Tiberghien
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New tax consolidation and interest limitation rules in Belgium and their impact on M&A transactions

Date: 27 and 28 March, 4 April 2019

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1. Tax consolidation

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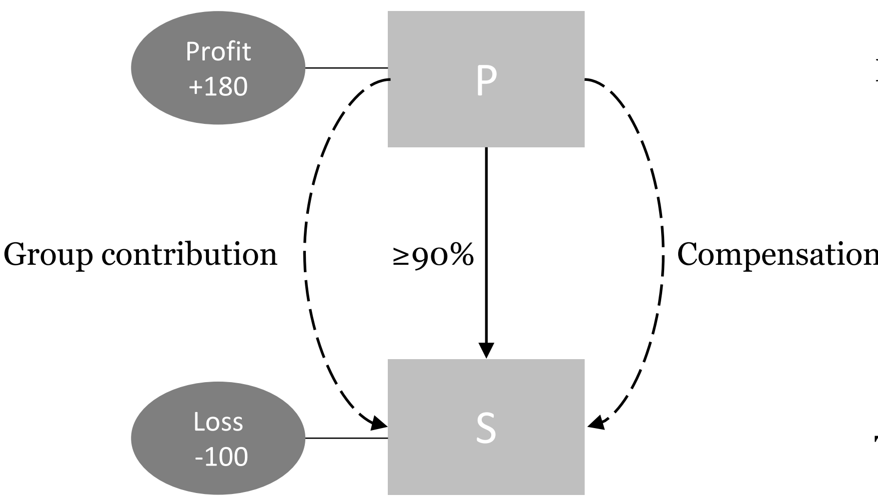
Consolidation Technique (High-level)

- What it is not:
  - No consolidated ‘group’ tax return
  - No ‘fiscal unity’ (Dutch system)
  - No ‘Organschaft’ (German system)
- Belgian approach in a nutshell
  - ‘Transfer’ of taxable profit (‘group contribution’)
  - Bilateral: ‘group contribution-agreement’
  - Annual option regime
  - Financially neutral due to a financial compensation
  - Domestic consolidation: Belgian taxable profits and Belgian tax losses
- Applicable as from tax year 2020
  (financial year starting on or after 1/1/2019)

Consolidation Technique (High-level)

Schematically



Tax	Financial
Deductible group contribution: - 100	Cash-out : - 25 (From tax year 2021)
Taxable group contribution: + 100	Cash-in : + 25

Qualifying companies

- Direct participation ≥ 90%
- Parent/ Subsidiary/ Sister Company
  - Sister Company:
    - Joint direct (≥ 90%) Parent Company
    - Parent Company: Belgian or EEA (limitation to EEA less clear after Law of 30 July 2018?)
    - Companies held by common private individual shareholders do not qualify
- (Belgian PE of a) foreign company qualifies if established in the EEA
- Excluded entities:
  - Companies owning real estate privately owned by director
  - Companies with lump sum taxable basis (e.g. some PRIVAKS)

Qualifying companies

- Entities affiliated during an uninterrupted period of 5 years
  - Starting January 1st of the fourth calendar year preceding the relevant tax year
  - Impact on M&A-transactions
  - Impact of a (tax-neutral) restructuring?

Financial year closing 31/12/2019	TY -4	TY -3	TY -2	TY -1	TY
	2016	2017	2018	2019	2020

Financial year closing 30/06/2020	TY -4	TY -3	TY -2	TY -1	TY
	2016	2017	2018	2019	2020

- No requirement for qualifying affiliated companies to have financial years with identical start/closing date.

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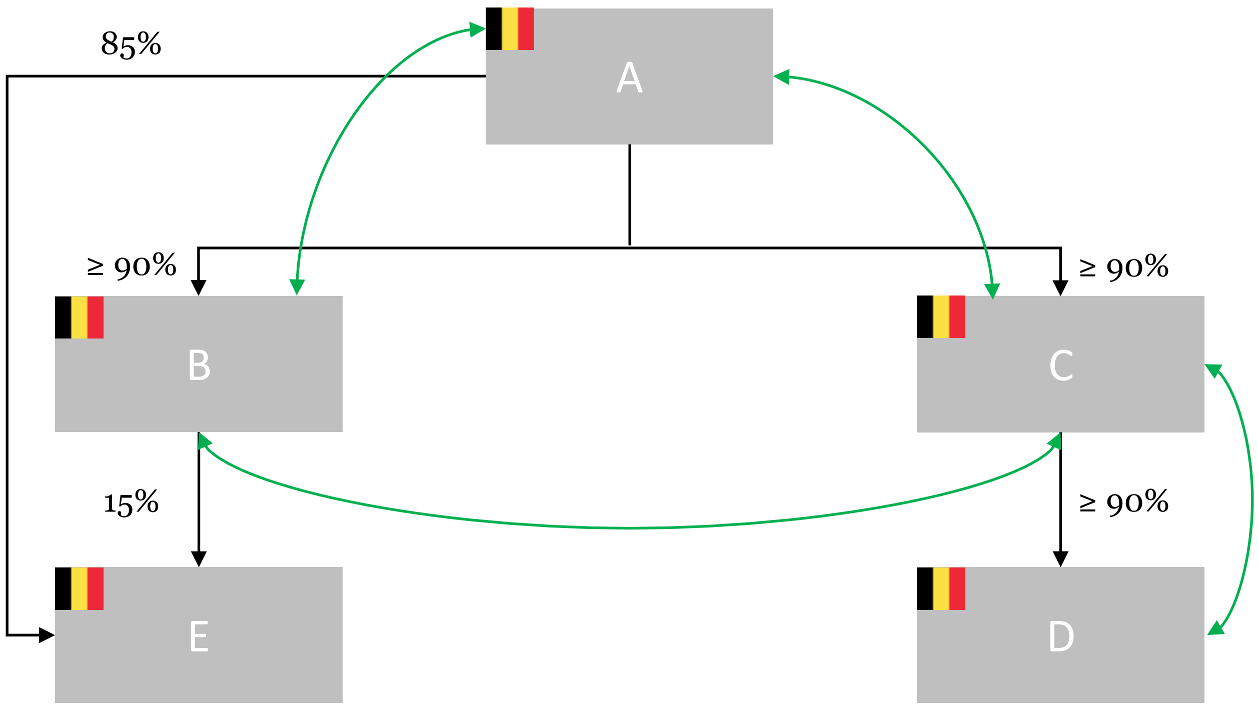
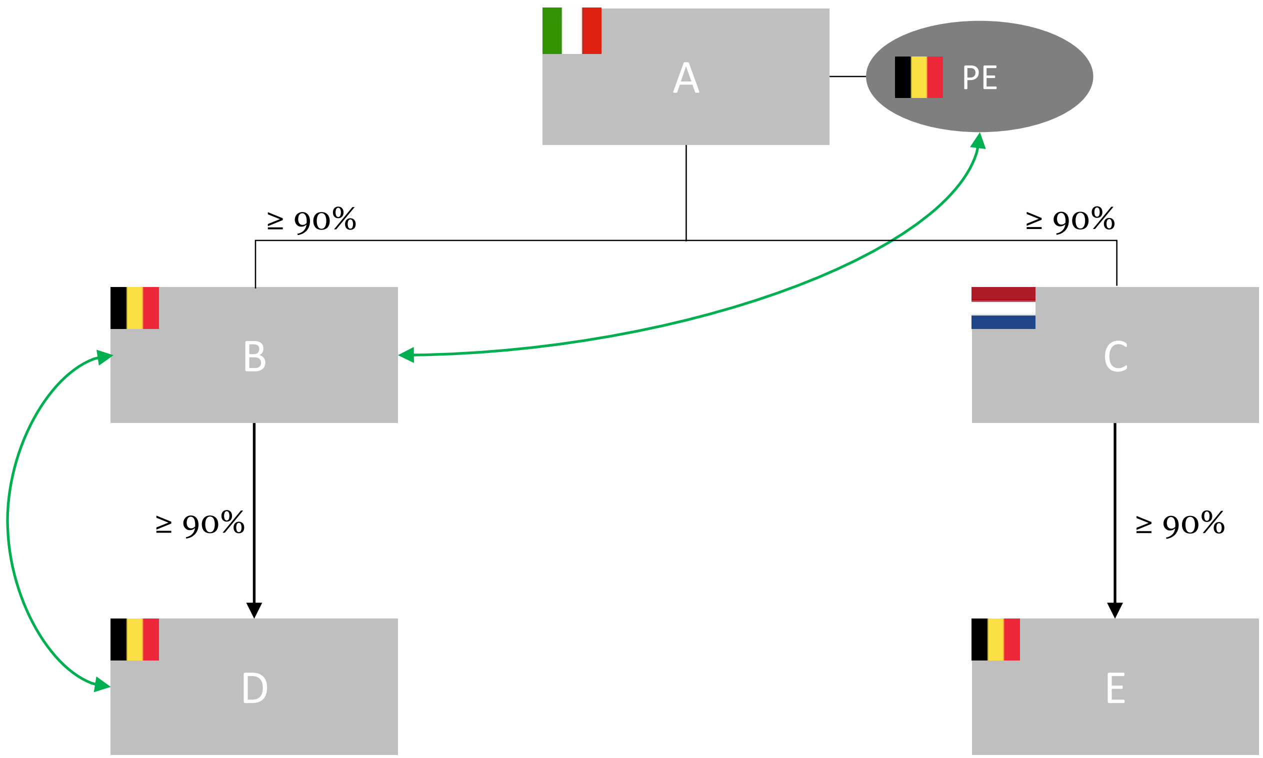
Qualifying companies: some examples

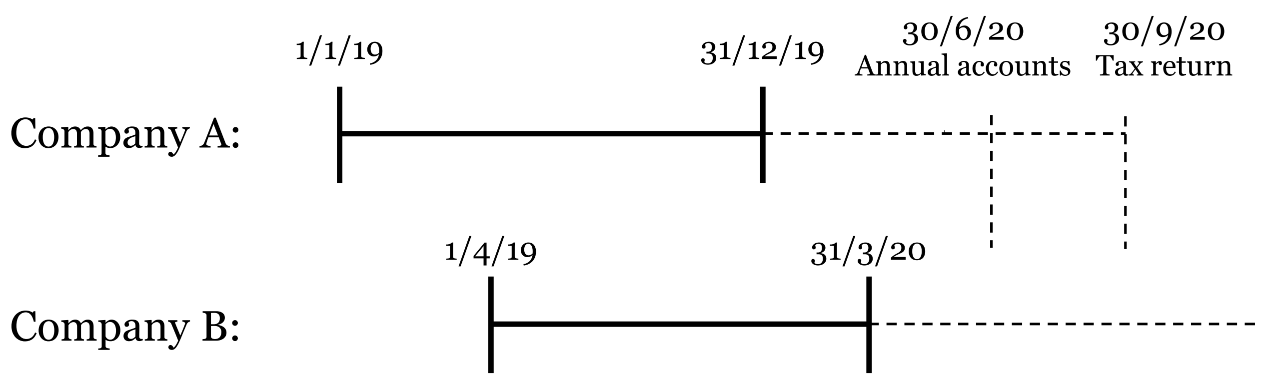


Qualifying companies: some examples



Consolidation technique: group contribution-agreement

- ‘Group contribution-agreement’: characteristics
  - Bilateral
  - Parties: Belgian companies and/or permanent establishments
    - exception: deduction for ‘final losses’ (art. 205/5, §4 ITC)
  - Valid for one tax year (identical start/closing dates not required)
  - Due date: date submission tax return (mandatory annex) (preferably: date approval annual accounts?)



Consolidation technique: group contribution-agreement

- ‘Group contribution-agreement’: content
  - Amount of group contribution
    - (∑ of) group contribution(s) received is not ‘capped’ up to current year’s tax loss.
    - However, ‘excess’ group contribution cannot be further offset against TLCF, deduction for dividends received, etc. (‘minimum taxable basis’); no credit for foreign tax (‘minimum tax’). **Infringement of P/S Directive?**
    - No ‘second-tier’ consolidation.
    - Group contribution to Belgian PE of affiliated EER company: restriction if PE loss deducted at head office level?
  - Engagements
    - Loss-making entity commits to include the group contribution received as profit in its corporate tax return
    - Profitable entity commits to an (effective!) payment amounting to the hypothetical CIT (i.e. tax saving resulting from group contribution).

