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**TAGLaw / TIAG**

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International Tax Planning: Holding Structures

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*Frankfurt*

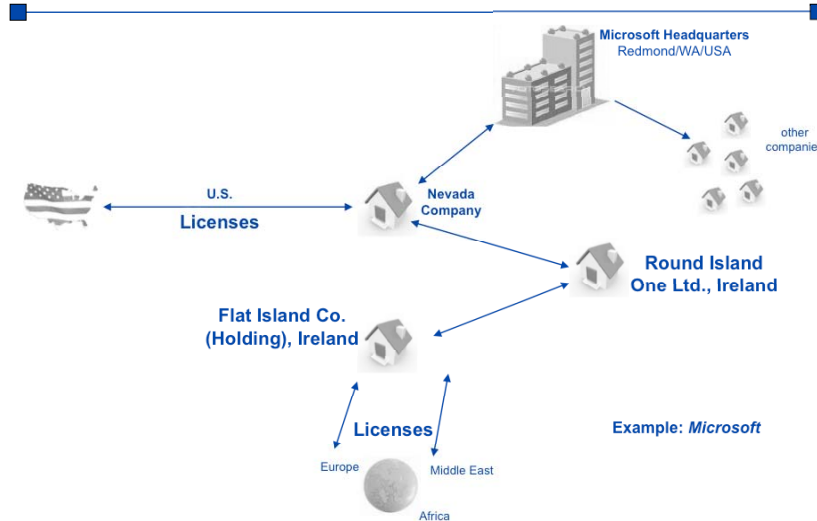
*Hamburg*

*Paris*

**International Tax Planning: Holding Structures**

- Introduction **Microsoft**
- Relevant tax criteria for a holding company
- Shopping tools
- Comparison: NL / GER / France
- Germany: Anti-Shopping Provision
- Investment structure: GER / NL Holding

## Introduction *Microsoft*



3

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## Relevant Tax Criteria for a holding company

- Tax rate and tax base
- Taxation of dividends received
- Withholding tax on profit distribution
- Deductibility of expenses and losses
- Group taxation
- Shareholder debt financing
- CFC regulation
- Exit taxation

4

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## Shopping tools

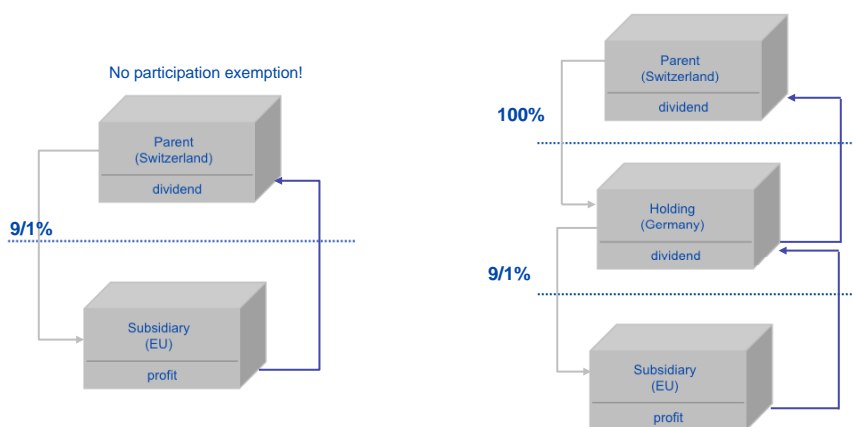
- Participation exemption shopping
- Treaty shopping
- Directive shopping
- Tax rule shopping
- Deduction shopping
- Cross-border group relief shopping

5

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## Participation exemption shopping

