Special Issues in Accounting and Taxation

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FOREVER FASTER PUMA

Grading

The final course grade of the FIRST attempt will be based on the following evaluations:

1) 5% case presentation: upload on EduNET 05 Nov 2022, presentation 11 Nov 2022

2) 10% oral exam via Teams – mainly on the case presentation, 26 Nov 2022

3) 35% written quiz (60 min) 02 Dec 2022

Resit exams: Every resit will be in a form of a written test and count for 100% of the grade.

Things to know

I. **Literature: Miller / Oats, *Principles of International Taxation;* Arnold / McIntyre, *International Tax Primer***

II. **To pass the Tax-Quiz the slides <u>and</u> the examples done in class are essential**

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(please: do NOT use the „FH“ e-mail address)

Agenda

I. Introduction to Taxation

II. Corporate income tax principles (in Austria)

III. Double Tax Treaties

IV. Value Added Tax (VAT)

I. Why governments levy taxes

To fund public expenditures

e.g.: Legal system, defence, health services, infrastructure etc.

by borrowing

by funding

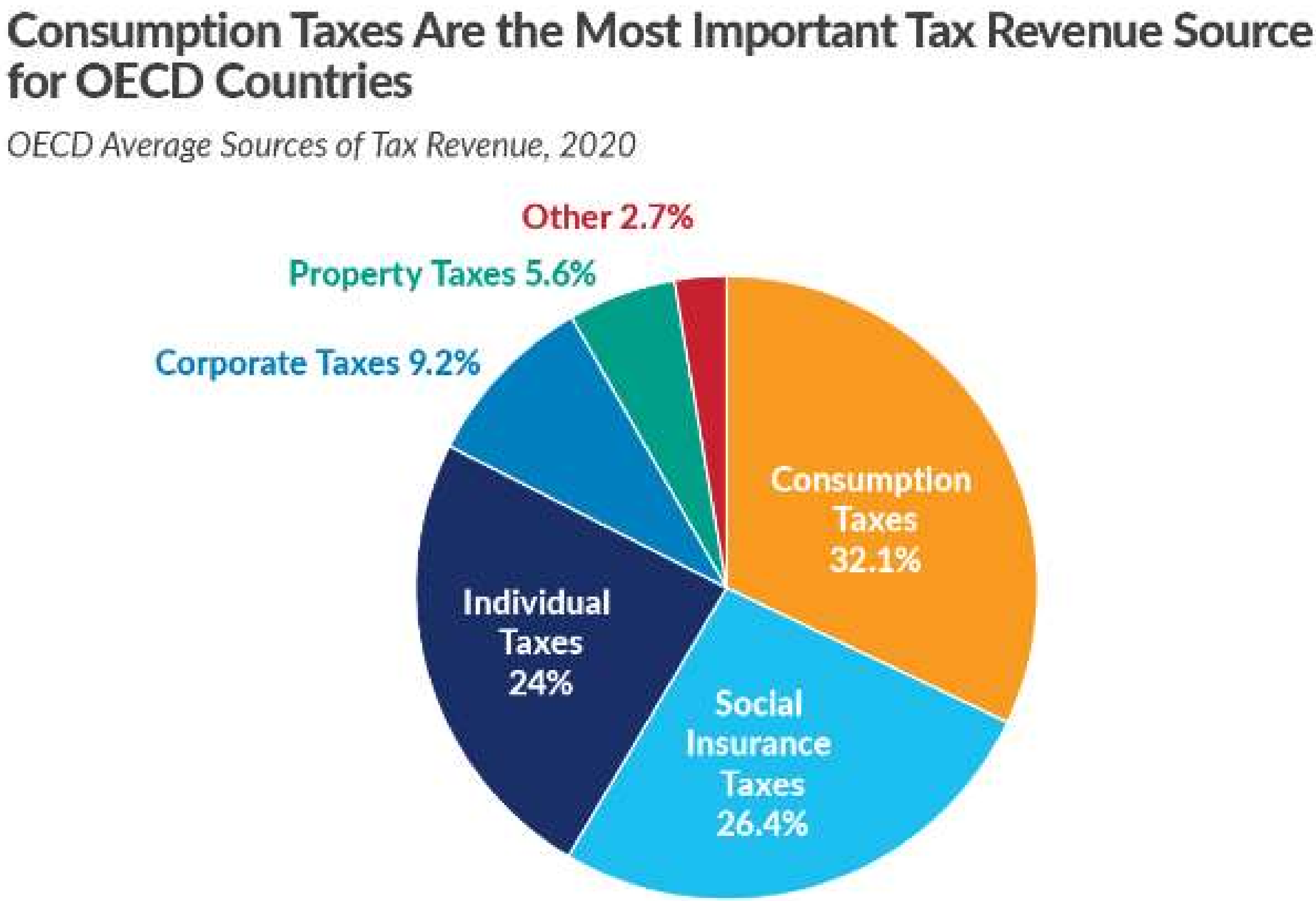
TAXES!!!

