



Study on Structures of Aggressive Tax Planning and Indicators

**Platform for Tax Good Governance
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Context

- Fair and efficient corporate tax system: priority of the Commission
- Action Plan for Fair and Effective Taxation (June 2015)
- Automatic Exchange of Information on Tax rulings (December 2015)
- Anti-Tax Avoidance Package (January 2016)



Context

- Extensive work done by the G20/OECD on the Base Erosion and Profit Shifting project
- Need for a strong analytical basis focused on EU
- Study launched beginning of 2015 and published in January 2016

Context

Anti Tax Avoidance Package

Chapeau Communication

Anti Tax
Avoidance
Directive

Recommendation
on
Tax Treaties

Revised
Administrative
Cooperation
Directive

Communication
on
External
Strategy

Staff Working Document

Study on Aggressive Tax Planning

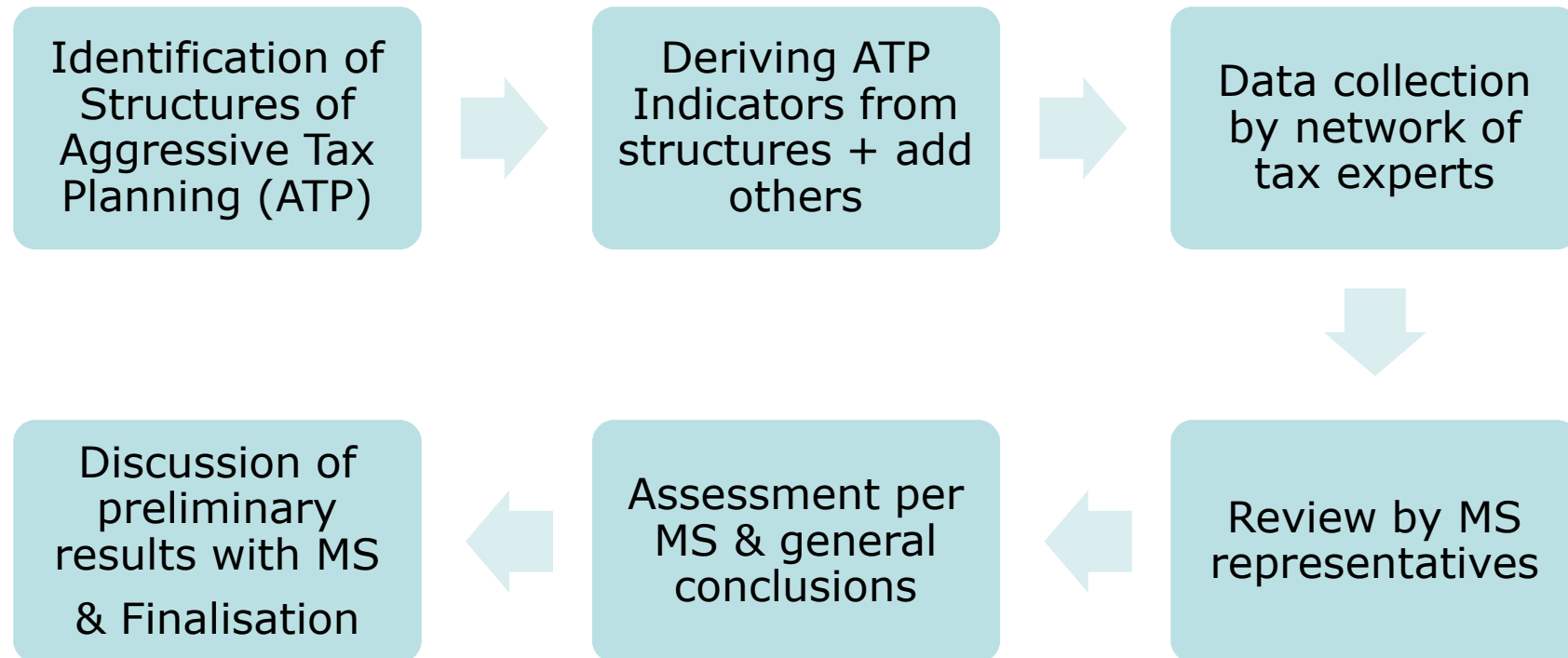
Objectives of the study

- Definition of the Identification of model ATP structures
- Identification of critical factors that facilitate or allow ATP (indicators)
- Review of MS' tax rules & practices which can expose MS to ATP