Group contribution: tax treatment

- Profitable entity making the contribution:
  - ‘Deduction for group contribution’
  - Deduction ‘outside basket’ (art. 207 ITC)
  - Financial compensation paid: disallowed expense
- Loss-making entity receiving the contribution:
  - Inclusion in taxable base
  - No compensation with TLCF, deduction for dividends received, etc.
  - Financial compensation received: exempted

Tax consolidation in numbers

	Un-consolidated		Consolidated	
	A	B	A	B
TAX				
Profit before tax (pre-consolidation)	+ 600	- 200	+ 600	- 200
Group contribution	-	-	- 200	+ 200
Financial compensation	-	-	0	0
Taxable base or loss carried-forward	+ 600	**- 200**	+ 400	**0**
Corporate tax	**150**	0	**100**	0
ACCOUNTING				
Profit before tax (pre-consolidation)	+ 600	- 200	+ 600	- 200
Group contribution	-	-	0	0
Financial compensation	-	-	- 50	+ 50
Corporate tax	- 150	0	- 100	0
Profit/loss after corporate tax	+ 450	- 200	+ 450	- 150

Tax consolidation in the CIT return

	A	B
Reserves at FYE	450	-150
Adjustment for compensation received	-	-50
Adjustment for group contribution received	-	+200
Disallowed expense (CIT)	+100	-
Disallowed expense (compensation granted)	+50	-
Result of taxable period	600	0
Deduction for group contribution granted	-200	-
Taxable	400	0

Tax consolidation in numbers (2) (EUR .000)

ASSUMPTIONS				
	A	B		
Profit (loss) before tax	11,000	-15,000		
Prior years' tax losses	-15,000	-5,000		
TAX EFFECTS				
	Unconsolidated		Consolidated	
	A	B	A	B
Profit or loss before tax	11,000	-15,000	11,000	-15,000
Group contribution	-	-	-11,000	11,000
Utilization of prior years' tax losses	-8,000	0	0	0
Taxable base or loss to be carried-forward	3,000	-15,000	0	-4,000
Corporate Tax	750	0	0	0
Accumulated losses to be carried-forward	-7,000	-20,000	-15,000	-9,000
Accumulated losses to be carried-forward	-27,000		-24,000	

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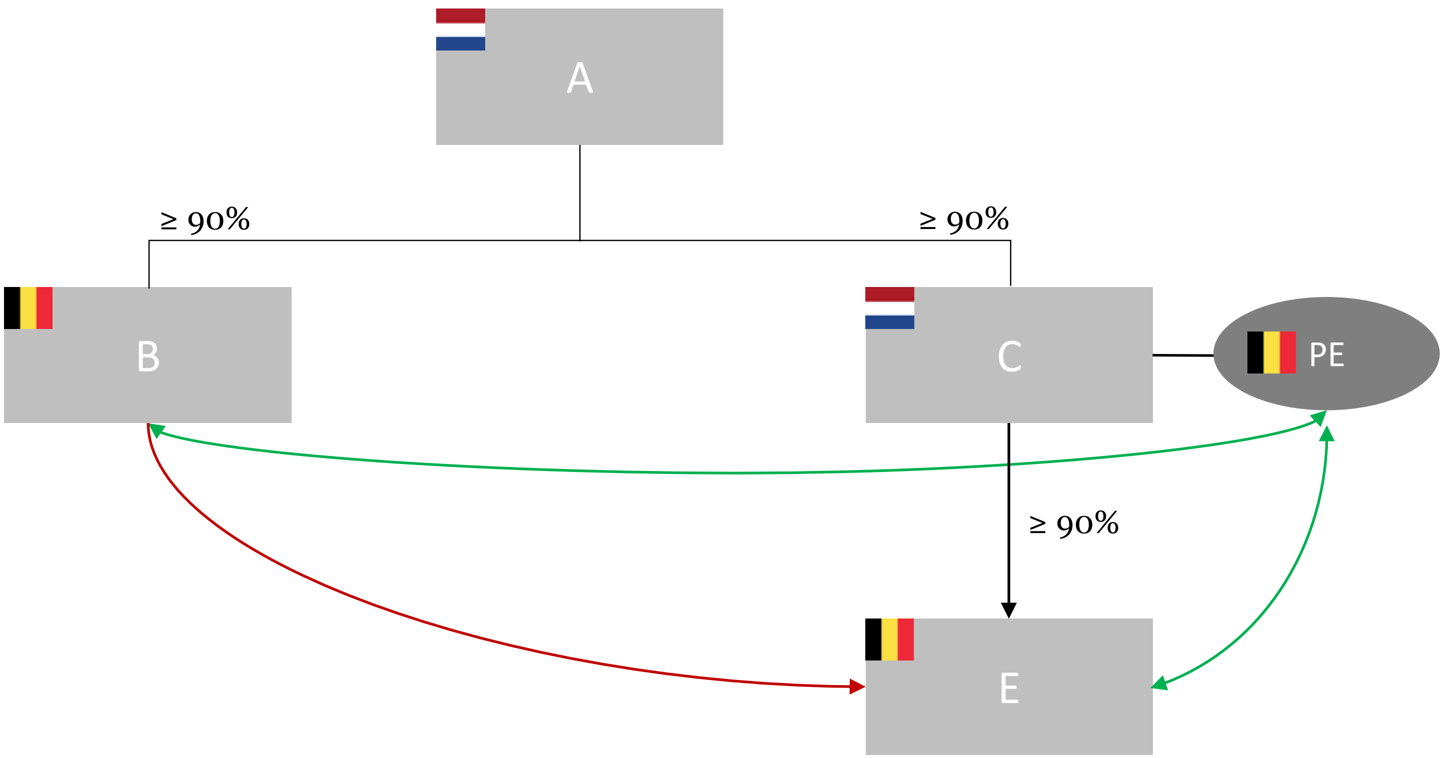
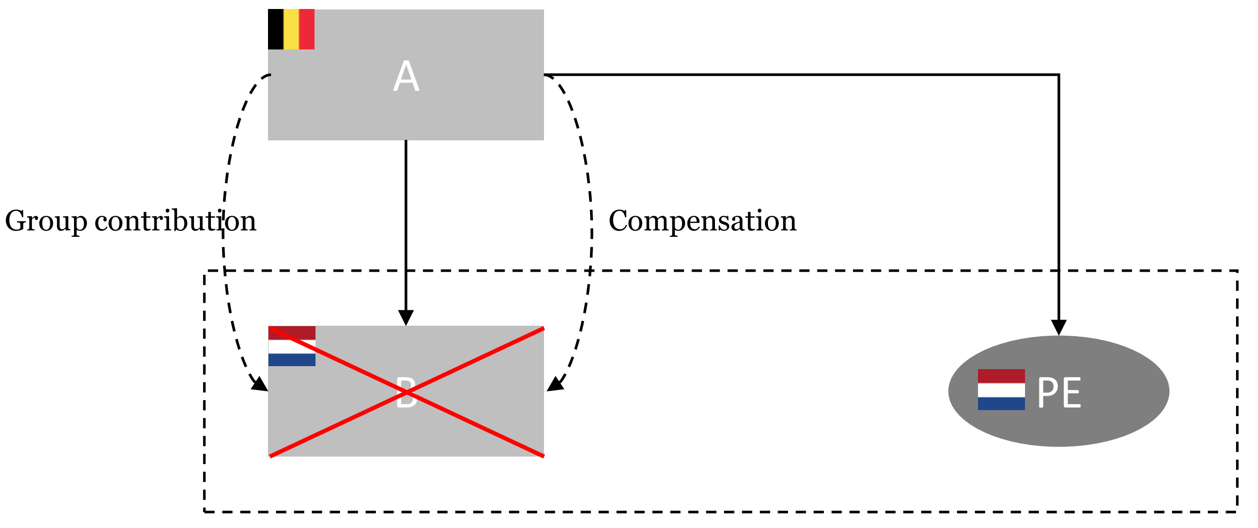
PE vs Subsidiary (inbound)



PE vs Subsidiary (outbound)



‘Final’ loss of affiliated company in other EEA member state

- Qualifying affiliated company
  - Established in EEA – subject to common corporate tax regime
  - Required affiliation: direct participation ≥ 90% and ≥ 5 year
- ‘Final’ losses
  - Definitive discontinuation of activities
  - ‘Recapture’ when restart activities within 3 years (non-proportional)
  - No deduction elsewhere in the group
  - *Only losses incurred in FY when discontinuation occurs*
  - PE losses as determined in accordance with Belgian ITC
- Group contribution-agreement
  - Subject to payment of financial compensation
- Capital loss on liquidation of EEA-subsidiary deductible

  (To the extent that paid-up capital is lost)

‘Final’ losses of PE in other EEA member state

- Qualifying PE:
  - PE in EEA
  - PE-profit exempt based on Double Tax Treaty
- ‘Final’ losses
  - Definitive discontinuation of activities
  - ‘Recapture’ when restart activities within 3 years (non-proportional)
  - No deduction elsewhere in the group
  - Only losses incurred in FY when discontinuation occurs, or accumulated PE-losses? (“losses that *exist* on discontinuation”)
- From tax year 2021 onwards
  - Financial years starting on or after 1/1/2020
- ‘Recapture’ for old PE-losses
  (tax losses deducted under current regime)

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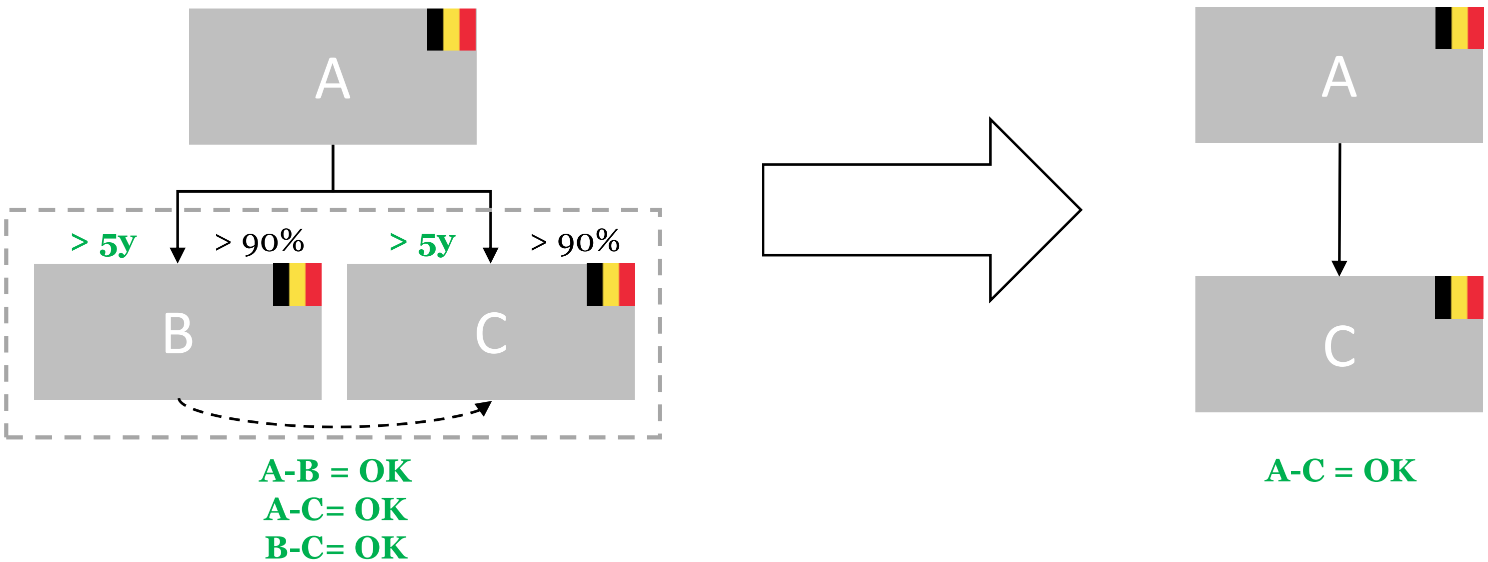
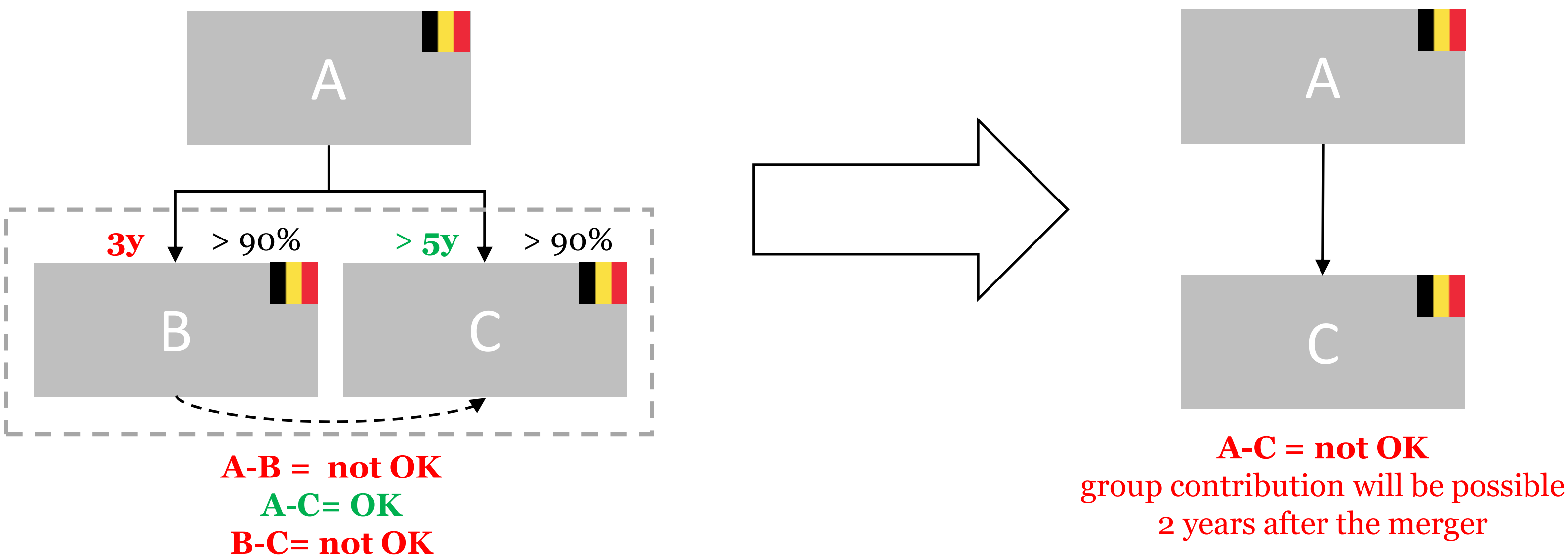
Merger by acquisition (1)