I. Types of Taxes

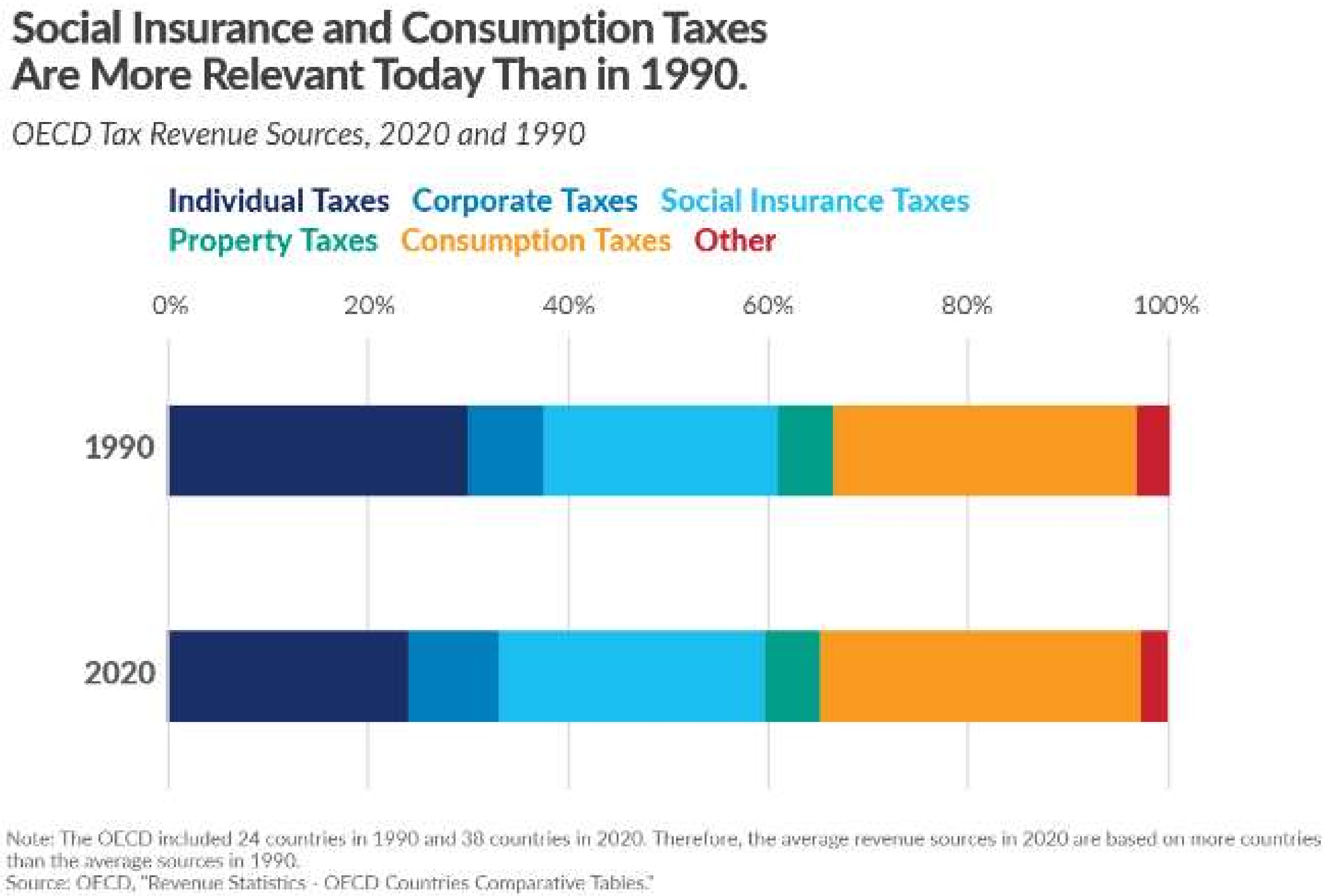
- Consumption tax
- Wealth tax, e.g. inheritance tax
- Personal income tax
- Capital gains tax
- Corporation tax
- Other …

- What are the most „effective“ taxes?
- Are there any social correct taxes? („Leistungsfähigkeits-prinzip“)
- Are taxes good?