Scope

- Aggressive 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,"
- National rules and practices, not tax treaties
- General corporate income tax systems of 28 MS, complemented by a review of possible role of overseas countries and territories
- Wide coverage in terms of number of MS and indicators ... more limited level of details per MS

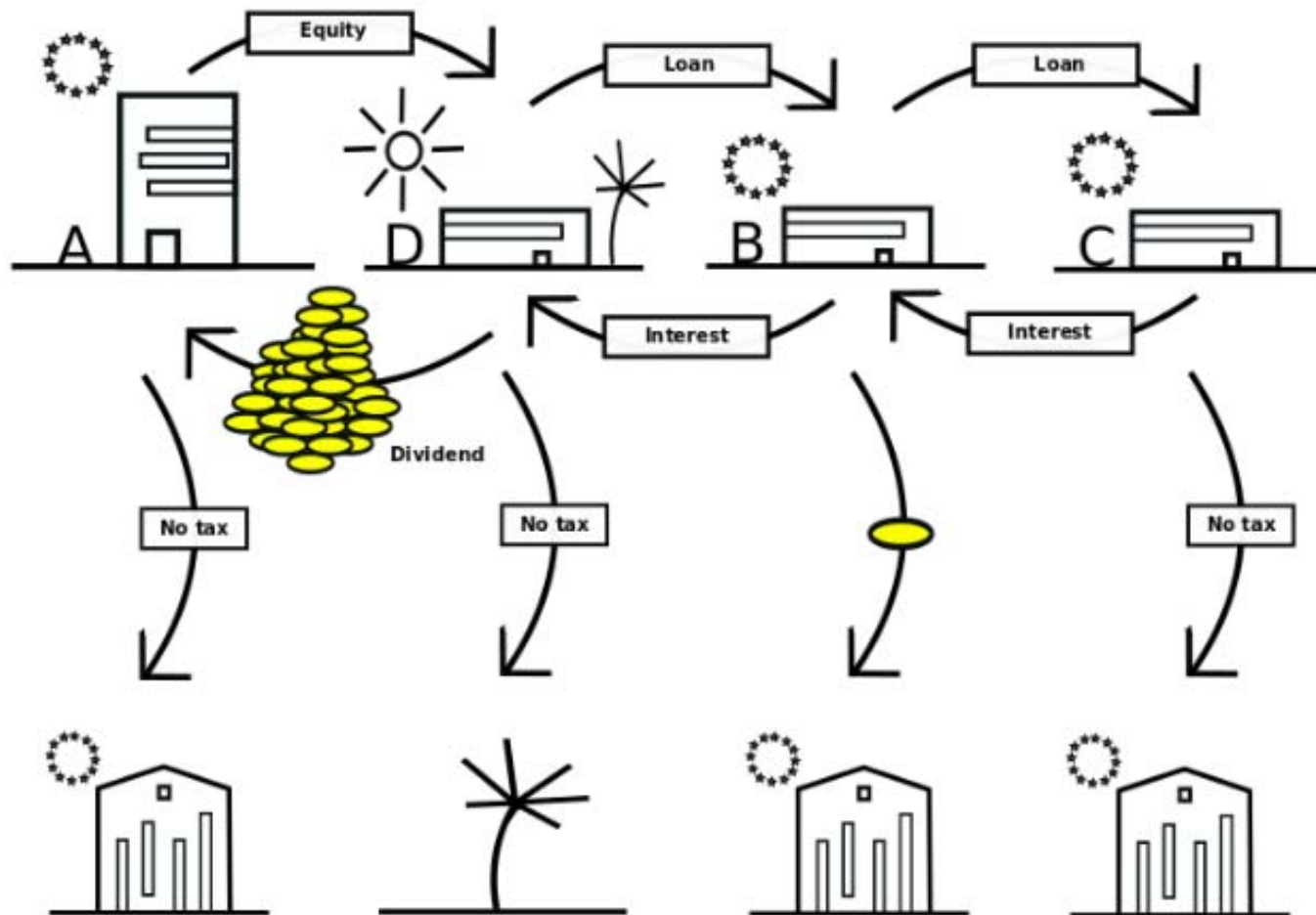
How was the study conducted?



