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**TAGLaw / TIAG**

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**Tax Specialty Group Session, May 12**

International Tax Planning: Holding Structures

**Dirk R. Schellack**

*Frankfurt*

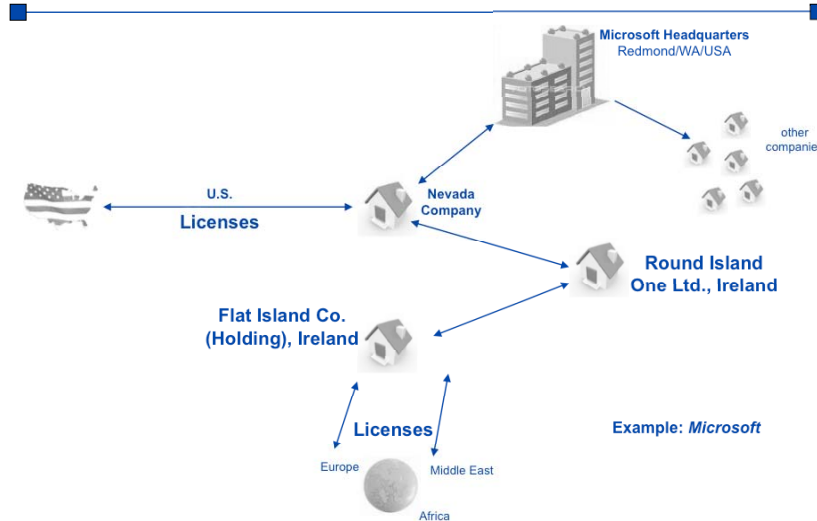
*Hamburg*

*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*



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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

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## Shopping tools

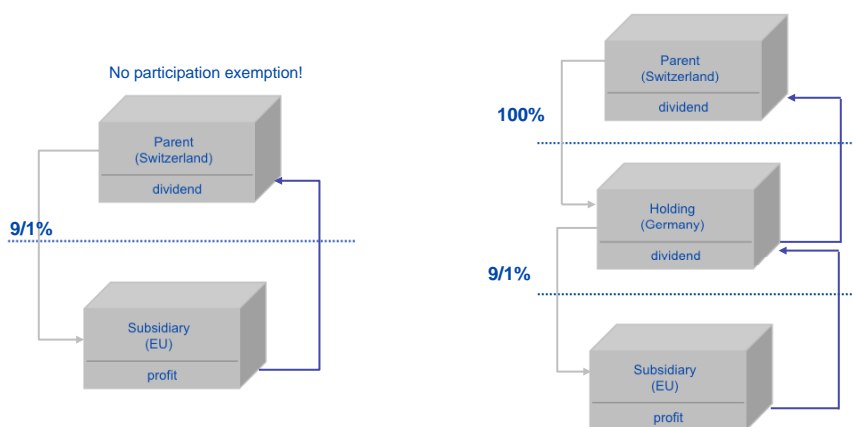
- Participation exemption shopping
- Treaty shopping
- Directive shopping
- Tax rule shopping
- Deduction shopping
- Cross-border group relief shopping

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## Participation exemption shopping