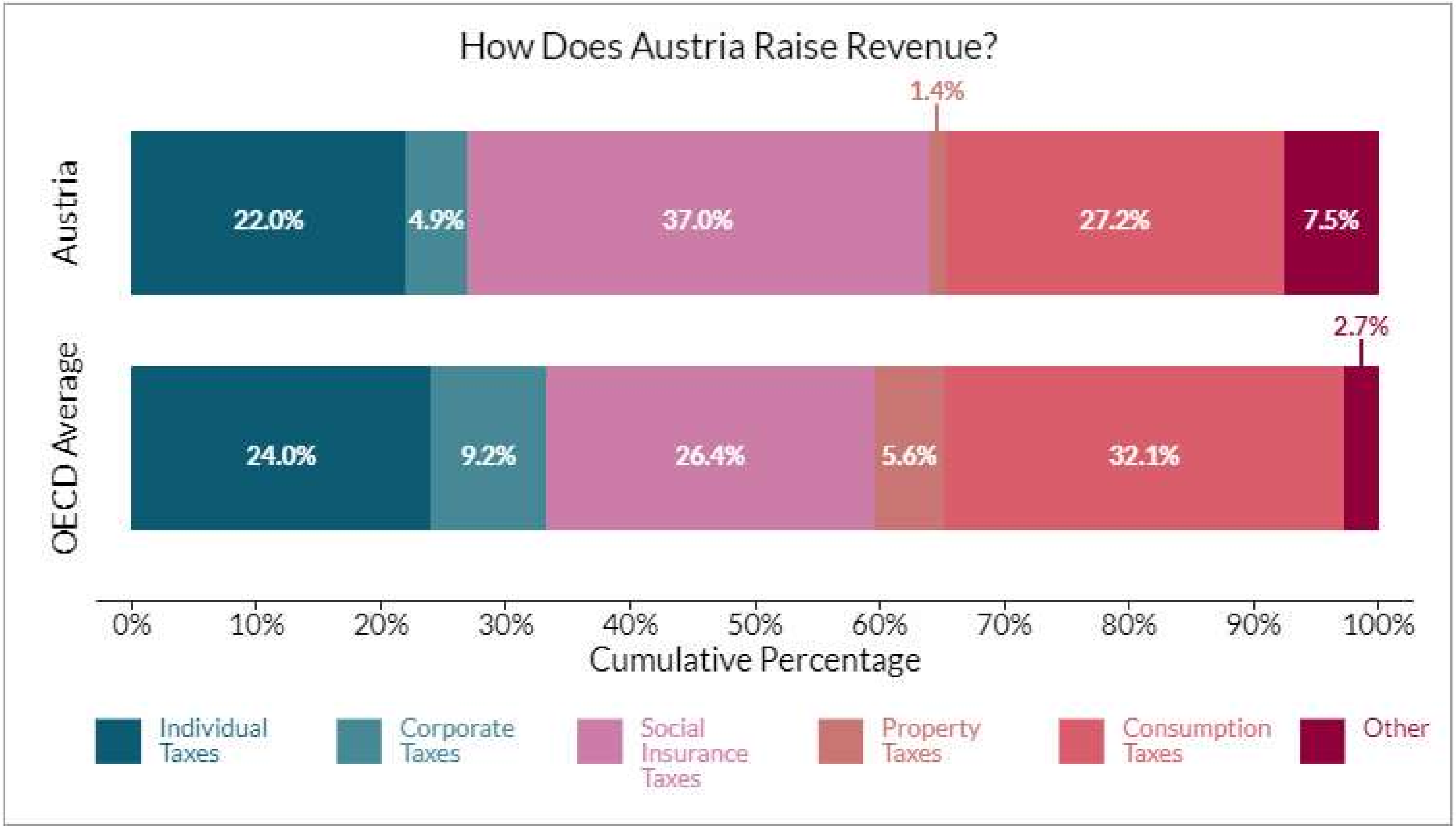
I. Types of Taxes



I. Types of Taxes



I. Types of Taxes



I. The right to tax individuals

- The right to tax

Permanent home or residence

⇒ Taxation on worldwide income!