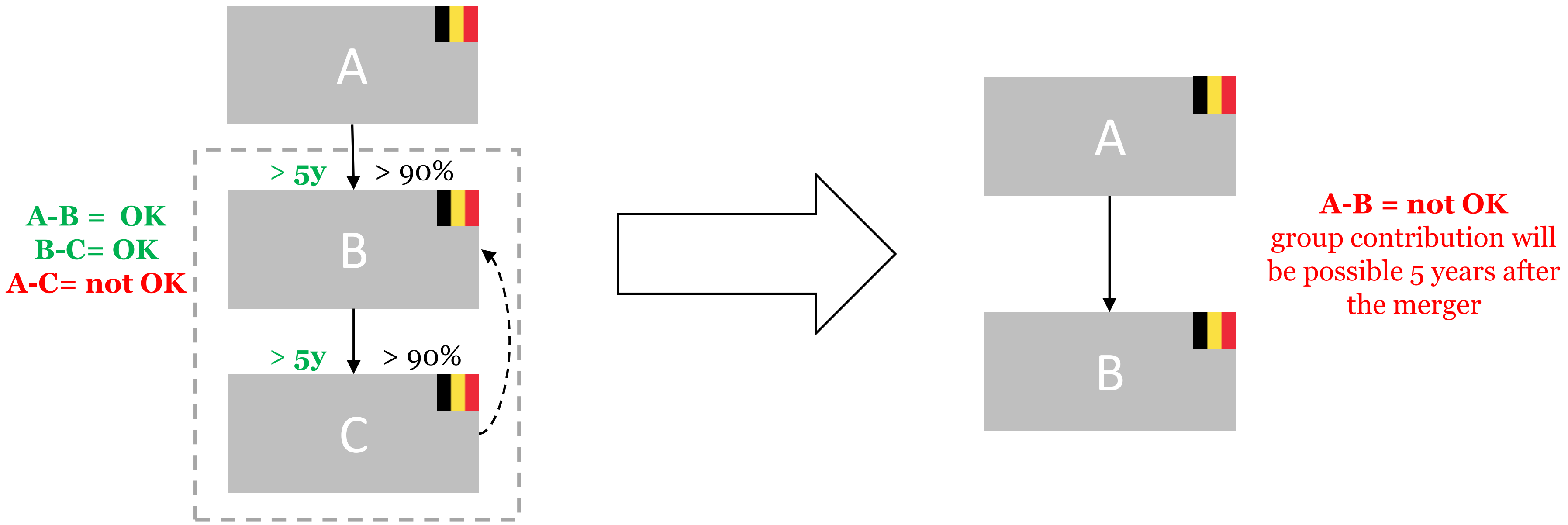
If the **assets** or part of the assets of a company have been **transferred** to the taxpayer or to a domestic or foreign company that is affiliated with the taxpayer within the period specified in the third paragraph following a **merger by acquisition, demerger by acquisition or an assimilated transaction, a contribution of a branch of activity or a contribution of the generality of goods**, for the purposes of the third paragraph, every company to which a part of the total assets of the taxpayer or of the company affiliated with the taxpayer belonged before the effective date of this merger, demerger, contribution or assimilated transaction is assimilated to the taxpayer or the domestic or foreign company related to the taxpayer **and will also have to comply with the conditions of application of this third paragraph**.

Merger by acquisition (2)



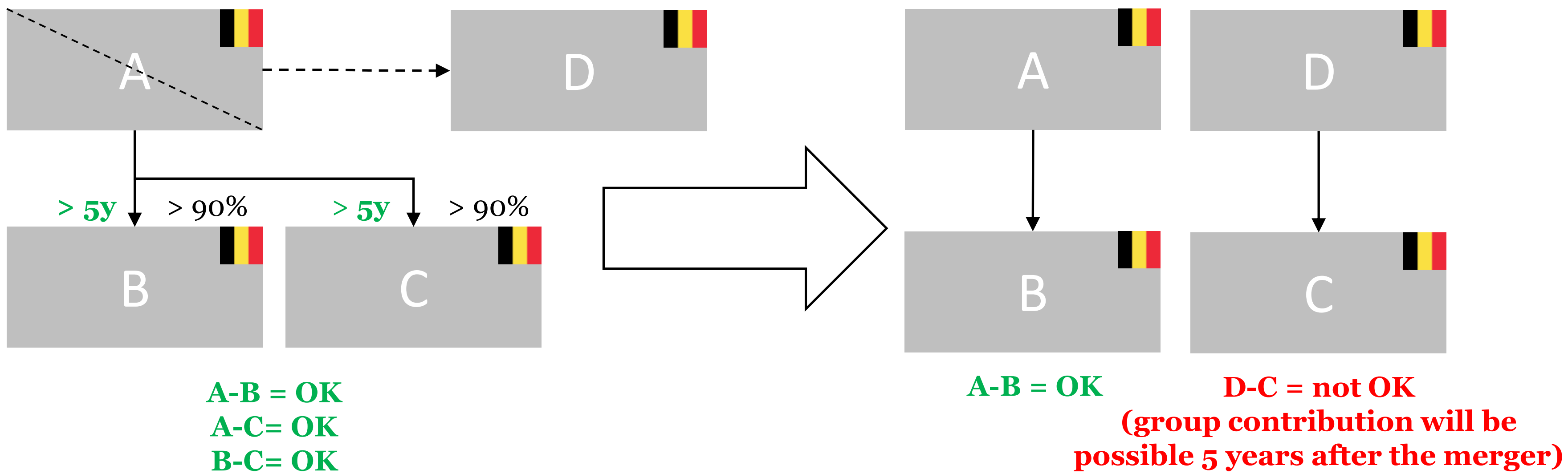
If the **assets** or part of the assets of a company have been **transferred** to the taxpayer or to a domestic or foreign company that is affiliated with the taxpayer within the period specified in the third paragraph following a **merger by acquisition, demerger by acquisition or an equivalent transaction, a contribution of a branch of activity or a contribution of the generality of goods**, for the purposes of the third paragraph, every company to which a part of the total assets of the taxpayer or of the company affiliated with the taxpayer belonged before the effective date of this merger, demerger, contribution or assimilated transaction is assimilated to the taxpayer or the domestic or foreign company related to the taxpayer **and will also have to comply with the conditions of application of this third paragraph**.

Merger by acquisition (3)

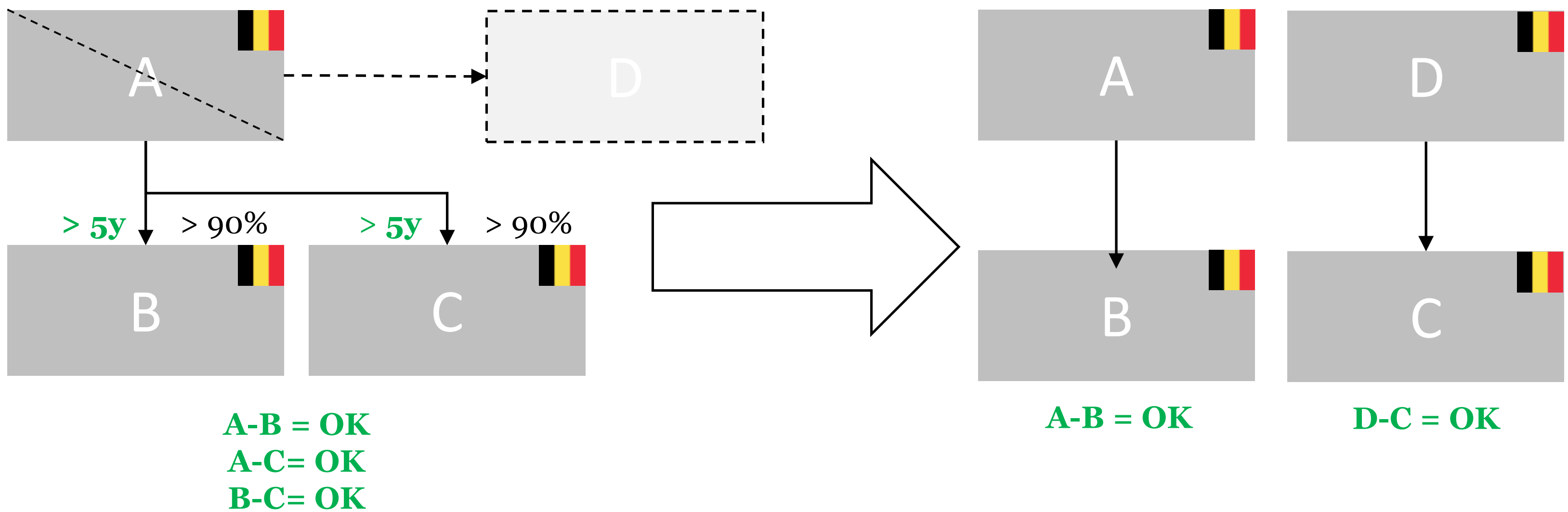


If the **assets** or part of the assets of a company have been **transferred** to the taxpayer or to a domestic or foreign company that is affiliated with the taxpayer within the period specified in the third paragraph following a **merger by acquisition, demerger by acquisition or an equivalent transaction, a contribution of a branch of activity or a contribution of the generality of goods**, for the purposes of the third paragraph, every company to which a part of the total assets of the taxpayer or of the company affiliated with the taxpayer belonged before the effective date of this merger, demerger, contribution or assimilated transaction is assimilated to the taxpayer or the domestic or foreign company related to the taxpayer **and will also have to comply with the conditions of application of this third paragraph**.

Partial demerger by acquisition (4)*

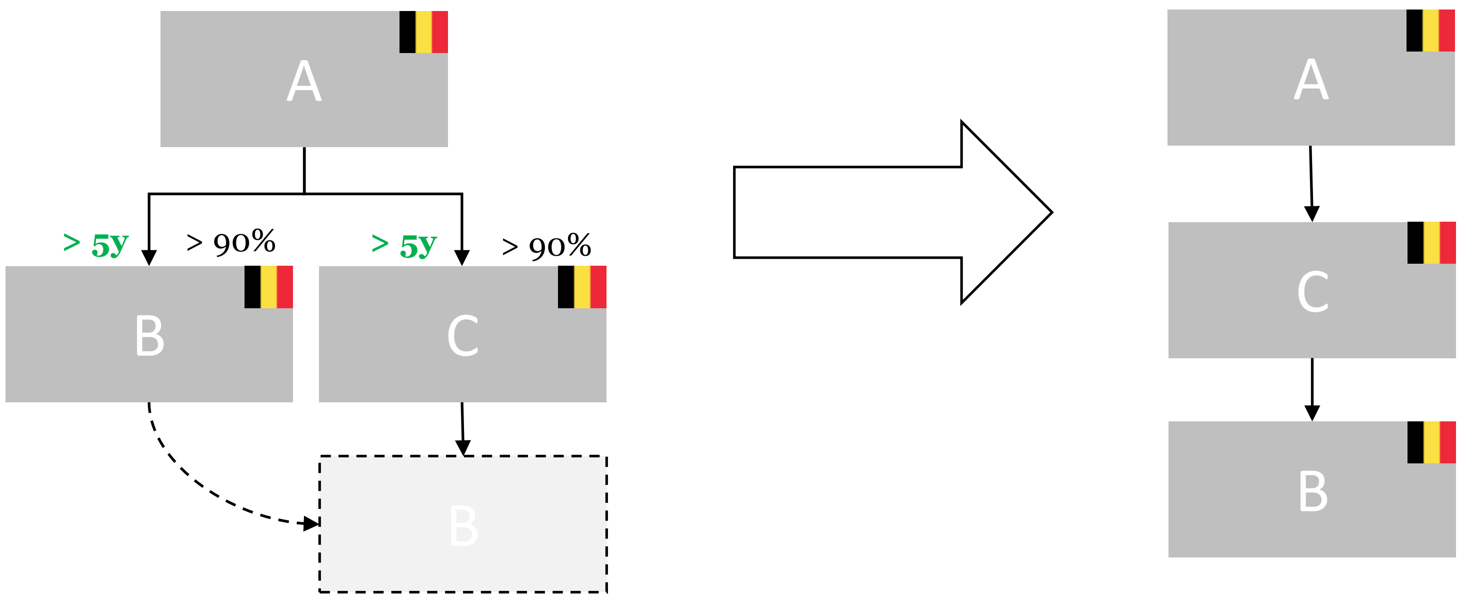


Partial demerger by incorporation (5)*



If the taxable person or a domestic or foreign company affiliated with the taxpayer is **incorporated** within the period referred to in paragraph 3 **pursuant to** a **merger** by the incorporation of a new company, a **demerger** by the incorporation of a new company, a mixed demerger or an **assimilated transaction**, for the purposes of this third paragraph, the taxpayer or the company affiliated with the taxpayer **is assimilated to the company** or to any company **to which the total assets of the taxpayer or of the affiliated company belonged before** the effective date of **this merger, demerger or assimilated transaction**.