ATP structures

- Identification of 7 relevant ATP structures
 - *Offshore loan ATP structure*
 - *Hybrid loan ATP structure*
 - *Hybrid entity ATP structure*
 - *Interest-free loan ATP structure*
 - *Patent box ATP structure*
 - *Two-tiered IP ATP structure*
 - *IP and cost contribution agreement ATP structure*

Offshore Loan



Example: Offshore Loan Structure

Indicators derived from Offshore Loan ATP Structure

State A	State B	State C	State D
<i>Relevant indicators</i>	<i>Relevant indicators</i>	<i>Relevant indicators</i>	<i>Relevant indicators</i>
Too generous tax-exemption of dividends received.	Tax deduction for interest costs.	Tax deduction for interest costs.	No withholding tax on dividends paid
No CFC Rules.	Tax deduction does not depend on the tax treatment in the creditor's state.	Tax deduction does not depend on the tax treatment in the creditor's state.	Nil corporate tax rate
	No interest-limitation rules and no thin-capitalization	No interest-limitation rules and no thin-capitalization	
	No withholding tax on interest payments.	No withholding tax on interest payments.	
	No beneficial-owner test for reduction of withholding tax.	No beneficial-owner test for reduction of withholding tax.	
	Unilateral ruling on interest spread.	Group taxation with acquisition holding company	
	No general or specific anti-avoidance rules to counter the model ATP structures.	No general or specific anti-avoidance rules to counter the model ATP structures.	

Indicators

- Derived from the model ATP Structures
- Capture the risk that the model ATP structures are set up.
- Correspond to specific piece of legislation or case law, or absence of those

Categories of indicators

- 33 indicators
- **Active** indicators
 - *can directly promote or prompt an ATP-structure*
 - *e.g. patent box, notional interest deduction, ...*
- **Passive** indicators
 - *does not by itself promote or prompt any ATP structure but is needed in order to allow the setting up of an ATP structure.*
 - *e.g. lack of withholding tax, interest deductibility within a group, ...*

Categories of indicators

- **Lack of anti-abuse provisions**
 - *Lack of rules that aimed at countering ATP*
 - *e.g. lack of CFC rules, absence of thin-cap rules, ...*
- **Combination of passive indicators and lack of anti-abuse provisions**
 - *Routing of dividends through a MS*
 - *Base erosion by means of financing costs*
 - *Base erosion by means of IP costs*

Overview of some indicators

Theme	No.	Subject	Category
Interest income	6	Income from certain hybrid instruments non-taxable	Lack of anti-abuse
	7	No deemed income from interest-free loan (non-arm's-length transactions)	Active
Interest costs	8	Tax deduction for intra-group interest costs	Passive
	9	Tax deduction does not depend on the tax treatment in the creditor's state	Lack of anti-abuse
	10	Tax deduction allowed for deemed interest costs on interest-free debt	Active
	11	No taxation of benefit from interest-free debt	Lack of anti-abuse
	12	No thin-capitalization rules	Lack of anti-abuse
	13	No interest-limitation rules	Lack of anti-abuse
	14	No withholding tax on interest payments (absent under domestic law)	Passive
	15	No beneficial-owner test for reduction of withholding tax on interest	Lack of anti-abuse
CFC rules	24	No CFC rules	Lack of anti-abuse

MS assessment

- Information collection structured around the 33 indicators
- Information provided by network of national tax experts
- Filled in questionnaire submitted to MS for comments