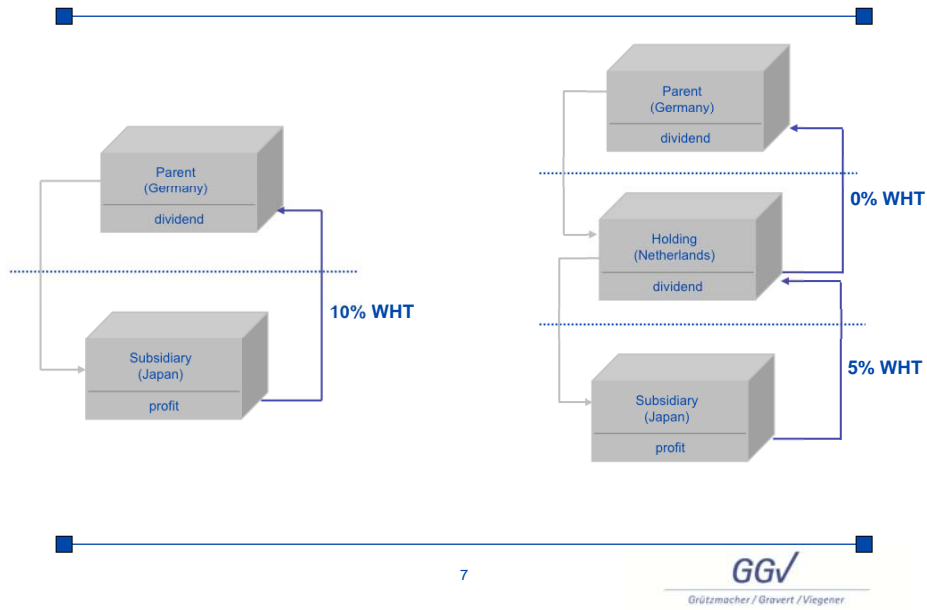


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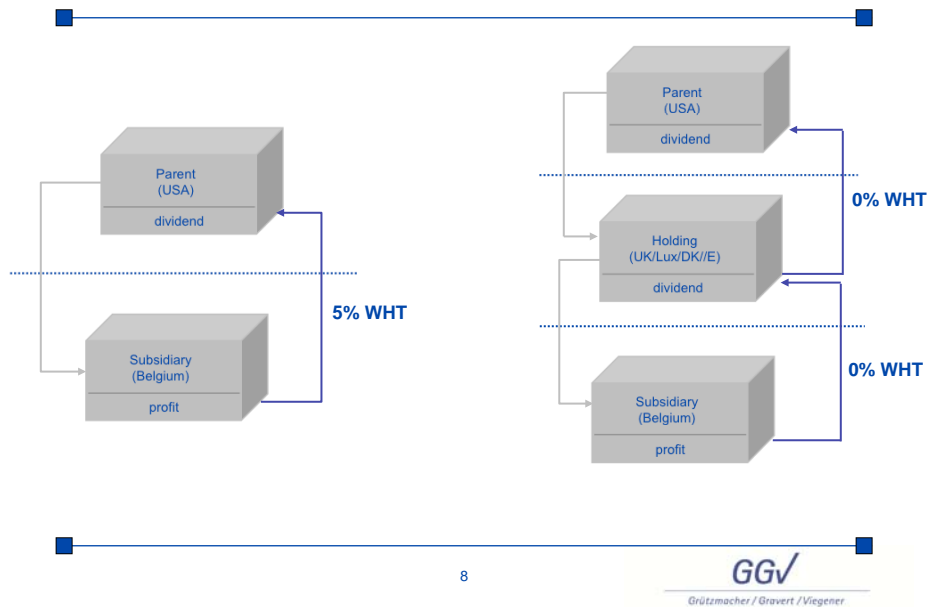
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## Treaty Shopping



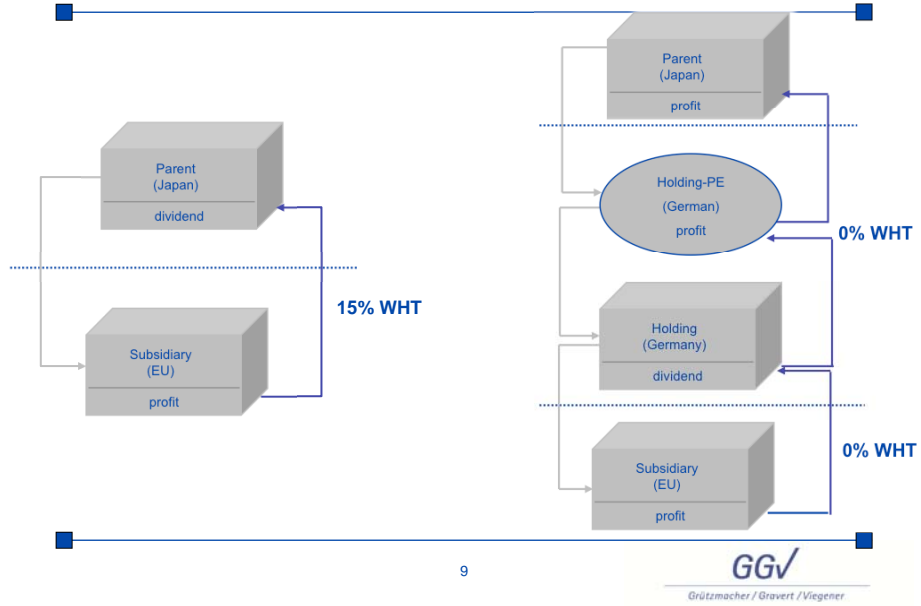
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## Directive Shopping