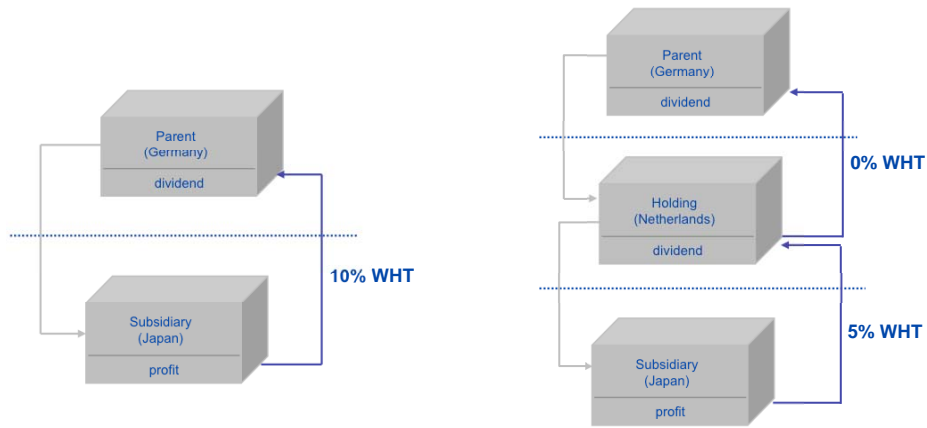


6

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## Treaty Shopping

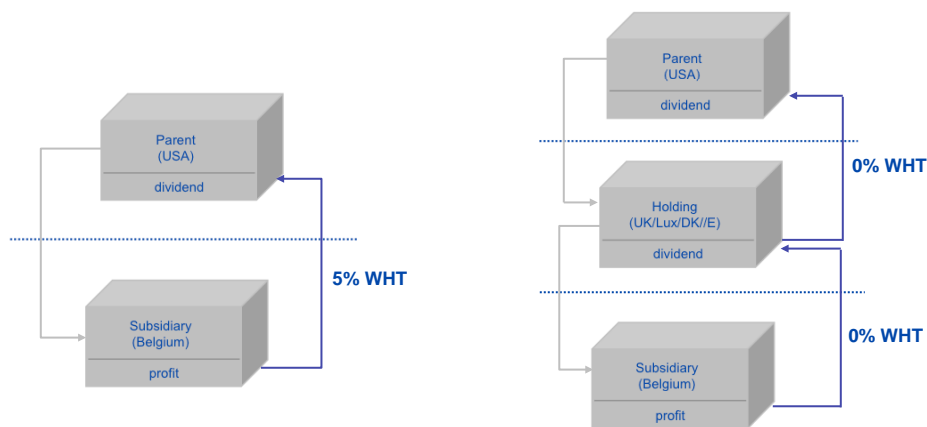


7

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## Directive Shopping

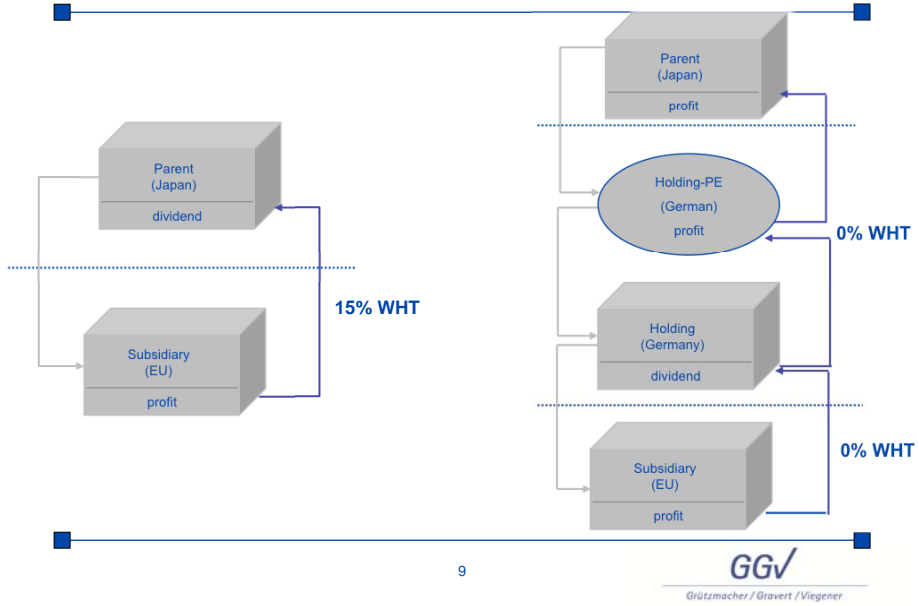


8

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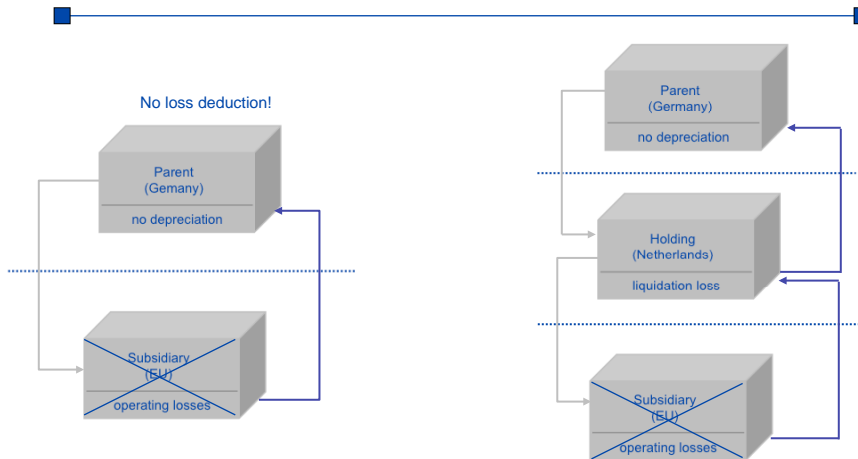
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## Rule Shopping



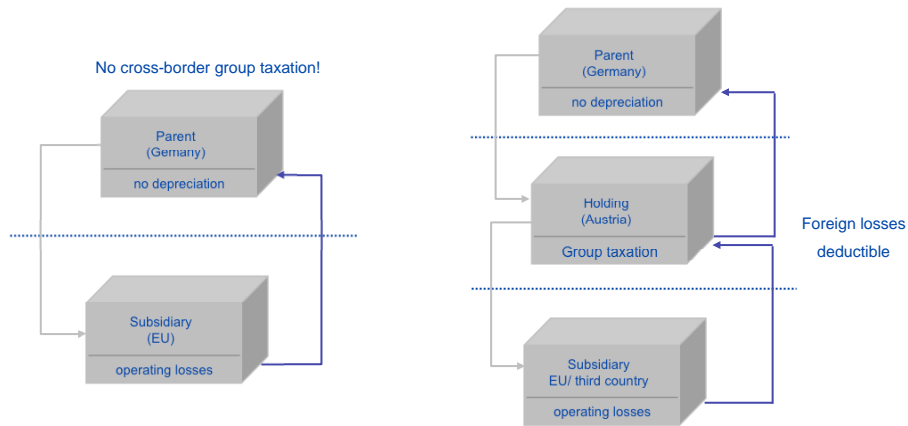
9

## Deduction Shopping



10

## Cross-border Group Relief Shopping



11

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## Comparison of relevant tax criteria

Characteristics	Netherlands	Germany	France
Exemption from income from investment	exemption	exemption	exemption
Dividends	100%	95%	95%
Minimum shareholding	5%	No	5%
Minimum holding period	No	No	2 years
Application to PE	Yes	Yes	Yes
Subject-to-Tax-clause	generally No	Yes (AStG)	No
Reservation clause for active income	Yes	No	No
CFC Rules	No	Yes	Yes
Exemption from income capital gains			
Capital gains	100%	95%	95%
Minimum shareholding	5%	No	5%
Minimum holding period	No	No	2 years
Capital loss deduction	No (except liquidation loss)	No	No (yes < 2 years)

12

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## Comparison of relevant tax criteria