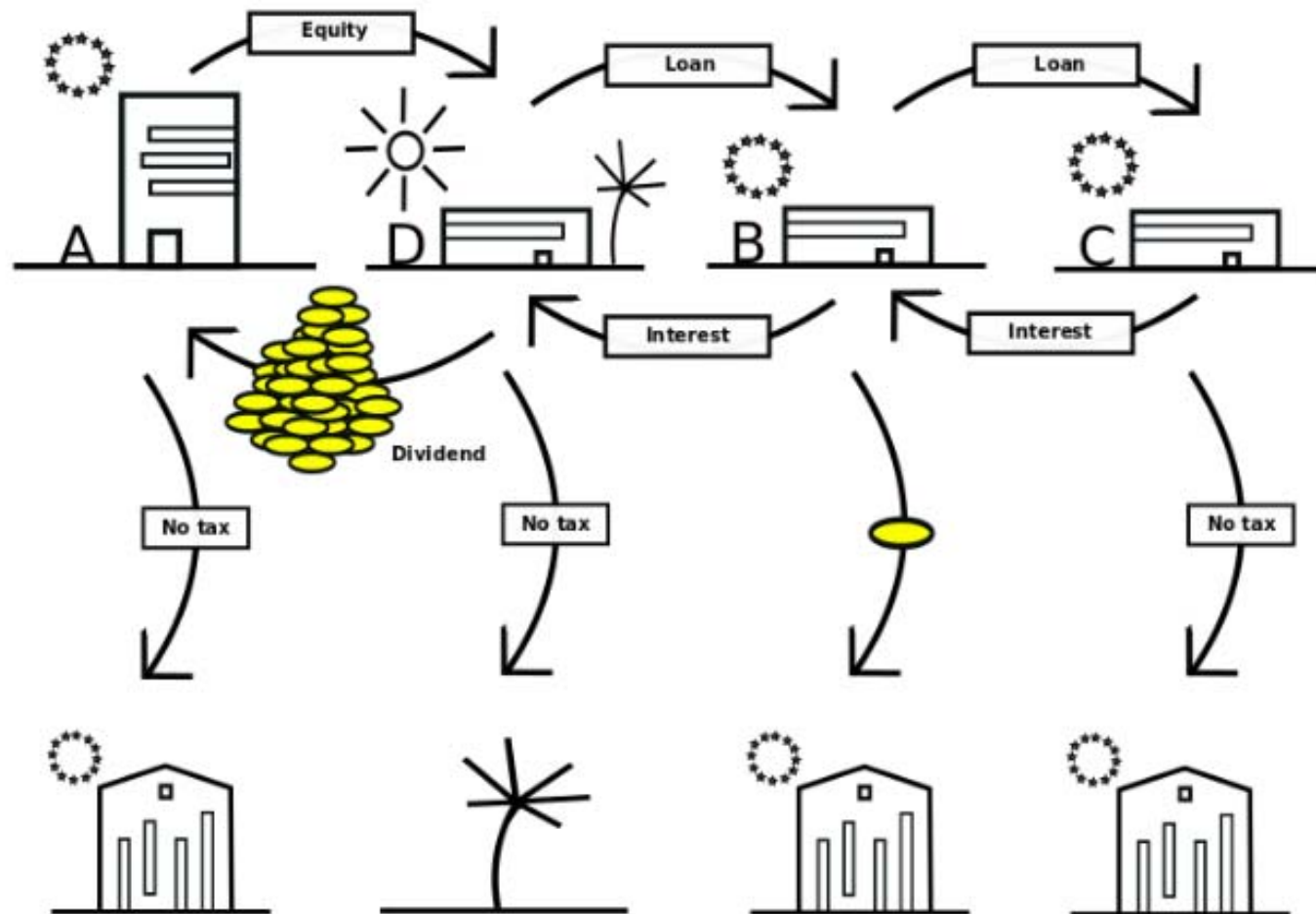
Conclusions from the study

- *Large differences across MS*
- Some indicators are particularly relevant
 - *Lack of CFC rules*
 - *Base erosion by means of financing costs intra-group*
 - *Lack of rules to counter mismatches in entities qualification*
 - *Dividend flow-through*
 - *Patent boxes*
- Role of third countries jurisdictions

Relevance for the ATAP

- *CFC rules*
- *GAAR*
- *Interest Limitation rules*
- *Hybrid mismatches*
- *Switchover rules*
- *Exit and Capital gains tax rules*
- *Role of third-country jurisdictions*