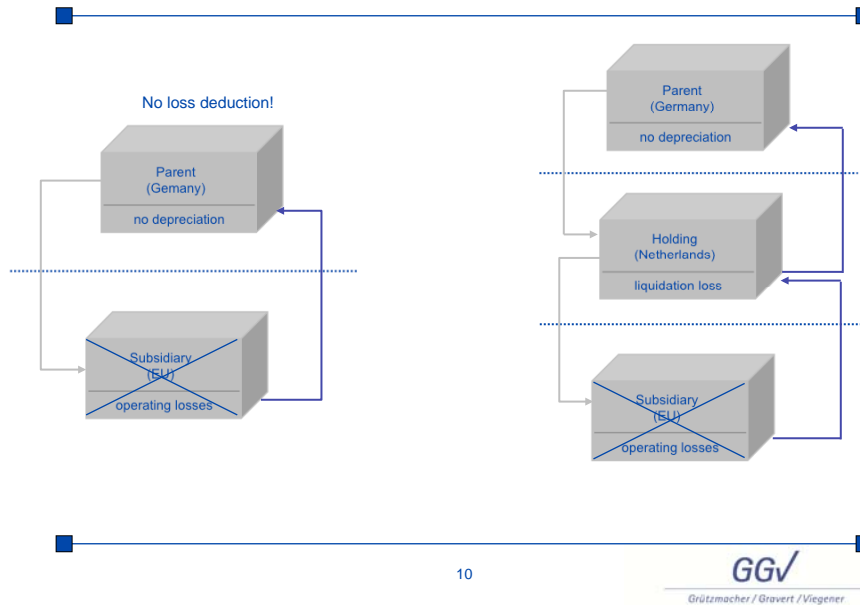


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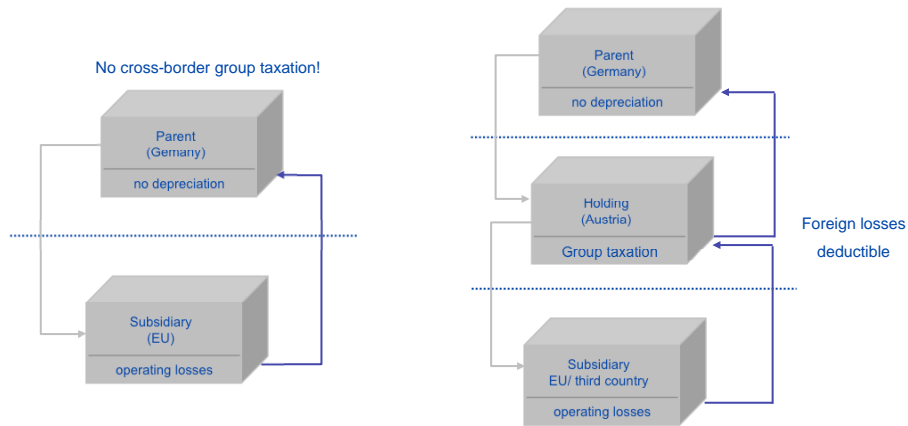
## Rule Shopping



## Deduction Shopping



## Cross-border Group Relief Shopping



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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)

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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)

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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	-	-	-

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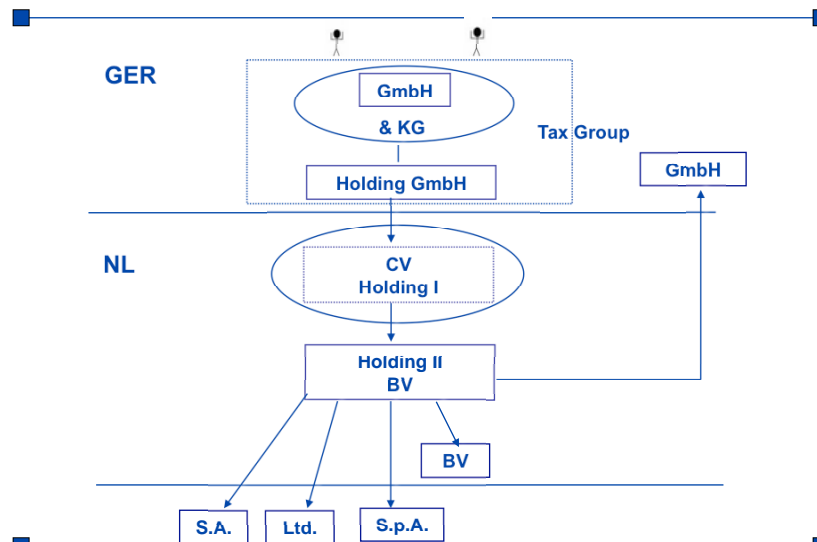
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### Anti-Shopping Provision, Sec. 50d (3) German ITC

- 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



Dr. Dirk R. Schellack  
Herrengaben 3 · 20459 Hamburg  
Telefon: +49(40)369633-0  
Email: schellack@gg-v.de

Rechtsanwalt (lawyer, 1999)  
Steuerberater (tax consultant, 2001)  
Fachberater für Internationales Steuerrecht (certified  
tax consultant specialist in international tax law, 2009).

Study of law at the Universities of Bayreuth and  
Freiburg. Five years experience in the tax and legal  
department of KPMG in Berlin and Hamburg. Since  
2004 working with GGV in Hamburg.

Practice areas:  
National and international tax law, company law, tax  
and commercial issues pertaining to the law of  
corporate reorganization, mergers & acquisitions,  
commercial contracts.

Languages: German, English.

E-mail: schellack@gg-v.de