Characteristics	Netherlands	Germany	France
<b>Miscellaneous</b>			
Deductibility from investment			
Interest	limited	limited (3 Mio. / 30% EBITDA)	limited (rate)
Current-value depreciation	No	No	No
Thin-Cap (debt/equity ratio)	3:1	No	3:2
DDT-network	80	88	118
Group taxation			
Domestic company	Yes	Yes	Yes
Foreign subsidiary	Yes, if PE in NL	No	No
Tax loss deductibility	max. 9 years	Yes (€ 1 Mio. > 60% of taxable income)	Yes
Deductibility foreign PE loss	Yes	No	No
Tax rates		No	
Standard tax rate CIT (without Trade Tax)	20% (k€200) 25,5% (>k€200)	15%	33,33%
Additive tax (solidarity surcharge)	-	5,5%	3,3% (on profits > k€ 763)

13

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## Group Taxation

	Netherlands	Germany	France
<b>Concept of group taxation</b>	unity concept (full consolidation)	attribution concept (tax group)	tax group
<b>Percentage of shareholding</b>	≥ 95% (voting rights and nominal capital)	> 50% (voting rights)	> 95% share capital
<b>Indirect shareholding</b>	Yes	Yes	Yes
<b>Dominant influence at each level</b>	Yes	Yes	Yes
<b>Amount of profit pooling</b>	completely	completely	completely
<b>Consolidation of equity</b>	Yes	No	No
<b>P&amp;L Pooling Agreement</b>	No	Yes	No
<b>Procedure</b>			
- option / obligation	option	option	option
- procedure	application till end of relevant FY	registration of P&L Pooling Agreement in Commercial Register	application within the begin (3 months) of the relevant FY
- binding period	No	5 years	in principle 5 years, can be terminated at any time
- extent	choice of each subsidiary	choice of each subsidiary	choice of each subsidiary
- FY consistent	Yes	Yes	Yes
<b>System</b>			
- nat. profit & loss pooling	Yes	Yes	Yes
- cross-border allocation	since 1.1.03 no longer possible	No	No
- If yes, subsequent taxation of foreign losses	-	-	-

14

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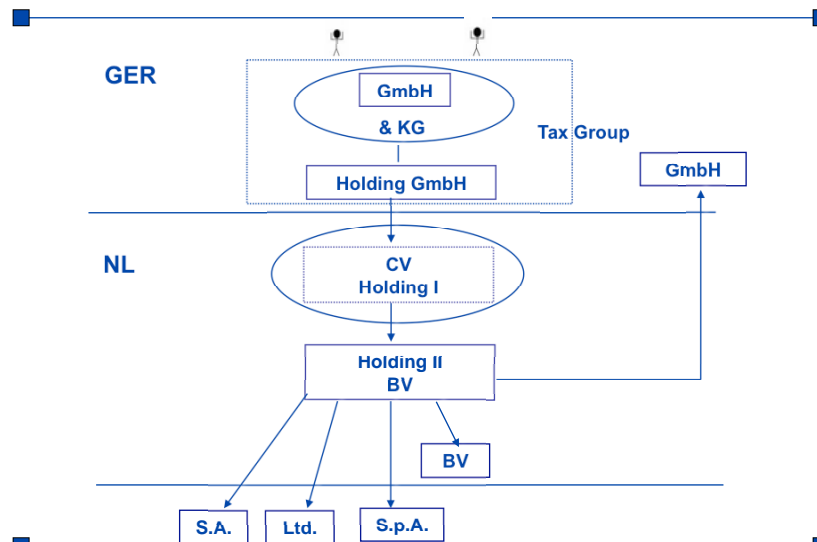
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### Anti-Shopping Provision, Sec. 50d (3) German ITC

- No economic or other relevant reason to establish the foreign company; or
- The foreign company does not earn more than 10% of its gross income from its own economic activity; or
- The foreign company has no adequate business premises for its activities.

Formal request of EU Commission (March 18, 2010)

### Investment Structure: GER / NL Holding





## Thank you for attention



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