Offshore Loan

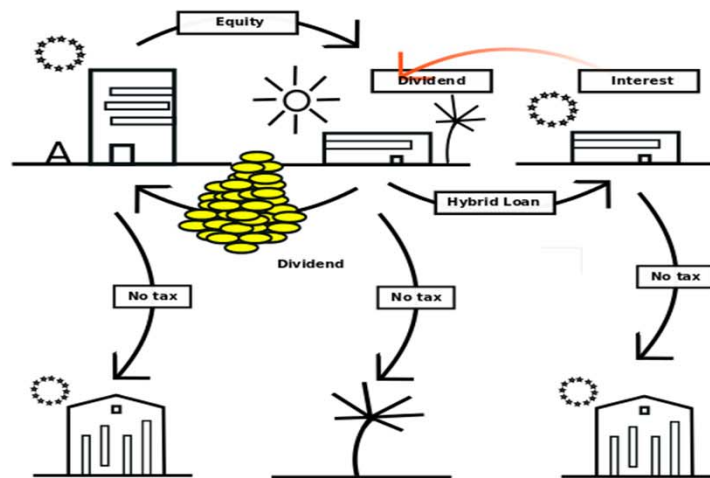


Offshore Loan Structure



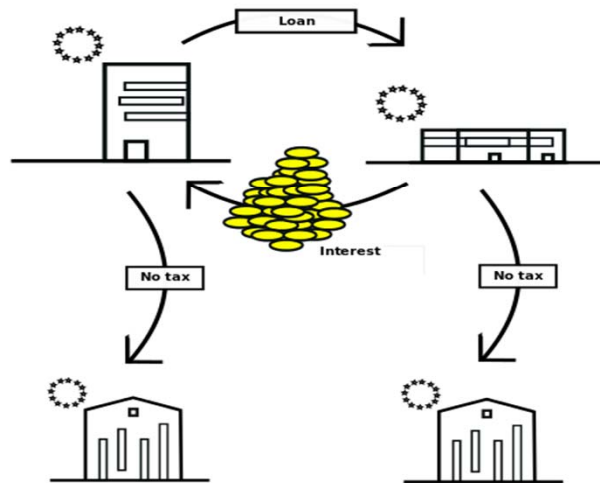
European

Hybrid Loan





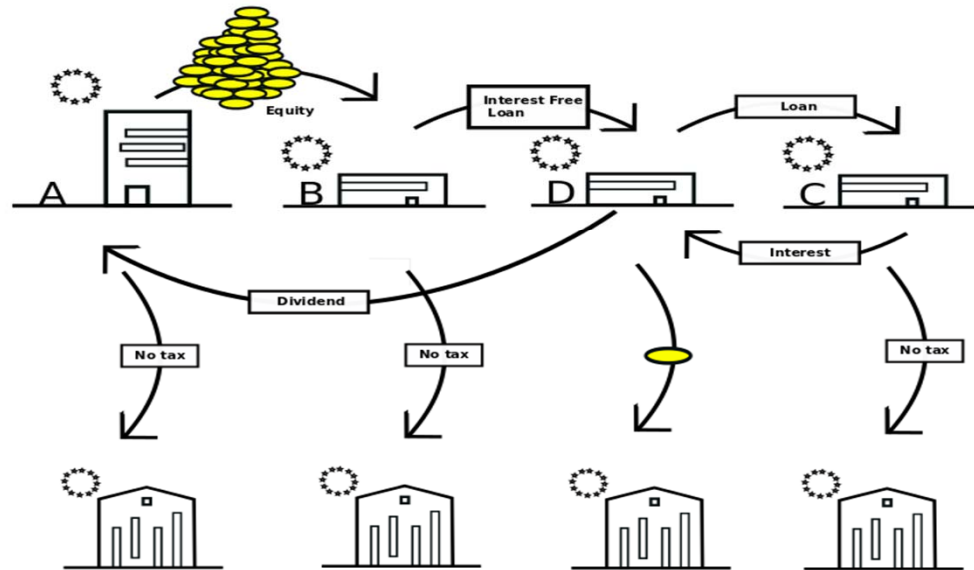
Hybrid Entity