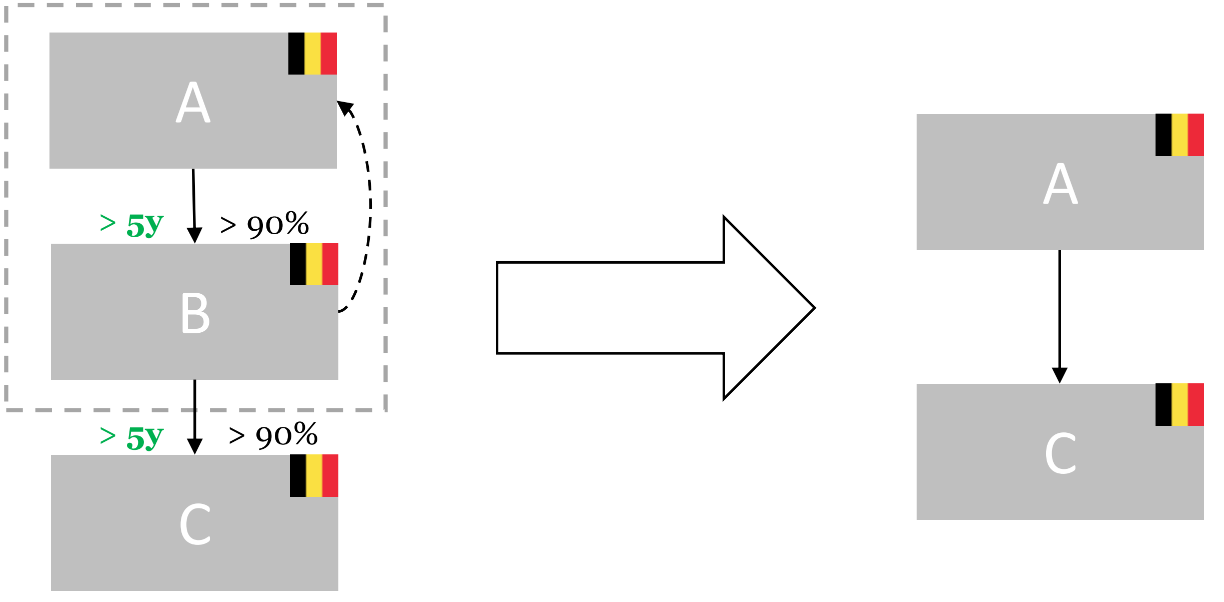
Intra-group transfer of shares (6)



A-B = OK
A-C= OK
B-C= OK

A-C = OK
A – B = not OK
C-B = arguably OK

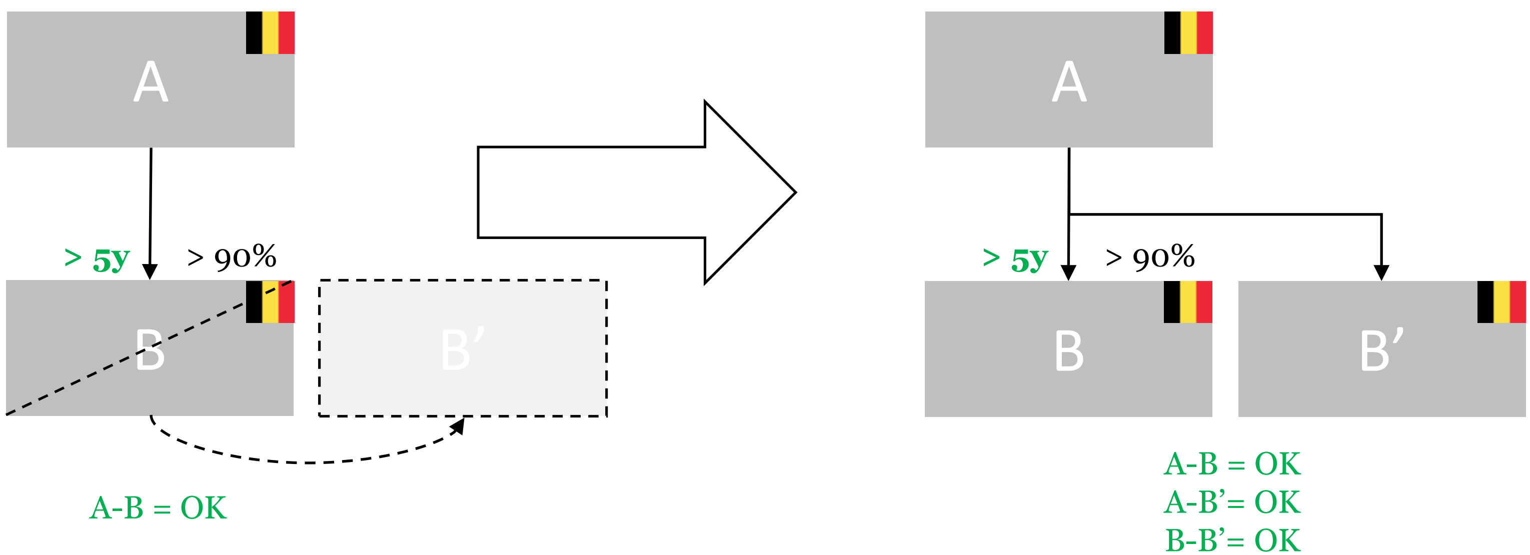
Intra-group transfer of shares (pursuant to a merger) (7)



A-B = OK
B-C= OK
A-C= not OK

A-C = not OK
group contribution will be possible 5 years after the merger

Partial demerger by incorporation (8)



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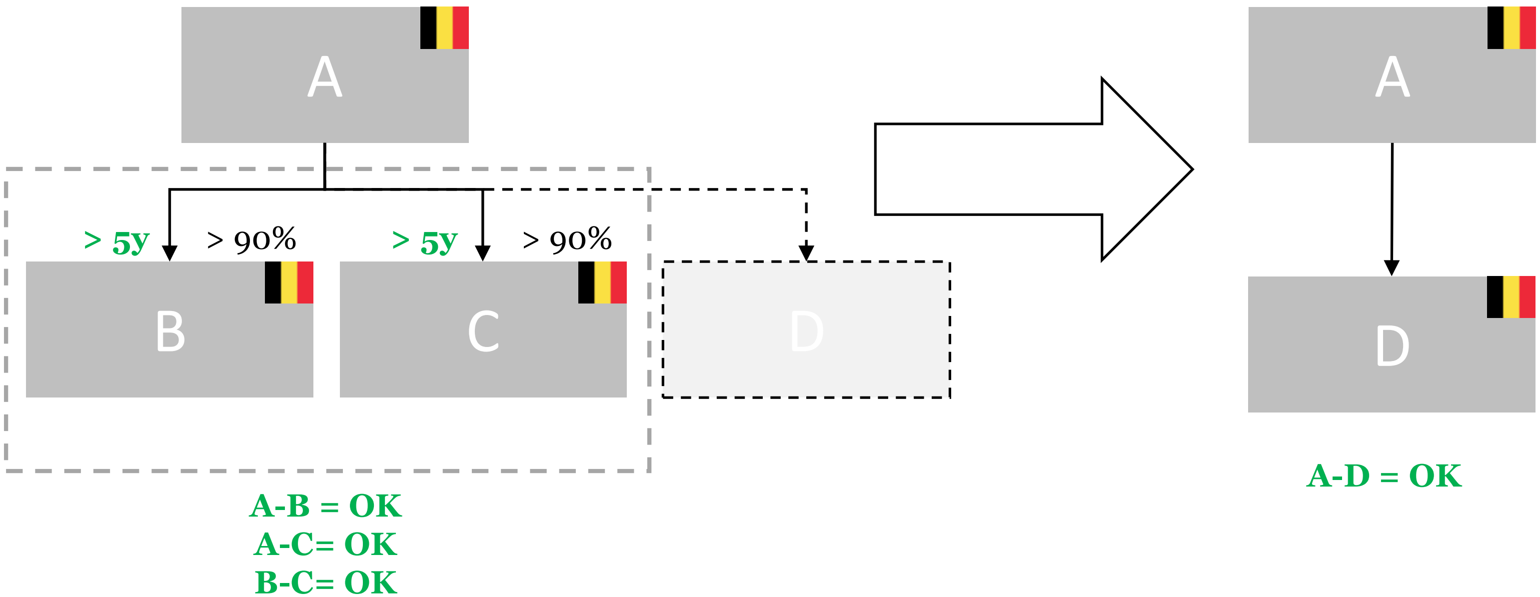
Merger by incorporation (9)



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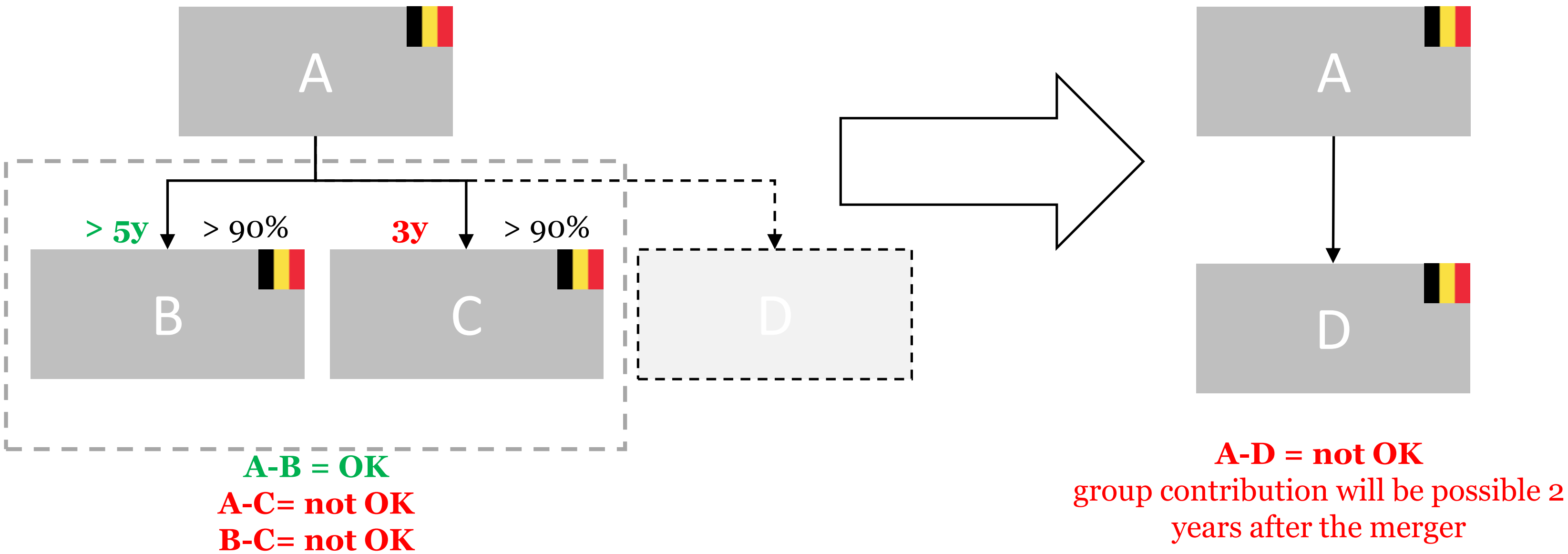
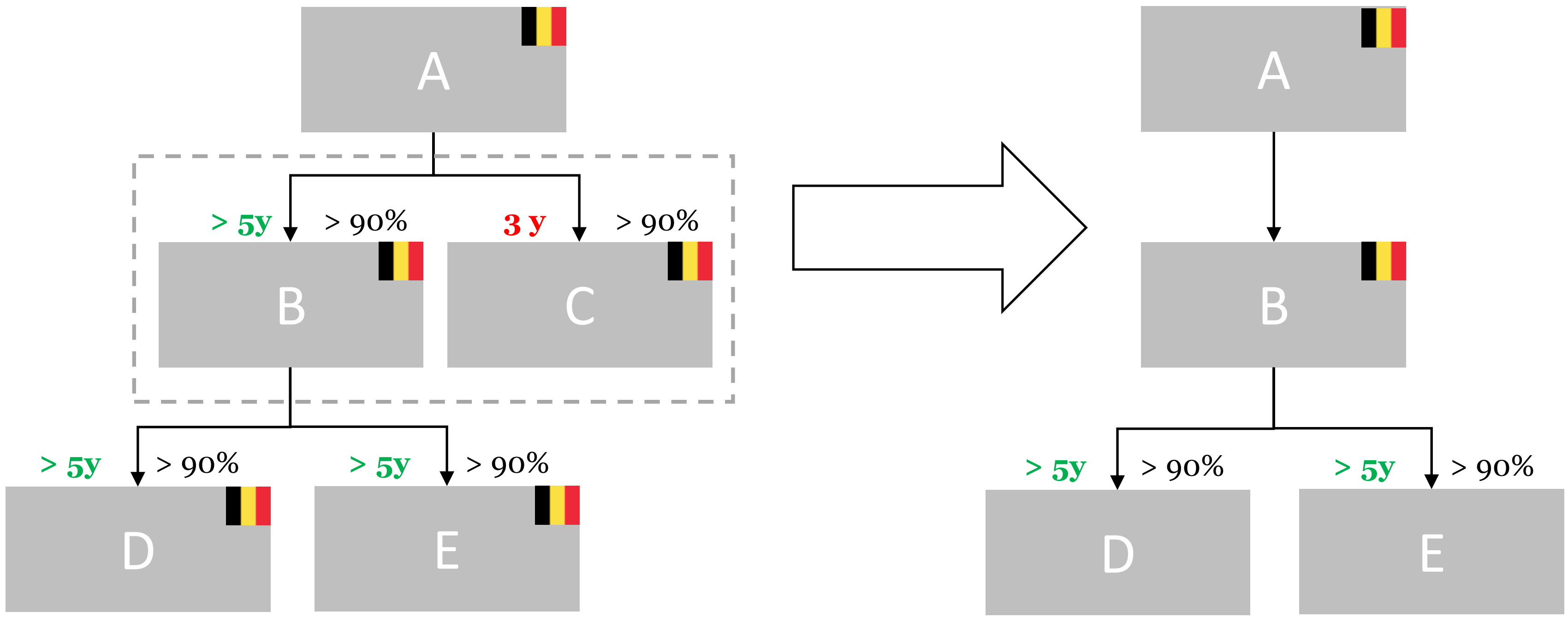
Merger by incorporation (10)