I. Individual Income Tax

Personal income tax rates

Income (EUR)	Tax rate (%)
11,000 and below	0
11,001 to 18,000	20
18,001 to 31,000	35
31,001 to 60,000	42
60,001 to 90,000	48
90,001 to 1,000,000	50
above 1,000,000	55

- Withholding tax 27.5% (except interest with 25%)

I. The right to tax legal entities

⇒ Place of incorporation

⇒ Place of management

⇒ Seat

⇒ Place of management and seat differ?

I. Introduction to Taxation

Art 4 OECD Model Convention (MC): RESIDENT

For the purposes of this Convention, the term "resident of a Contracting State"
means any person who, under the laws of that State, is liable to tax therein by reason of his
domicile, residence, place of management or any other criterion of a similar nature,…

I. Introduction to Taxation

Art 4 OECD Model Convention (MC): RESIDENT

- *Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:*
- *a) he shall be deemed to be a resident only of the State in which he has a **permanent home** available to him; **if** he has a permanent home available to him **in both States**, he shall be deemed to be a resident only of the State with which **his personal and economic relations** are closer (centre of vital interests);*

I. Introduction to Taxation

- *b) if the State in which he has his* ***centre of vital interests*** *cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an* ***habitual abode****;*

- *c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a* ***national****;*

- *d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by* ***mutual agreement****.*

II. Corporate income tax principles

(1) Corporate income tax

(2) Losses

(3) Parent-subsidiary directive

(4) Group taxation

II. Corporate income tax

− Basis = pre-tax profit from local GAAP

\+ Add non-deductible items, e.g. expenses with representative character, luxury, fines, provisions, etc.

− Subtract deductible items, e.g. tax-free dividends

= TAX BASE

CIT = TAX BASE x Corporate income tax rate (25%)

II. Corporate income tax

pre-tax profit	1.200
+ non-deductible items	+ 300
- deductible items	- 500
= TAX BASE	1,000
Corporate income tax rate	25.0%
= CIT	250

II. Corporate income tax: losses

− Basis = pre-tax profit from local GAAP

\+ Add non-deductible items, e.g. expenses with representative character, luxury, fines, provisions, etc.

− Substract deductible items, e.g. tax-free dividends

= TAX BASIS

- Substract losses (max. 75% of positive tax basis)

= TAX BASIS after losses

CIT = TAX BASIS after losses x Corporate income tax rate (25%)

II. Corporate income tax: losses

pre-tax profit	1.200
+ non-deductible items	+ 300
- deductible items	- 500
= TAX BASIS	1,000
- losses	**400**
= TAX BASIS after losses	600
= CIT	150
Rest of losses	0

