with acquisition holding company allowed. No general or specific anti-avoidance rules to counter the structure.	No withholding tax on dividends paid. Absence of corporate income taxation.

Model 2 – Hybrid Financing



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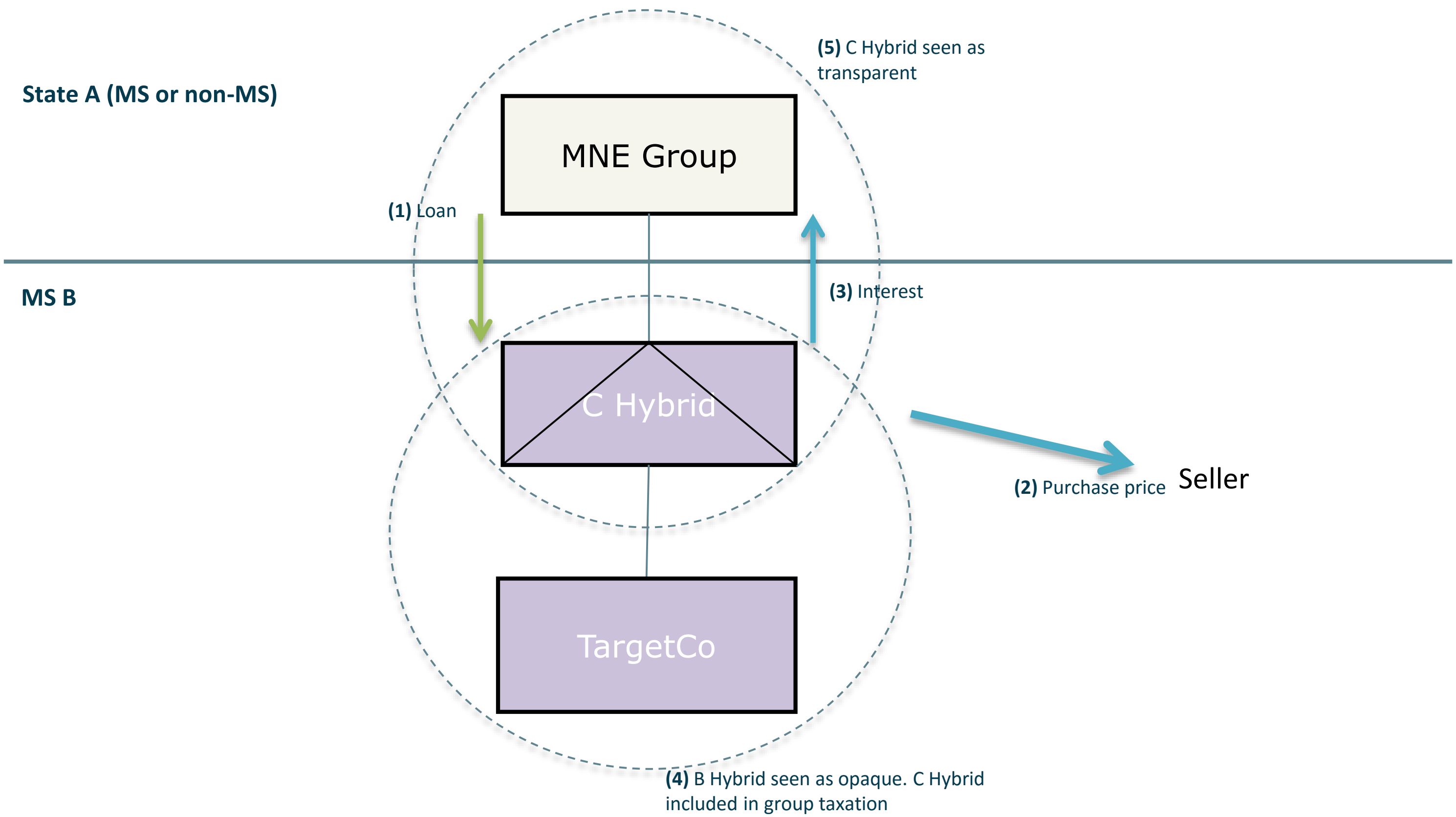
Model 2 –Indicators

State A	State B	State C
• No taxation of dividends received. • No CFC Rules.	• No withholding tax on dividends paid. • Income from certain hybrid instruments can be treated as tax free dividend or similar. • No taxation of dividends received regardless of deduction by the distributing company (hybrid loan).	• Tax deduction for interest costs. • Tax deduction does not depend on the tax treatment in the creditor's state. • No interest limitation-rules. • No withholding tax on interest payments. • No effective beneficial owner-test for reduction of withholding tax. • Group taxation with acquisition holding company allowed. • No general or specific anti-avoidance rules to counter the model ATP structures.