European
Commission

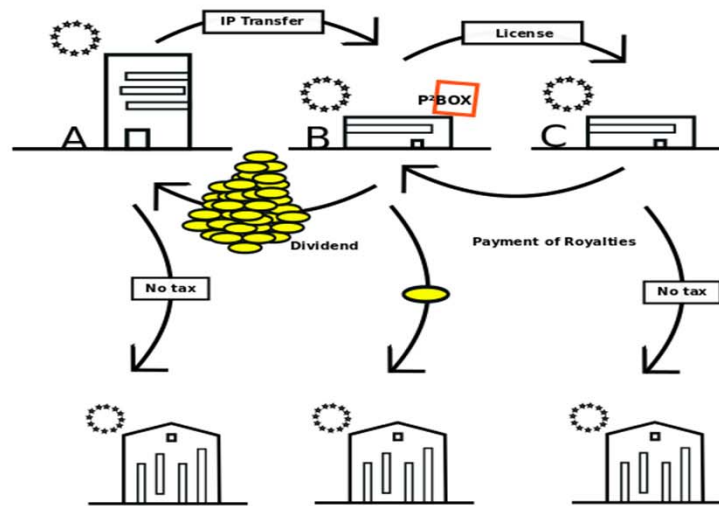
Interest Free Loan



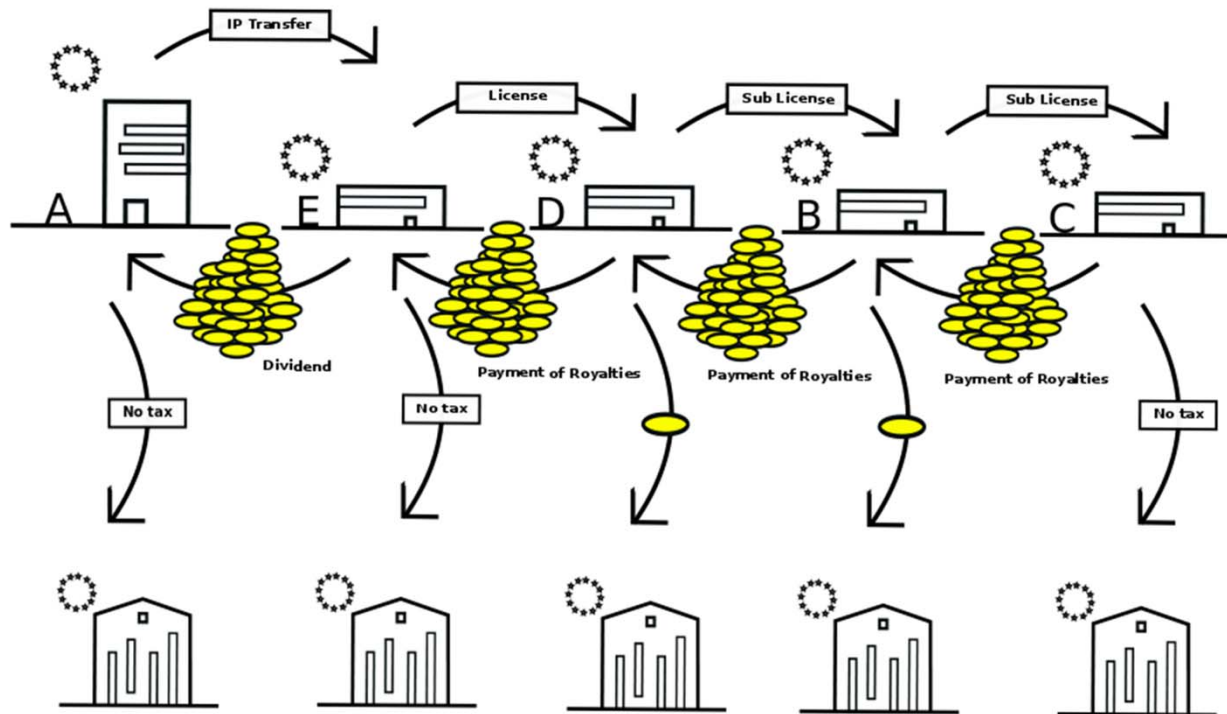


European

Patent Box ATP Structure



Two Tiered IP Structure



IP and CCA Structure