II. Corporate income tax: losses

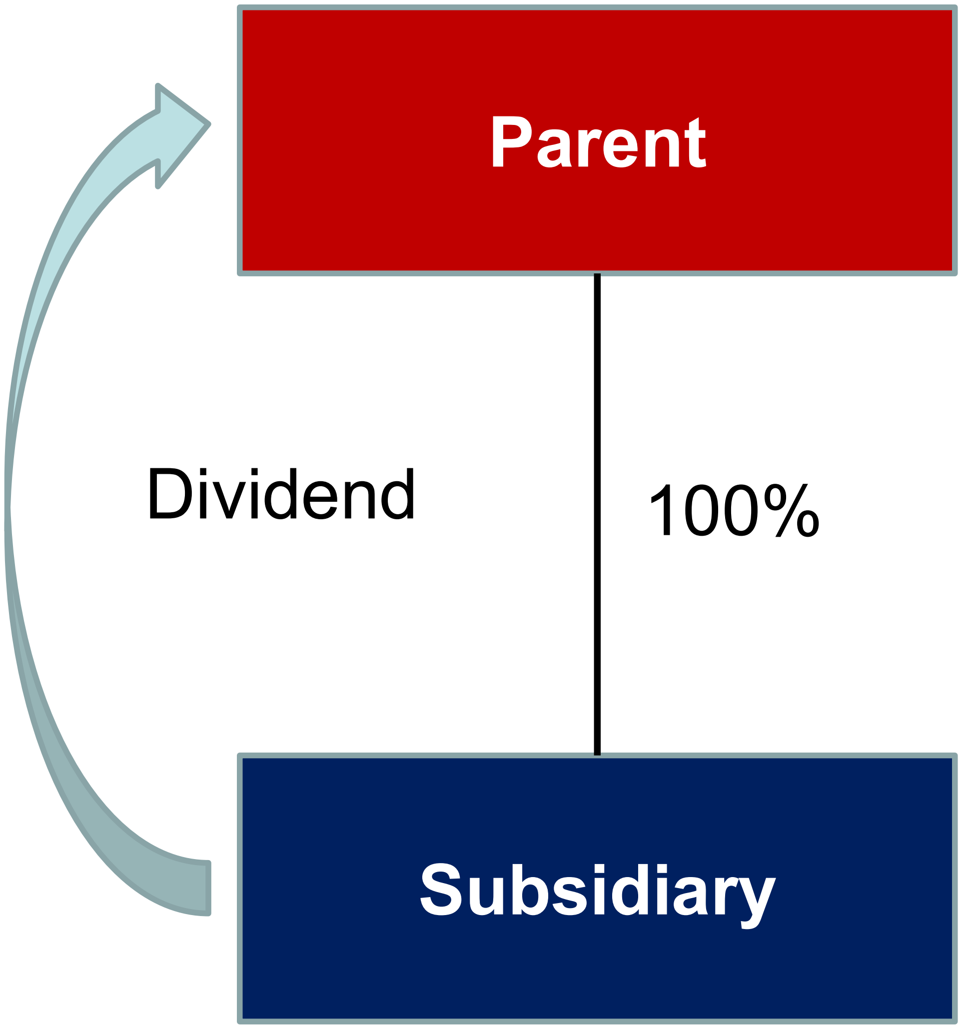
pre-tax profit	**1.200**
+ non-deductible items	+ 300
- deductible items	- 500
= TAX BASIS	1,000
- losses	800
= TAX BASIS after losses	**250**
= CIT	62.5
Rest of losses	50

II. Corporate income tax: losses

Exemption for substracting losses in the amount of 100% of positive tax basis:

100% for „old“ losses in group taxation

II. Parent-subsidiary directive



- Minimum shareholding of 10%
- 2 corporations within EU
- Possibility to replace the criterion of shareholding by that of holding voting rights

Consequences of BREXIT?!

II. Group taxation

Requirements

a. Separate legal entity (corporation)

b. Shareholding over 50%

c. Shareholding via partnership possible

d. Direct and indirect shareholding possible

e. Foreign entities only at first foreign level after AT group member / corporation

f. Minimum existence of tax group 3 years

g. The 3 years must be full calender years

II. Group taxation

Attribution of profits

1. Attribution only if shareholding

2. Attribution to parent of group if direct shareholding

3. Attribution to parent company if shareholding > 50%

II. Group taxation

Attribution of losses

1. Current losses: attribution to parent company

2. „Old“ (before group) or merged losses: stays at the level of group member

3. Foreign losses: same attribution as gains, but only in the amount of total shareholding

II. Group taxation

Set off of **foreign** losses

1. Loss of a foreign subsidiary (only 1st level!): attribution to parent company in the amount of shareholding
2. ***Starting with tax assessment 2015*** *limited to 75% of the* ***domestic*** *group income (will be applied in Master's degree only)*
3. Exceeding losses at group parent level are included in the loss carry forwards for subsequent years
4. *Exceeding losses from foreign entities are included in the loss carry forwards for subsequent years (will be applied in Master's degree only)*