Model 3 – Hybrid Entity



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Model 3 –Indicators

State A	State B
• No rule to counter a qualification mismatch of entities. • No general or specific anti-avoidance rules to counter the model ATP structures.	• Tax deduction for interest costs. • Tax deduction does not depend on the tax treatment in the creditor's state. • No interest limitation-rules. • No withholding tax on interest payments. • Group taxation with acquisition holding company allowed. • Tax qualification of foreign partnership does not follow that of the foreign state. • No rule to counter a qualification mismatch of entities. • No general or specific anti-avoidance rules to counter the model ATP structures.

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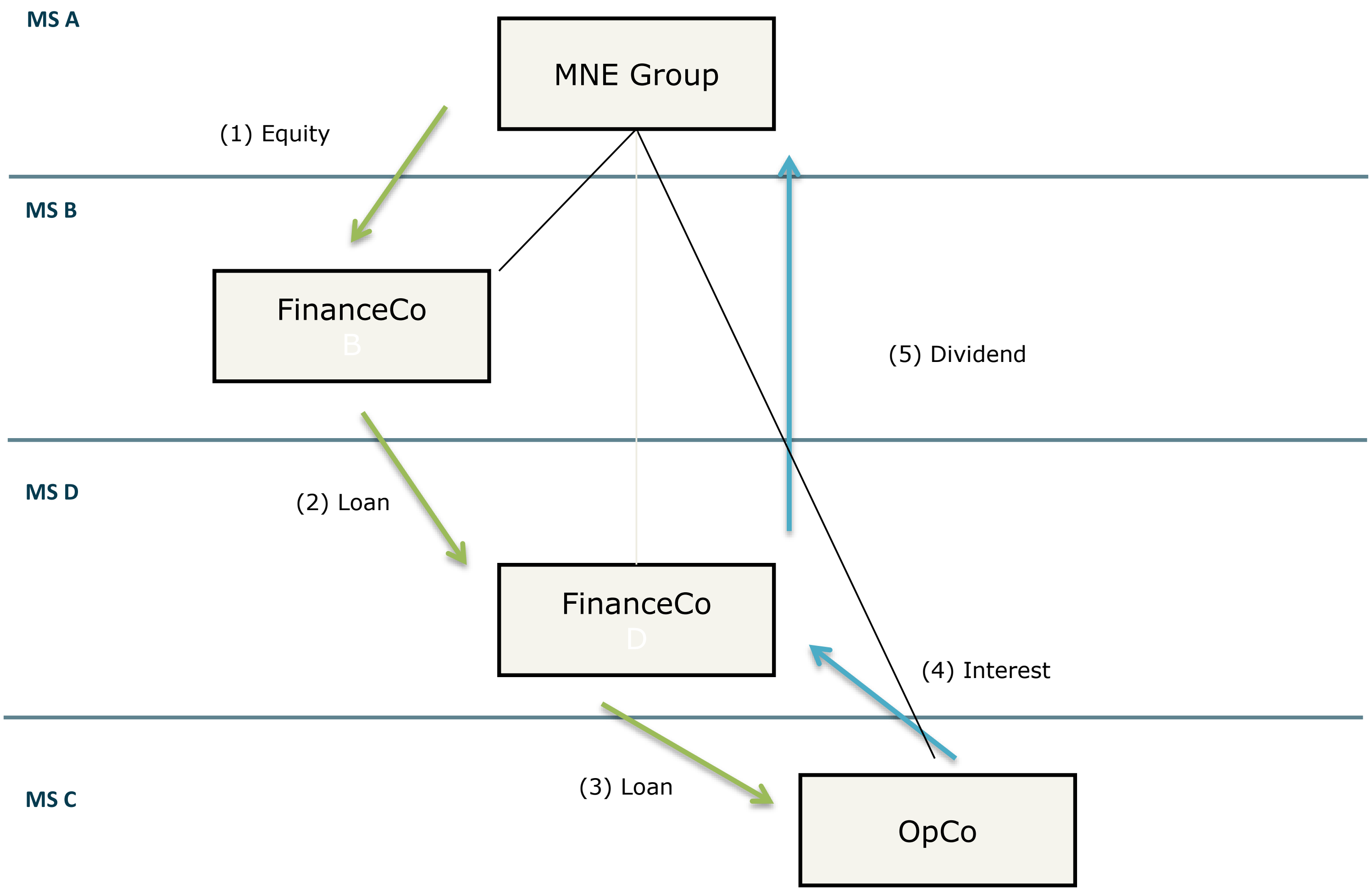
Model 4 – Interest-free Loan