If the taxable person or a domestic or foreign company affiliated with the taxpayer is **incorporated** within the period referred to in paragraph 3 **pursuant to** a **merger** by the incorporation of a new company, a **demerger** by the incorporation of a new company, a mixed demerger or an **assimilated transaction**, for the purposes of this third paragraph, the taxpayer or the company affiliated with the taxpayer **is assimilated to the company** or with any company **to which the total assets of the taxpayer or of the affiliated company belonged before** the effective date of **this merger, demerger or assimilated transaction**.

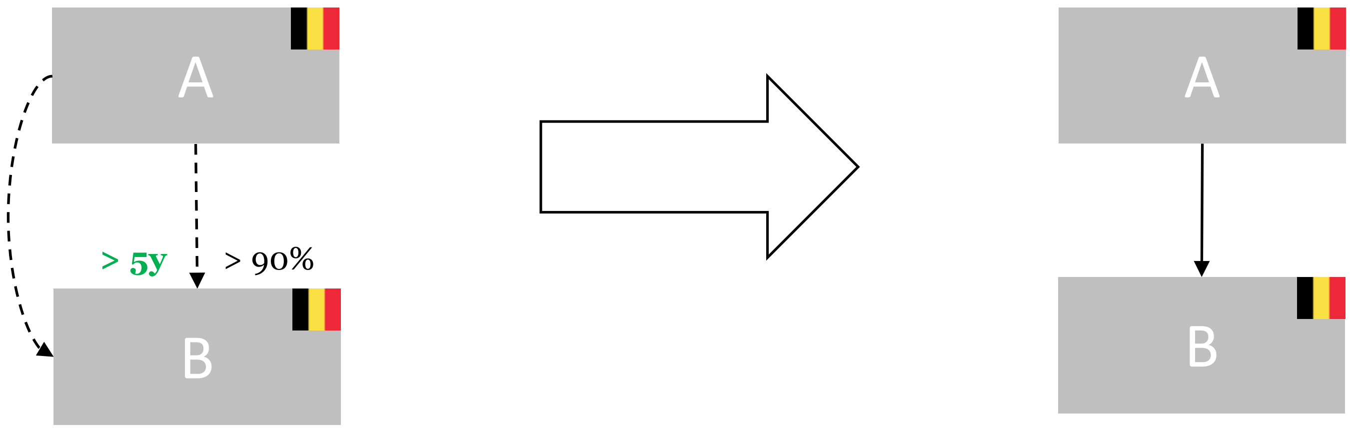
Merger by Acquisition (11)



A-B = OK
A-C = not OK
B-C = not OK
B-D = OK
B-E = OK
D-E = OK

A-B = not ok (possible **2** years after the merger)
B-D = not ok (possible **5** years after the merger)
B-E = not ok (possible **5** years after the merger)
D-E = OK(?)

Contribution of a branch of activity in an existing company (12)*

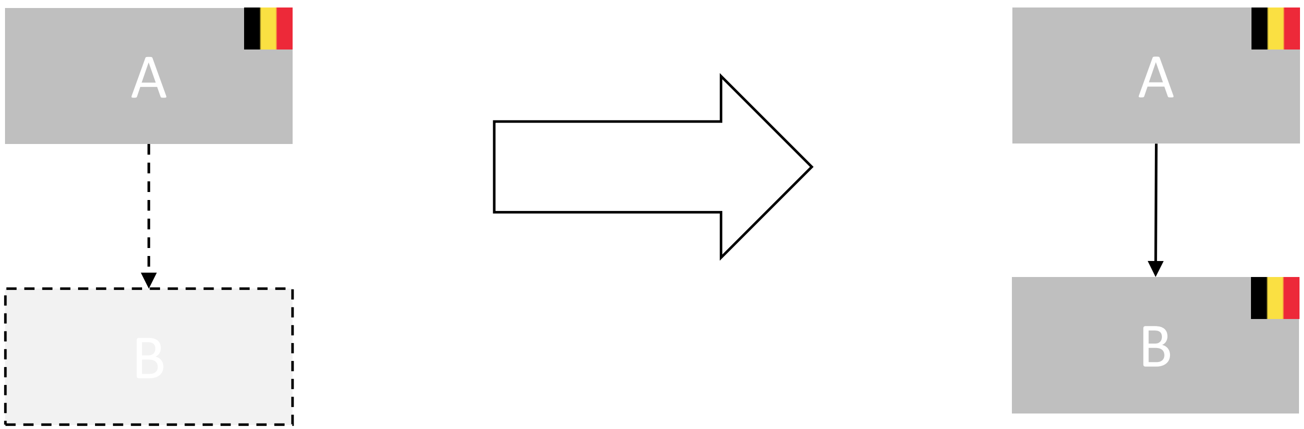


A-B = OK

A-B = OK

If the **assets** or part of the assets of a company have been **transferred** to the taxpayer or to a domestic or foreign company that is affiliated with the taxpayer within the period specified in the third paragraph **following a** merger by acquisition, demerger by acquisition or an assimilated transaction, **a contribution of a branch of activity or a contribution of the generality of goods**, for the purposes of the third paragraph, **every company to which a part of the total assets of the taxpayer or of the company affiliated with the taxpayer belonged before the effective date of this** merger, demerger, **contribution** or assimilated **transaction is assimilated to the taxpayer** or the domestic or foreign company related to the taxpayer **and will also have to comply with the conditions of application of this third paragraph**.

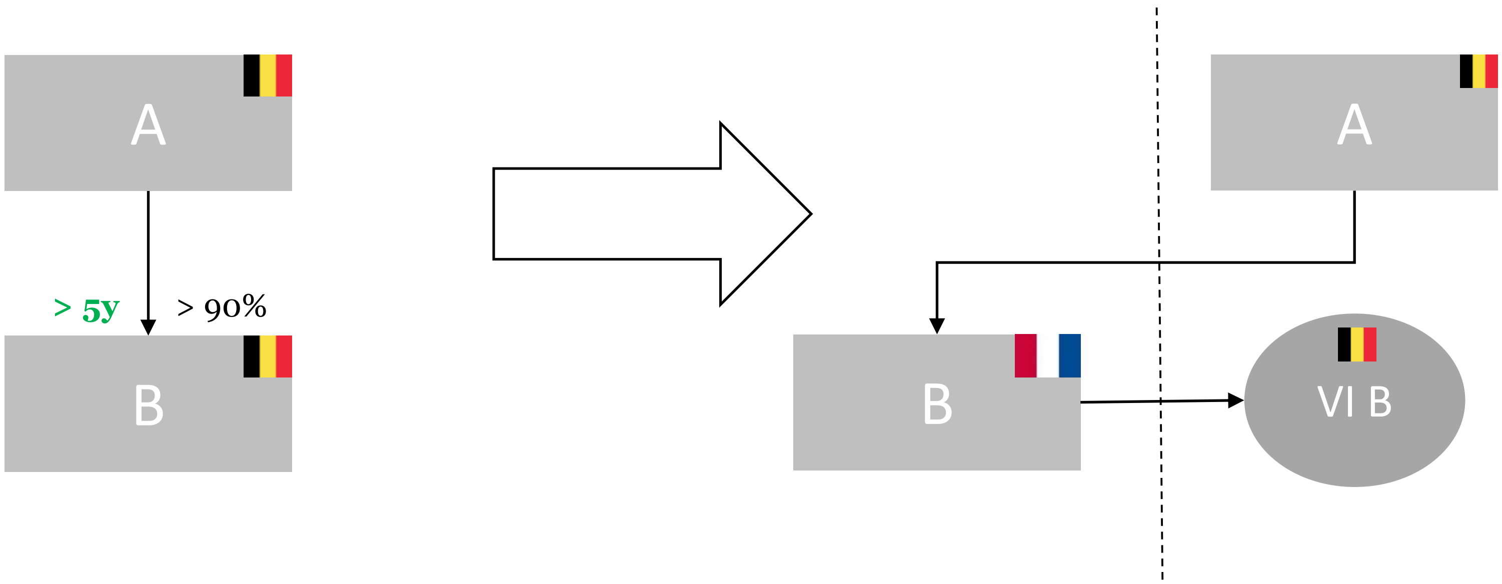
Contribution of a branch of activity in a new company (13)*



A-B = not OK
group contribution will be possible 5 years after the incorporation

If the taxable person or a domestic or foreign company affiliated with the taxpayer is incorporated within the period referred to in paragraph 3 **pursuant to a merger by the incorporation of a new company, a demerger by the incorporation of a new company, a mixed demerger or an assimilated transaction**, for the purposes of this third paragraph, the taxpayer or the company affiliated with the taxpayer is assimilated to the company or with any company to which the total assets of the taxpayer or of the affiliated company belonged before the effective date of this merger, demerger or assimilated transaction.

Cross border seat transfer (14)



A-B = OK

A-VI B = OK?

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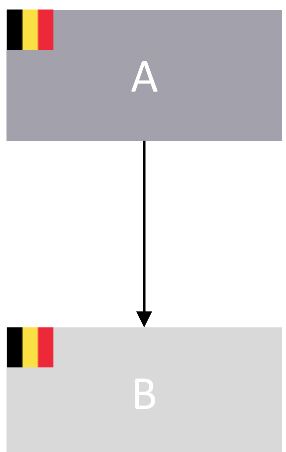
Practical cases regarding 5-year period



- Company A purchases shares in company B on 10 October 2015 and sells the shares on 20 December 2021.
- Financial year of both companies are per calendar year.

- Is tax consolidation possible in financial year 2019 (tax year 2020)?

- Is tax consolidation possible in financial year 2019 if shares in company B are sold 10 December 2020 (instead of December 2021)?

Practical cases regarding 5-year period

- Company A purchases shares in company B on 10 October 2015 and sells the shares on 20 December 2021.

CY x-4	CY x-3	CY x-2	CY x-1	**TY**
2016	2017	2018	2019	2020

- Is tax consolidation possible in financial year 2019 ?
  - Tax consolidation OK

- Quid if the shares in company B are sold 20 December 2020?
  - Tax consolidation NOT OK
  - Quid income tax return TY 2020?

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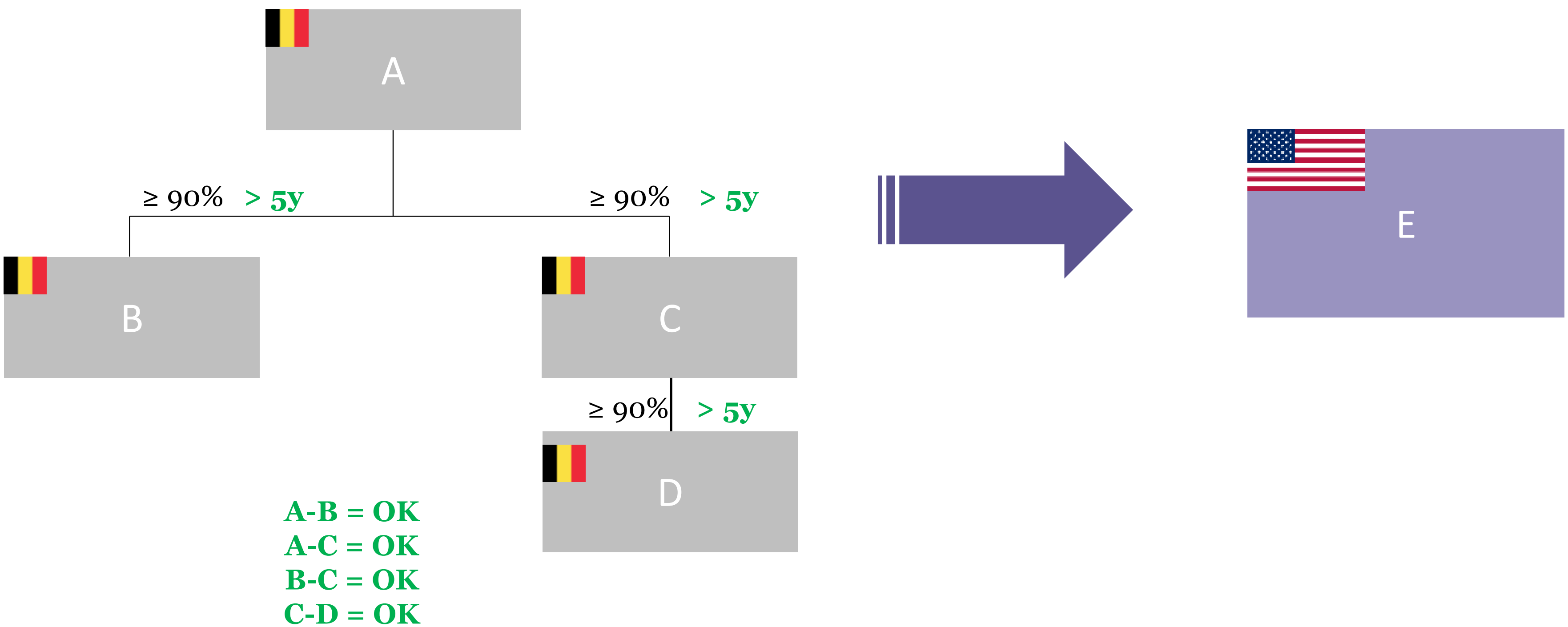
How do consolidation rules impact acquisitions/divestures?

- Horizontal group structure (instead of vertical structures)
  (due to 'direct participation'-requirement)
- Asset deal by operational company
  (that already meets the 5-year holding requirement)
  (subsequent (partial) demerger by incorporation: no adverse impact)
- Acquisition company established in EER
- Stock option or warranty plan: attention for ≥ 90% direct participation requirement
- Divesture: potential adverse impact on 5-year holding requirement
  (5 year from January 1st of 4th calendar year preceding the relevant tax year)
  (impact of postponed closing; suspensive conditions)

Acquisition company: Parent company outside EER

- What if US company acquires a Belgian group?



Acquisition company: Parent company outside EER

BEFORE 30-07-2018 ACT

- Art. 205/5. **§ 2.** Het bedrag van de groepsbijdrage wordt vastgesteld in een in paragraaf 3 en 4 bedoelde groepsbijdrageovereenkomst die wordt gesloten tussen de belastingplichtige en een in aanmerking komende binnenlandse of buitenlandse vennootschap. **Een in aanmerking komende binnenlandse of buitenlandse vennootschap is een vennootschap**:
  - die beschikt over een deelneming van ten minste 90 pct. van het kapitaal van de belastingplichtige, of;
  - waarvan het kapitaal voor ten minste 90 pct. wordt aangehouden door de belastingplichtige, of;
  - waarvan het kapitaal voor ten minste 90 pct. wordt aangehouden **door een andere binnenlandse of buitenlandse vennootschap en deze andere binnenlandse of buitenlandse vennootschap** beschikt over een deelneming van ten minste 90 pct. van het kapitaal van de belastingplichtige.

Een buitenlandse vennootschap komt enkel in aanmerking indien deze gevestigd is in een lidstaat van de Europese Economische Ruimte.

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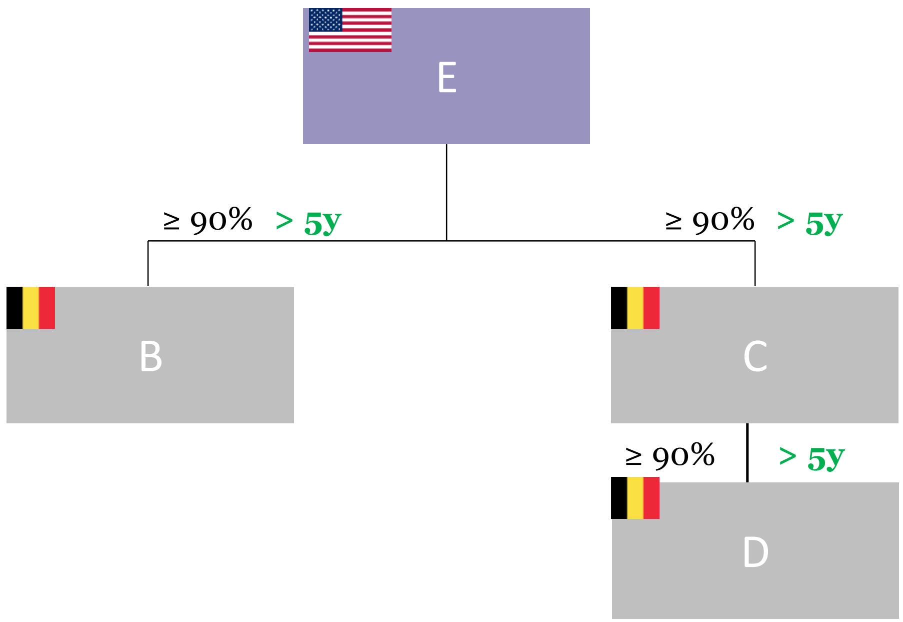
Acquisition company: Parent company outside EER

30-07-2018 ACT

- Art. 205/5. **§ 2.** … **Voor de toepassing van dit artikel is een binnenlandse of buitenlandse vennootschap die verbonden is met de belastingplichtige een vennootschap**:
  - die beschikt over een deelneming van ten minste 90 pct. van het kapitaal van de belastingplichtige, of;
  - waarvan het kapitaal voor ten minste 90 pct. wordt aangehouden door de belastingplichtige, of;
  - waarvan het kapitaal voor ten minste 90 pct. wordt aangehouden door **een andere binnenlandse of buitenlandse vennootschap en deze andere binnenlandse of buitenlandse vennootschap** beschikt over een deelneming van ten minste 90 pct. van het kapitaal van de belastingplichtige.

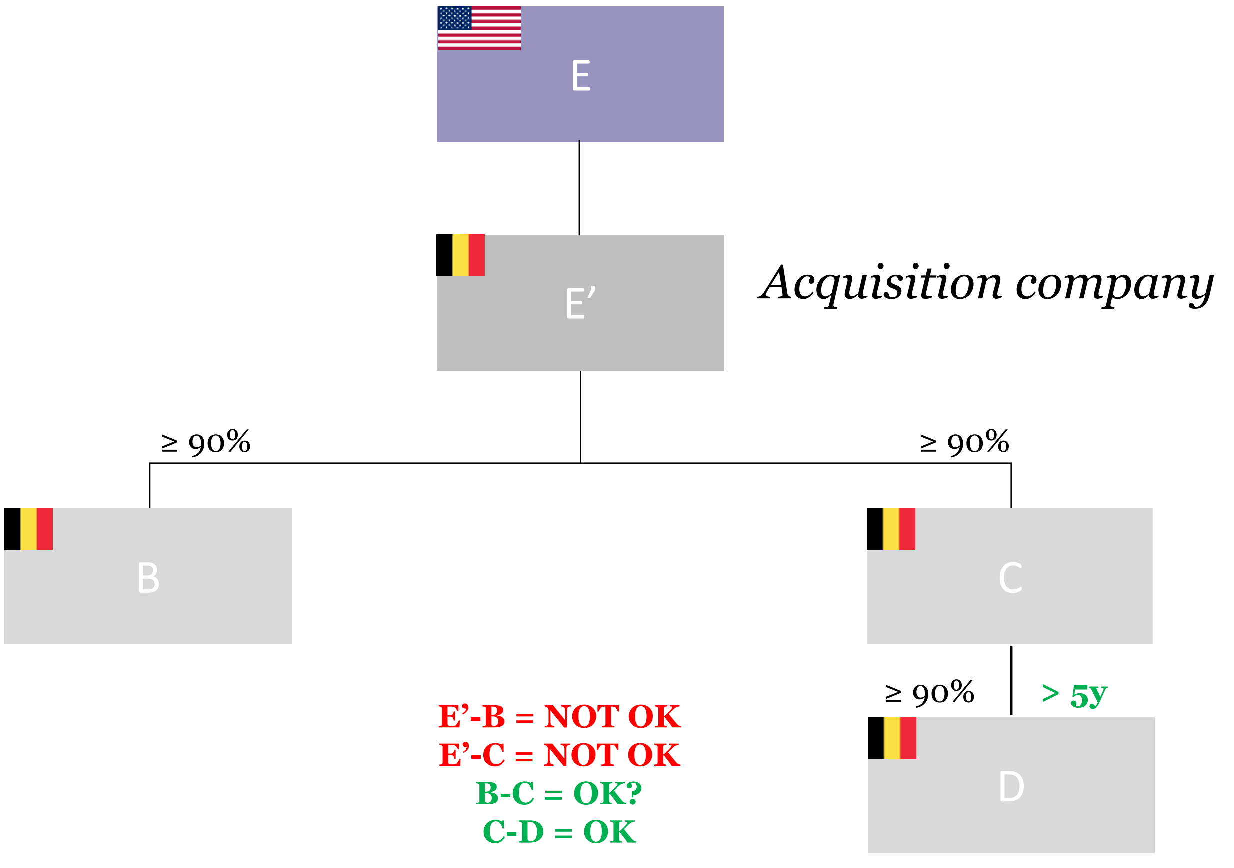
  Een buitenlandse vennootschap wordt voor de toepassing van dit artikel enkel als een in aanmerking komende buitenlandse vennootschap aangemerkt indien deze gevestigd is in de Europese Economische Ruimte.