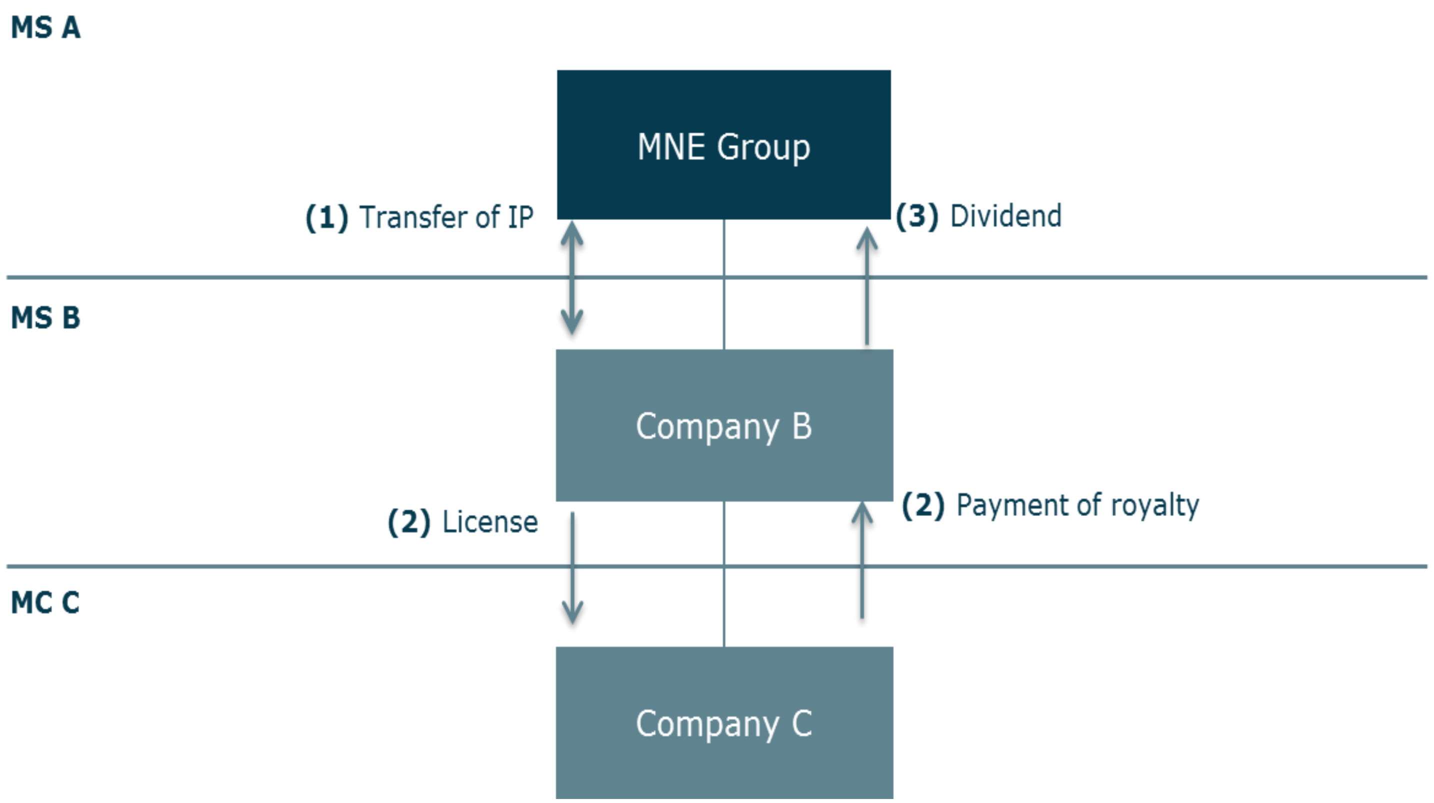
Model 4 –Indicators

State A	State B	State C	State D
• No taxation of dividends received. • No CFC-rules. • No general or specific anti-avoidance rules to counter the model ATP structures.	• No deemed income from interest-free loan (non-arm's length-transactions.	• No withholding tax on dividends paid. • Tax deduction for interest costs. • Interest deduction allowed for deemed interest costs on interest-free debt. • No taxation of benefit from interest-free debt. • No interest limitation-rules. • No withholding tax on interest payments. • No general or specific anti-avoidance rules to counter the model ATP structures.	• No withholding tax on dividends paid. • Tax deduction for interest costs. • No interest limitation-rules. • No withholding tax on interest payments. • No effective beneficial owner-test for reduction of withholding tax. • No general or specific anti-avoidance rules to counter the model ATP structures.

International IP Tax Planning

- What is IP
  - The notion of intangibles
  - The notion of royalties
- IP Tax Planning in its simplest form
  - Timing:
    - In the start up phase
    - Development of IP
    - Migration of existing IP rights
  - Long term assets v. direct costing
  - Tax and other incentives
  - A tax-friendly structure (model)
    - Low taxation of income (Patent boxes)
    - CFC and other parent-issues?