Acquisition company: Parent company outside EER



B-C = not OK?
C-D = OK

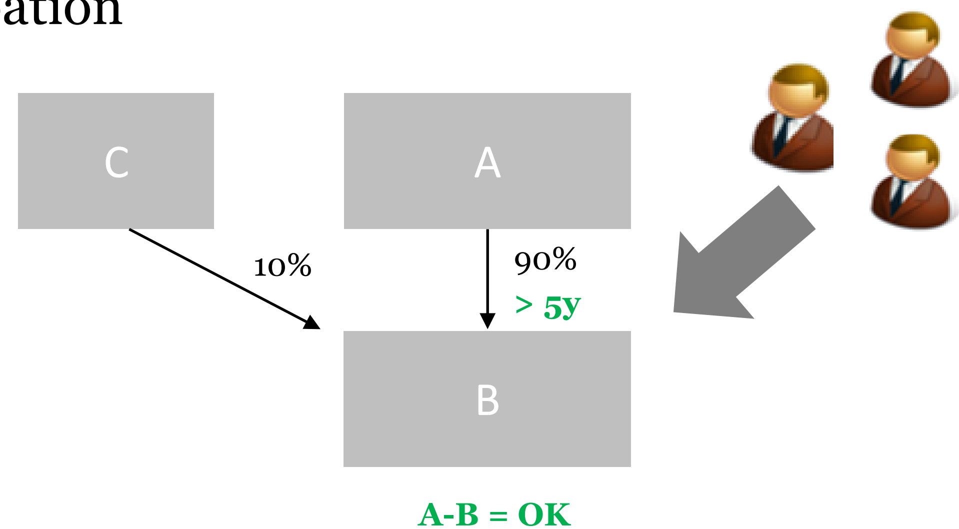
Acquisition company: Parent company outside EER



E'-B = NOT OK
E'-C = NOT OK
B-C = OK?
C-D = OK

Do’s and Don’ts in acquisition – divesture context

- Stock option plans / warrant plan: attention for ≥ 90% direct participation



- Alternatives
  - Profit certificates
  - Different categories of shares (ordinary shares and shares with preference)

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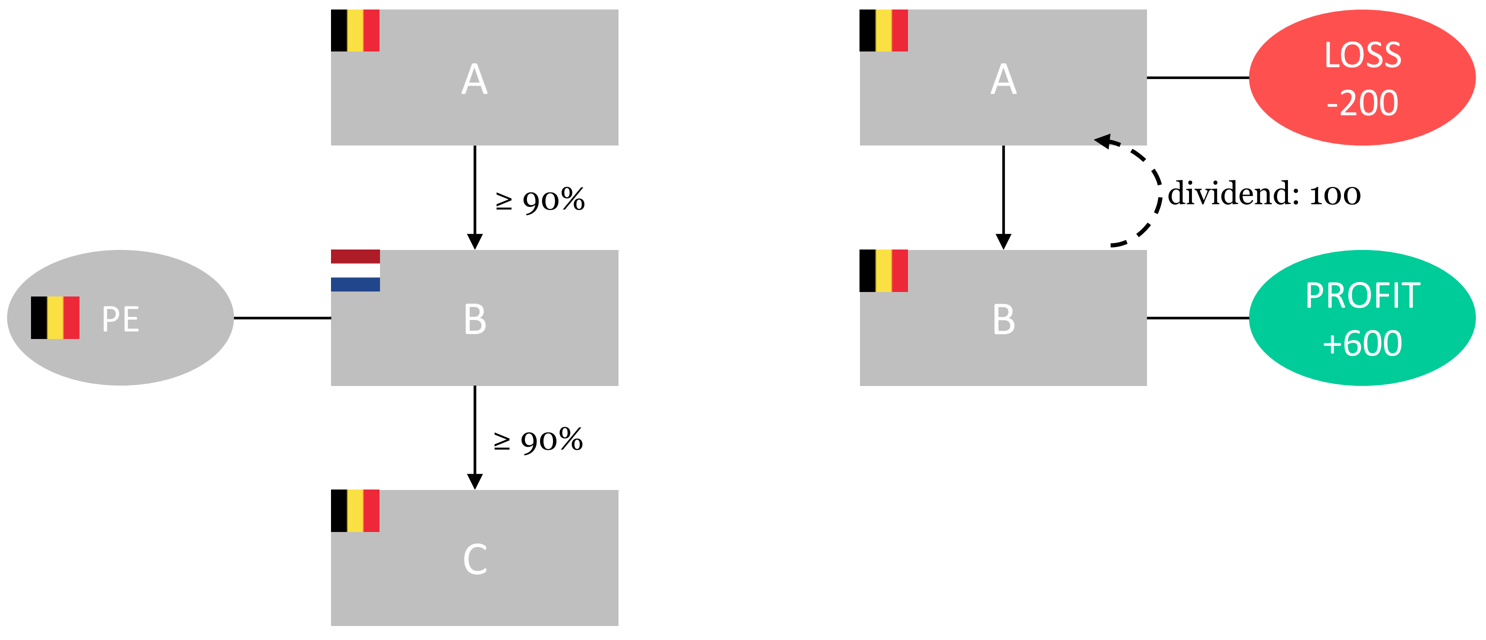
EU proof?



EU proof? Compliant with P/S Directive?

	Profit retained		Profit distributed	
	Subsidiary	Parent	Subsidiary	Parent
TAX				
Profit before tax (pre-consolidation)	+ 600	- 200	+ 600	0
Group contribution	-200	+200	- 200	+ 200
Dividend received deduction	-	-	0	0
Taxable base or loss carried-forward	+ 400	**0**	+ 400	**+ 200**
Corporate tax	**100**	0	**100**	**50**

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What to think about the 'Belgian approach' to consolidation?

- EU-proof?
- Affiliation criteria (direct ≥ 90%-participation) : (too) stringent
- 5-year affiliation requirement: overkill effects
- 'Anti-abuse'-rule for group reorganizations: overkill effects
- Flexible system

Some conclusions for practitioners

- Consider tax consolidation when making ‘subsidiary vs PE’ decisions
  - Or convert existing subsidiary into PE
- Consider group restructurings in order to optimize tax consolidation
  - But be aware of potential adverse impact of restructurings
- Consider future consolidation opportunities when structuring an M&A-transaction
- Consider tax consolidation as an alternative to TLCF utilization on stand-alone basis (avoid ‘basket’-restriction)
  - But TLCF-utilization may be preferable if upcoming restructuring
- Plan ahead when calculating tax prepayments

2. Interest limitation rules

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Interest limitation rules at a glance

- Non-deductibility of “exceeding ” borrowings costs
- **Exceeding borrowing cost** (“financieringskostensurplus”)
  - Net funding cost: borrowing cost *minus* interest revenues
  - > definition of “interest” in Income Tax Code (art. 19 ITC)
  - Also includes “economically equivalent” costs and revenues
    - To be further clarified by Royal Decree (based on the definition of borrowing costs provided by ATAD).

Interest limitation rules at a glance

- “Borrowing costs’ means interest expenses on all forms of debt, other costs economically equivalent to interest and expenses incurred in connection with the raising of finance as defined in national law, including, without being limited to, payments under profit participating loans, imputed interest on instruments such as convertible bonds and zero coupon bonds, amounts under alternative financing arrangements, such as Islamic finance, the finance cost element of finance lease payments, capitalised interest included in the balance sheet value of a related asset, or the amortisation of capitalised interest, amounts measured by reference to a funding return under transfer pricing rules where applicable, notional interest amounts under derivative instruments or hedging arrangements related to an entity's borrowings, certain foreign exchange gains and losses on borrowings and instruments connected with the raising of finance, guarantee fees for financing arrangements, arrangement fees and similar costs related to the borrowing of funds” (art. 2, (1) ATAD).

Interest limitation rules at a glance

- Excluded loans (not taken into account for determining the exceeding borrowing cost):
  - Interests on loans concluded before 17 June 2016 (unless if substantially modified)
  - Interest on PPP loans

- **Thresholds**
  - The exceeding borrowing costs will be disallowed if they exceed the highest of two thresholds:
    - 30% of the 'tax adjusted' EBITDA
    - *De minimis* threshold of € 3 million

Interest limitation rules at a glance

- ‘Tax adjusted’ EBITDA=

Result of the tax year (‘*eerste bewerking*’)

\+ Tax deductible depreciations and amortizations

\+ Tax deductible exceeding borrowing costs (disallowed interest is already included in the result of the tax year)

– Dividend income qualifying for participation exemption
– 85% of income qualifying for innovation deduction

– 80% of the income qualifying for patent income deduction

– Profits qualifying for treaty exemption

– Profits arising from a qualifying PPP-project

– Group contribution granted to affiliated company (tax consolidation)

Scope

- Belgian legal entities subject to CIT and Belgian establishments subject to non-resident CIT.
- Excluded entities:
  - ‘Standalone’ company
    - Not part of a “group”
    - No foreign establishment
    - No direct or indirect participation of ≥ 25% (voting rights, capital or profits)
    - No (individual or corporate) shareholder holding directly or indirectly a participation in the company of ≥ 25%
  - SPV for PPP-projects
  - Financing sector entities (a.o. certain investment companies)
  - Leasing- and factoring companies

Carry-forward of disallowed exceeding borrowing costs

- Disallowed exceeding borrowing costs can be carried forward
- No time limitation
- Utilization in subsequent tax year is limited to the interest margin for that tax year (i.e. to the positive difference between the threshold and the exceeding borrowing costs).
- Not limited by the “basket system”
- Not subject to article 207 WIB (change of control)

Entry into force

- Initially: tax year 2021 (FY starting on or after 1 January 2020).
- Law amended: tax year 2020 (FY starting on or after 1 January 2019).
- Grandfathering rule:

  Loans concluded before 17 June 2016 (which have not been fundamentally modified): still subject to the 5/1 – debt-equity rule (art. 198, 11° ITC)

Calculation at group level (*ad hoc* consolidation)

- Adjustments for affiliated (art. 11 Company Code) Belgian entities (companies and permanent establishments):
  - Calculation of **exceeding borrowing costs**: interest (and 'economically equivalent 'costs) payable to, and income obtained from affiliated Belgian entities (other than excluded entities) are disregarded. **(EU proof?)**
  - Calculation of the **EBITDA**: (+) costs payable to and (-) income obtained from affiliated Belgian entities (affiliation during the entire taxable period?). **(EU proof?)**
  - The ***de minimis* threshold** (€ 3 million) is "proportionally" allocated between Belgian affiliated entities (affiliation during the entire taxable period?) (allocation key to be determined by royal decree).

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Transfer of (excess) interest capacity to affiliated entity

- ‘Interest deduction agreement’
  - Rationale: alternative to ‘Group EBITDA’-escape, but limited to Belgian entities
  - Bilateral
  - Affiliation criterion: art. 11 Company Code
  - Applicable for 1 tax year
  - Due date: filing date for CIT returns
  - Transfer of ‘interest capacity’
    (but transfer can exceed ‘excess interest capacity’)
  - Financial compensation:
    - Optional
    - If compensation is paid: tax saving for the entity receiving additional interest capacity

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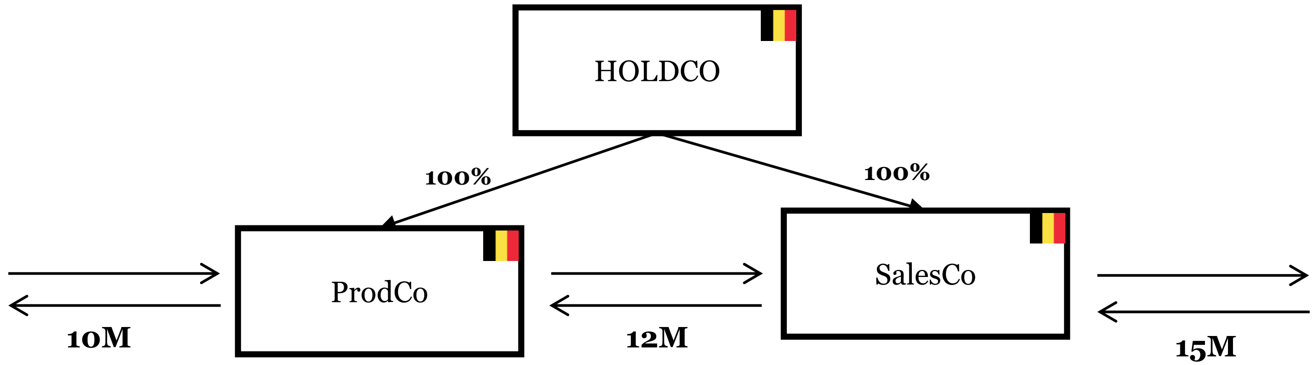
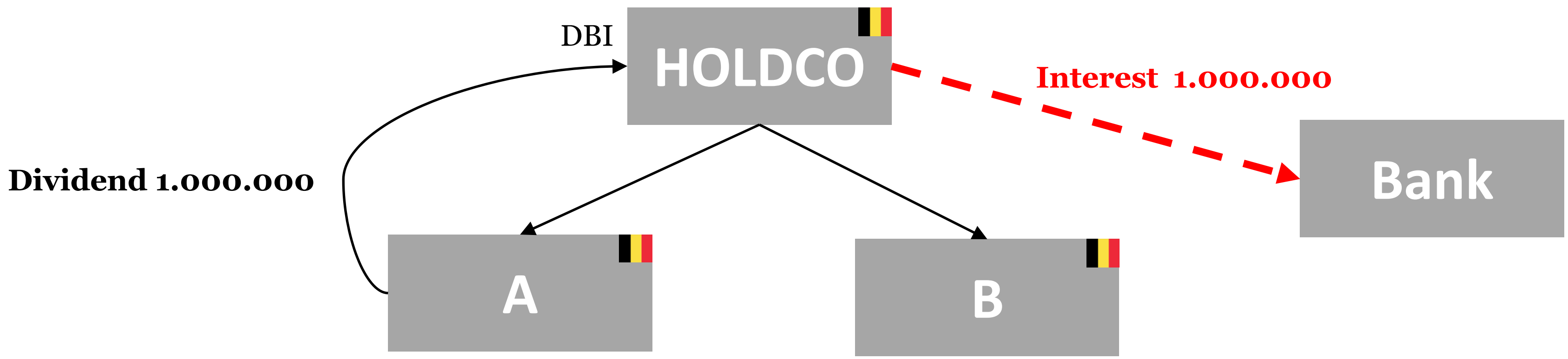
Group funding structure