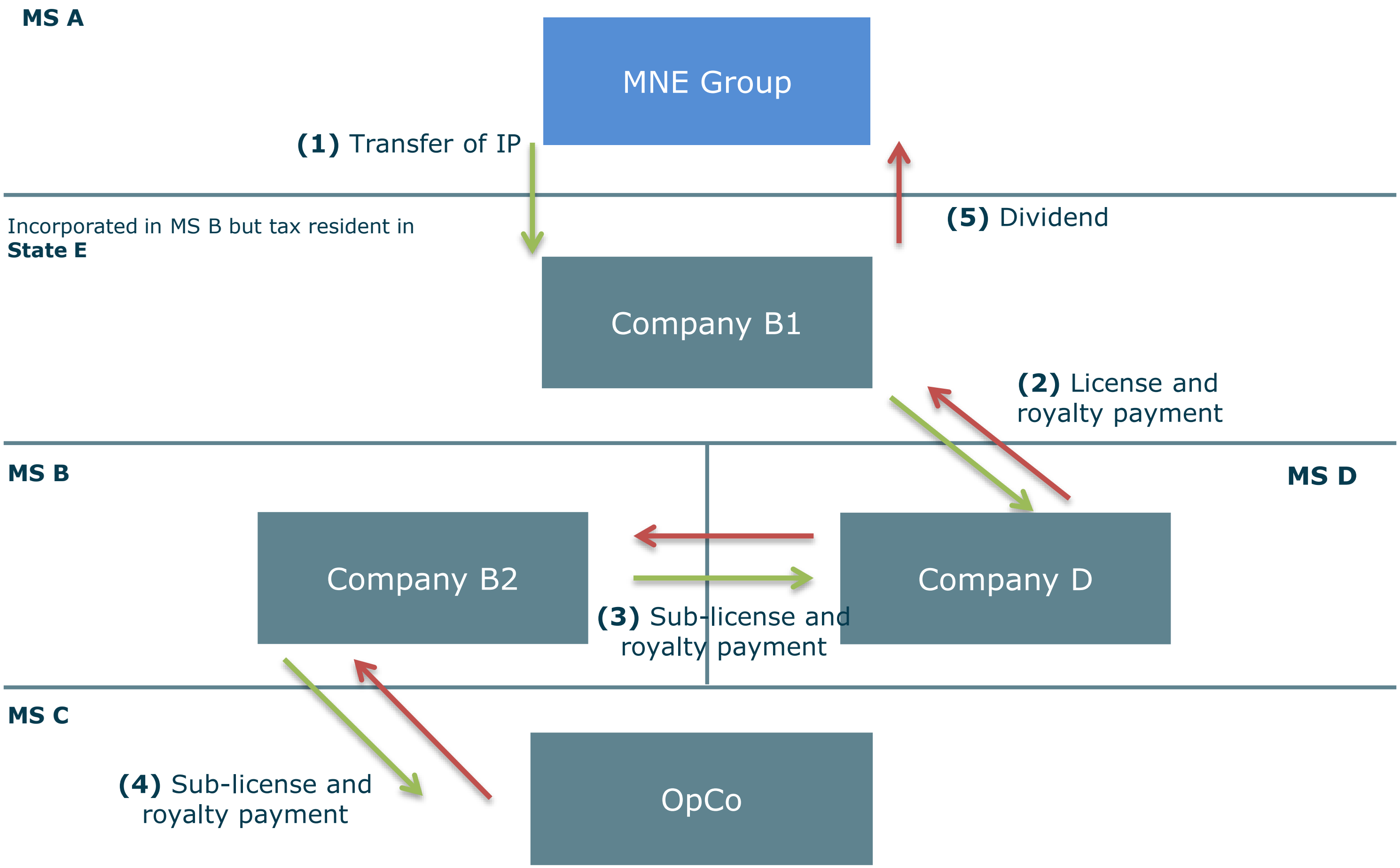
Model 5 – Patent Box Structure



Model 5 – Indicators

State A	State B	State C
• No taxation of dividends received. • No or low taxation of capital gain (fair market value) upon disposal of IP. • No CFC-Rules.	• No withholding tax on dividends paid. • Patent box or other preferential tax treatment of income from IP.	• Tax deduction for royalty costs. • No withholding tax on royalty payments. • No effective beneficial owner-test for reduction of withholding tax. • No general or specific anti-avoidance rules to counter the model ATP structures.

Model 6 – Two-Tiered Structure



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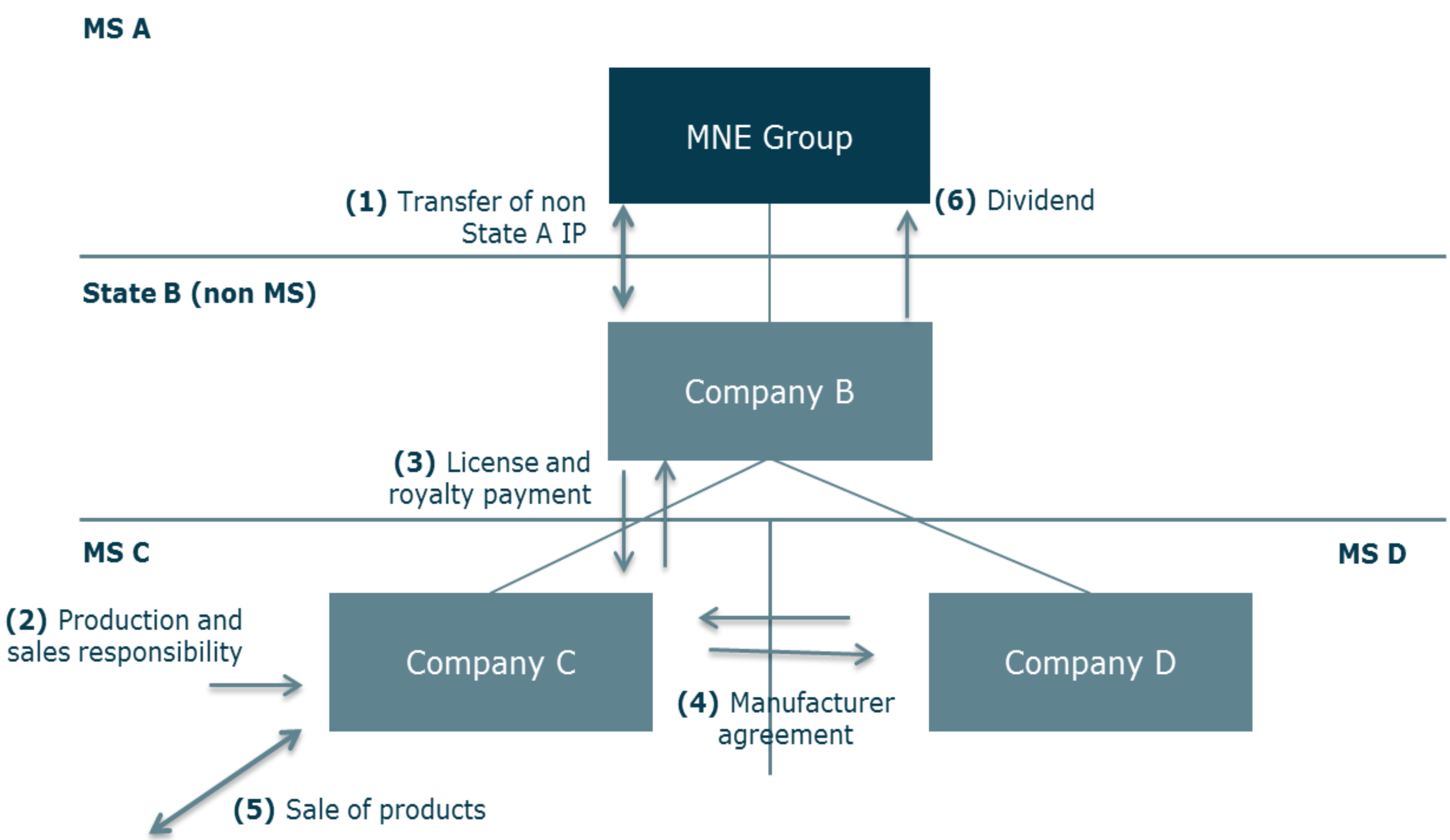
Model 6 –Indicators