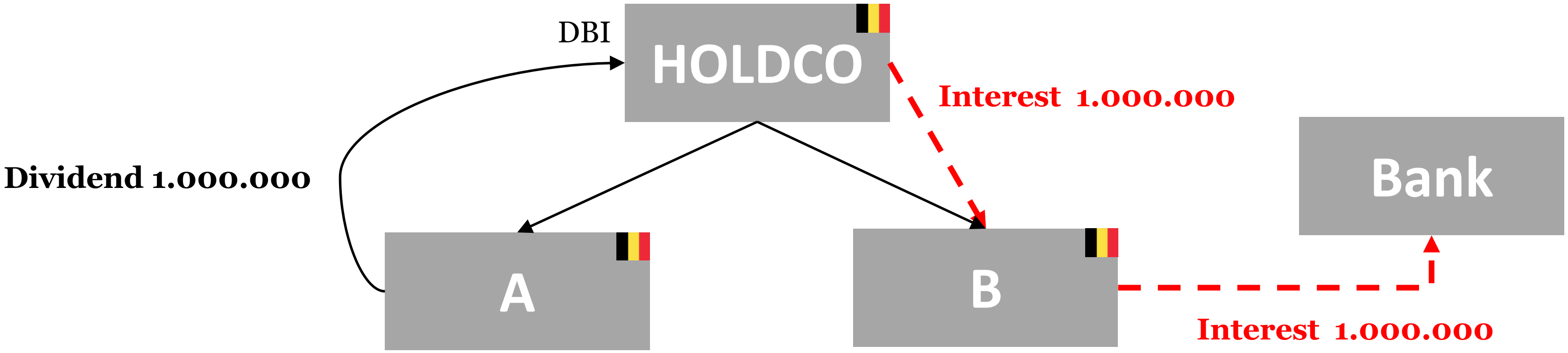
	ProdCo	SalesCo
Taxable income	12.000.000	15.000.000
Deductible costs	10.000.000	12.000.000
Taxable base	**2.000.000**	**3.000.000**
Correction (*ad hoc* conso)	-12.0000.000	+ 12.000.000
EBITDA (tax adjusted)	-10.000.000	15.000.000
Threshold (30%)	**0**	**4.500.000**

Group funding structure



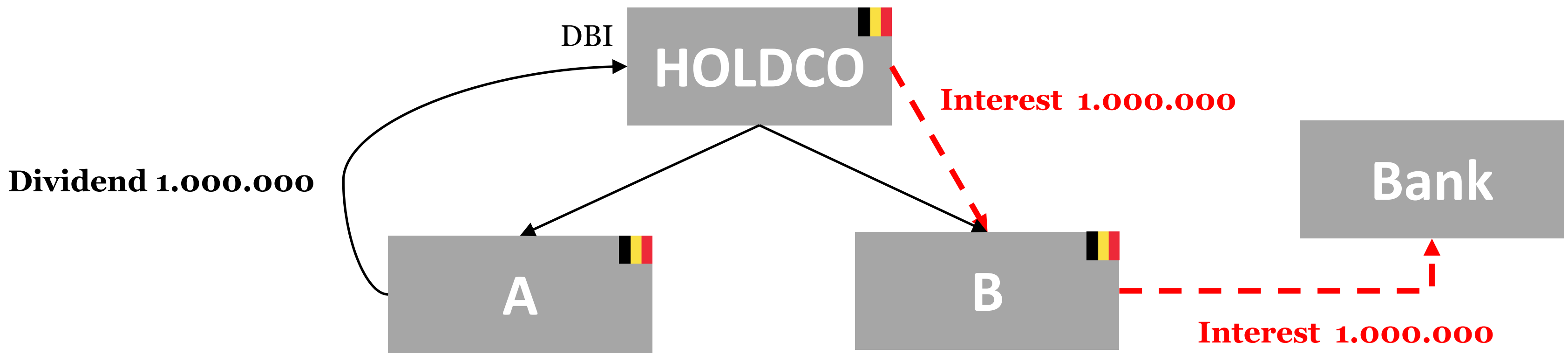
	Holdco
Taxable income	0
Exceeding borrowing cost	1.000.000
DRD	- 1.000.000
EBITDA (tax adjusted)	0
Threshold (30%)	**0**

Group funding structure



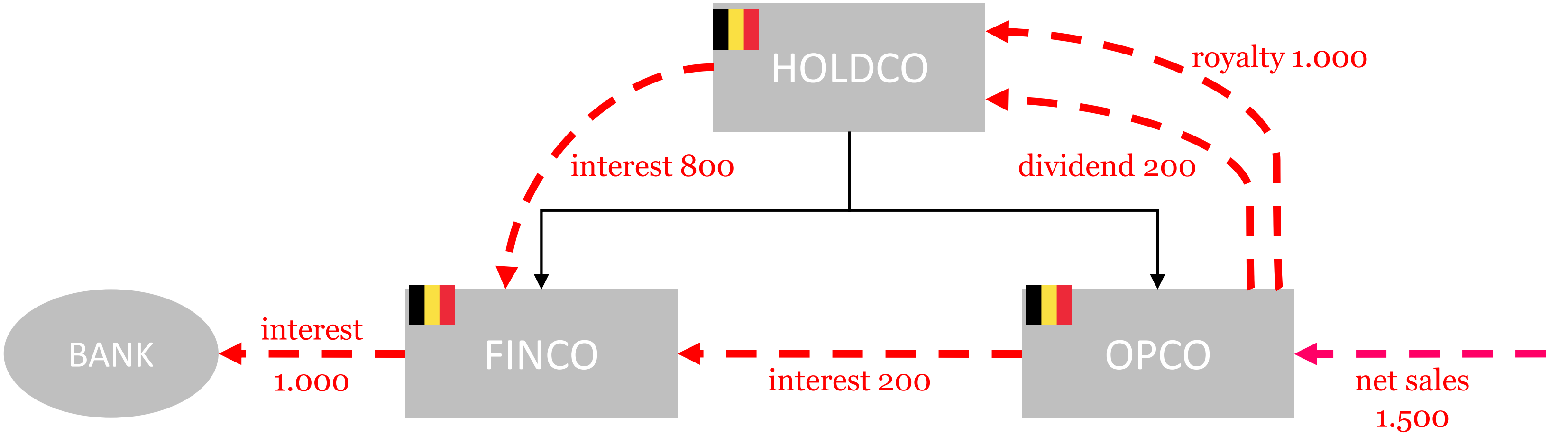
	HOLDCO	B
Taxable income	0	0
Exceeding borrowing cost	0	1.000.000
DRD	- 1.000.000	0
Correction (*ad hoc* conso)	+ 1.000.000	- 1.000.000
EBITDA (tax adjusted)	0	0
Threshold (30%)	**0**	**0**
Non deductible interest	**0**	**1.000.000**

Group funding structure



	HOLDCO	B
Taxable income	0	0
Exceeding borrowing cost	0	1.000.000
DRD	- 1.000.000	0
Correction (*ad hoc* conso)	+ 1.000.000	- 1.000.000
EBITDA (tax adjusted)	0	0
Threshold (30%)	**0**	**1.000.000**
Non deductible interest	**+1.000.000**	**0**

Group funding structure



Group funding structure

	HoldCo	FinCo	Opco
Exceeding borrowing cost	0	1.000	0
“Profit before tax”	400	0	300
Exceeding borrowing cost	0	1.000	0
Intra-group adjustments	- 200	- 1.000	+ 1.200
Dividend received deduction	- 200	-	-
EBITDA	0	0	1500
Threshold (30%)	0	0	450
Excess / (deficit)	0	- 1.000	450
Taxable basis	200	1.000	300
Transfer interest capacity	-	+ 450	- 450
Excess / (deficit)	0	- 550	0
Taxable basis	200	550	300

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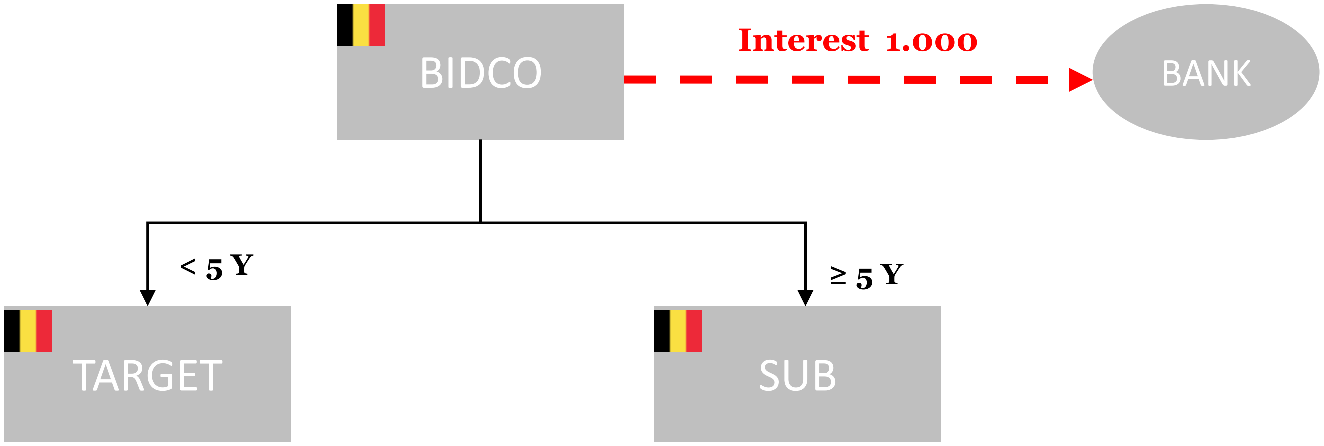
- Interest limitation rules: overview
- Case: group funding
- **Case: acquisition funding**
- Case: real estate investment

Acquisition financing



Acquisition financing

	No optimization	Transfer of interest capacity	Group contribution and transfer of interest capacity
Exceeding borrowing cost	1.000	1.000	1.000
“Profit before tax”	- 1.000	- 1.000	- 1.000
Group contribution	-	-	+1.000
Exceeding borrowing cost	+ 1.000	+ 1.000	+ 1.000
EBITDA	0	0	1.000
Threshold	0	0 + 1.000	300 + 700
Excess / (deficit)	- 1.000	0	0
Taxable basis	0	0	0
Tax loss carry-forward	0	1.000	0

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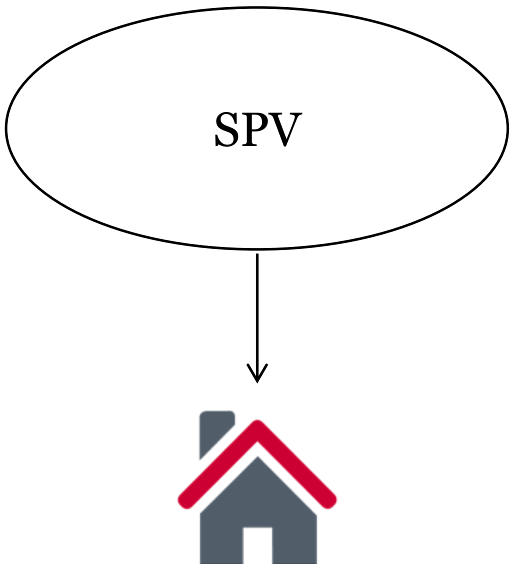
Impact on real estate investments



Real estate • 26.000	*Equity* • 7.800 *Debt* • 18.200

Revenue • 1.560	*Amortization* • 624 *Interest* • 382 *Miscellaneous expenses* • 94

Impact on real estate investments

Result before taxation	460
Amortization	+624
(Net) borrowing costs	+382
EBITDA	1.466
Limitation (30% x 1.1466)	**440**
(Net) borrowing cost	382
Taxable income	460
Result after taxation	345

Cash-trap

Impact on real estate investments

	Cash-trap	**Subordinated loan** **6000 EUR at 3,5%**
Result before taxation	460	250
Amortization	+624	+624
Net borrowing cost	+382	+592 (382 + 210)
EBITDA	1.466	1.466
Limitation 30% x1.466	440	440
(Net) borrowing cost	382	592
Surplus	**0**	**152**
Taxable income	460	402 (250+152)
Result after taxation	345	302

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Impact on real estate investments

- Broad impact and adverse tax effects of Belgian Interest limitation rule

  - Subordinated loans
    - Higher return on investment
    - No tax motives

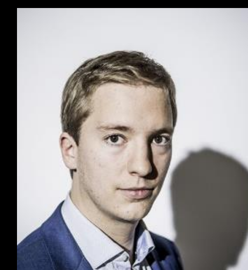
  - Vacancy
    - Creating tax loss situation

Impact on real estate investments

- Also important
  - Thin cap rules: interests which exceed the threshold are lost
  - Interest limitation rules: unlimited carry forward of disallowed borrowing costs
  - 30% of EBITDA *or* de minimis threshold of 3 mio EUR
  - Exclusion
    - GVBF/FIIS

Tiberghien
Advocaten / Avocats / Lawyers

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