State A	State B	State C	State D	State E
• No taxation of dividends received. • No or low taxation of capital gain (fair market value) upon disposal of IP. • No CFC-Rules.	• No withholding tax on dividends paid. • Tax deduction for royalty costs. • No withholding tax on royalty payments. • No effective beneficial owner-test for reduction of withholding tax. • Locally incorporated company not tax resident if management/control is situated in another state. • Excess profits are tax exempt (ruling can be obtained).	• Tax deduction for royalty costs. • No withholding tax on royalty payments. • No effective beneficial owner-test for reduction of withholding tax. • No general or specific anti-avoidance rules to counter the model ATP structures.	• Tax deduction for royalty costs. • No withholdin g tax on royalty payments. • Excess profits are tax exempt (ruling can be obtained).	• No taxation of dividends received.

Model 7 – IP and Cost Contribution Agreement



Model 7 –Indicators

State A	State B	State C
• No taxation of dividends received. • No or low taxation of capital gain (fair market value) upon disposal of IP. • R&D tax incentive obtainable also for costs that are reimbursed. • No CFC-Rules.	• No withholding tax on dividends paid. • Patent box or other preferential tax treatment of income from IP. • Absence of corporate income taxation or very low corporate tax rate.	• Tax deduction for royalty costs. • No withholding tax on royalty payments. • No general or specific anti-avoidance rules to counter the model ATP structures.

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International tendencies

- The era of globalization
  - Media attention –”naming and shaming”
  - NGO and activist attention
  - Moving towards transparency
  - Fairness in taxation

- Tightened domestic legislation
- BEPS
- EU Anti Tax Avoidance Package

- Tax strategy is becoming increasingly important

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Tax Strategy

- Taxes are moving up the agenda – entering the board room as well.
- Historical efforts were limited to either doing nothing or general remarks on the company webpage.
- More and more companies are becoming aware of the importance of tax strategy and the potential consequences of increased attention (e.g consumer goods: Vodafone, Starbucks, 3, Nordea etc., etc.)
  - As a consequence more companies have developed detailed tax policies and tax strategies, which are aligned with management.
- However, far from all companies…….
  - Possible explanations:
    - Corporate governance: No tax policy requirement yet in guidelies
    - Bonus schemes: wrong P&L lines – above taxes!
  - Need to communicate better and strategic on taxes
  - Not merely a paper CRS excercise.

Tax Strategy

- How to prepare?
  - Develop a tax policy to demonstrate publicly how taxes are handled, also in times of full transparency
  - Develop an internal tax strategy to provide the internal guidelines for the daily tax work:
    - Practical tool
    - Do's and dont's.
    - How to communicate? - Communications team must be involved…
    - General principles on tax planning, compliance, tax audits, public information, media, communation on taxes etc.
    - Short-medium-long term initiatives on compliance, risk, tax planning
- Experiences
  - Suprising that many still have not made this excercise.
  - Good experiences with making this as hands on practical as possible.
  - Stressing the importance of anchoring ownership throughout the organisation (tax, finance, accounting, management, board, audit committee, communications team, etc).

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