II. Group taxation

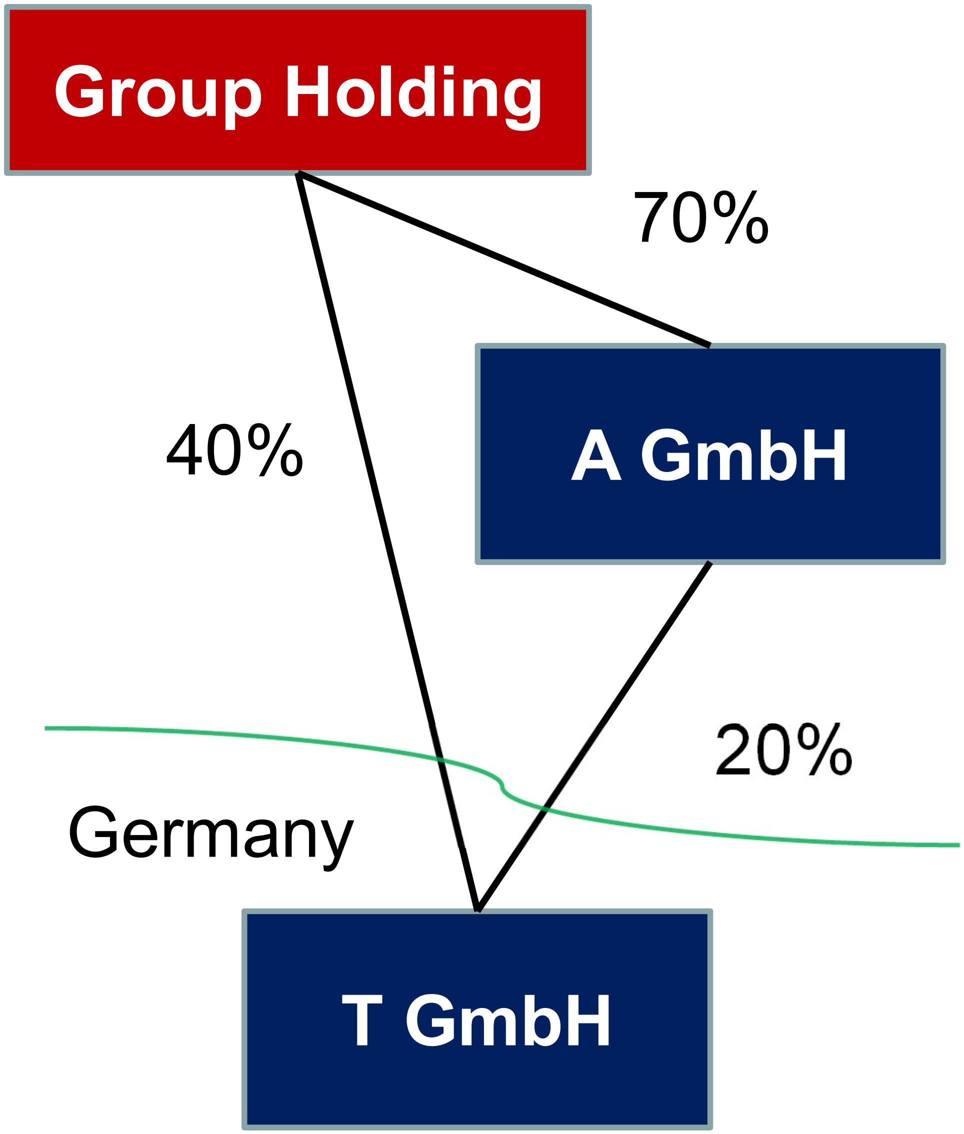
Depreciation *(will be applied in Master's degree only)*

1. In general: only 1/7 for tax purposes

2. For group members: NOT possible – unless depreciation already started before the group was formed!!!

3. "Old" (before group): continue!

II. Group taxation: example



	Tax Profits 2021	Tax Profits 2022	Tax Loss 1.1.2021
Holding	100	10	-50
A GmbH	30	24	-40
T GmbH	-100	60	

- German losses can be used up to 60% with domestic income.
- Tax Loss Carry Forward (TLCF) is unlimited!

II. Group taxation: example

Questions:

1. Maximum group building
2. What is the income of Group Holding in 2021 and 2022?

II. Further corporate income tax principles

1. Partnership & corporation

2. Dividend distribution

3. Withholding tax and double taxation

4. Asset deal versus share deal

II. Partnership

- A partnership can be formed by only one person
- No separate legal entity
- Forms: General Partnership (Offene Handelsgesellschaft, OHG) or Limited Partnership (Kommanditgesellschaft, KG)
- In the OHG, all partners are fully liable for the partnership's debts
- In the KG there are general partners with unlimited liability and limited partners whose liability is restricted to their fixed contributions to the partnership

II. Corporation

- A corporation can be formed by only one person
- Separate legal entity
- Forms: GmbH; AG
- Limited liability

differencies in sizes of corporations under UGB (§ 221)			
	total assets	revenue	employ.
very small corp.	350.000	700.000	10
small corp.	5 Mio	10 Mio	50
midsize corp.	20 Mio	40 Mio	250
large corp.	above	above	above

II. Dividend distribution

Topics on dividend distribution:

1. CIT / subsidiary level
2. Withholding tax (WHT)
3. CIT / parent level

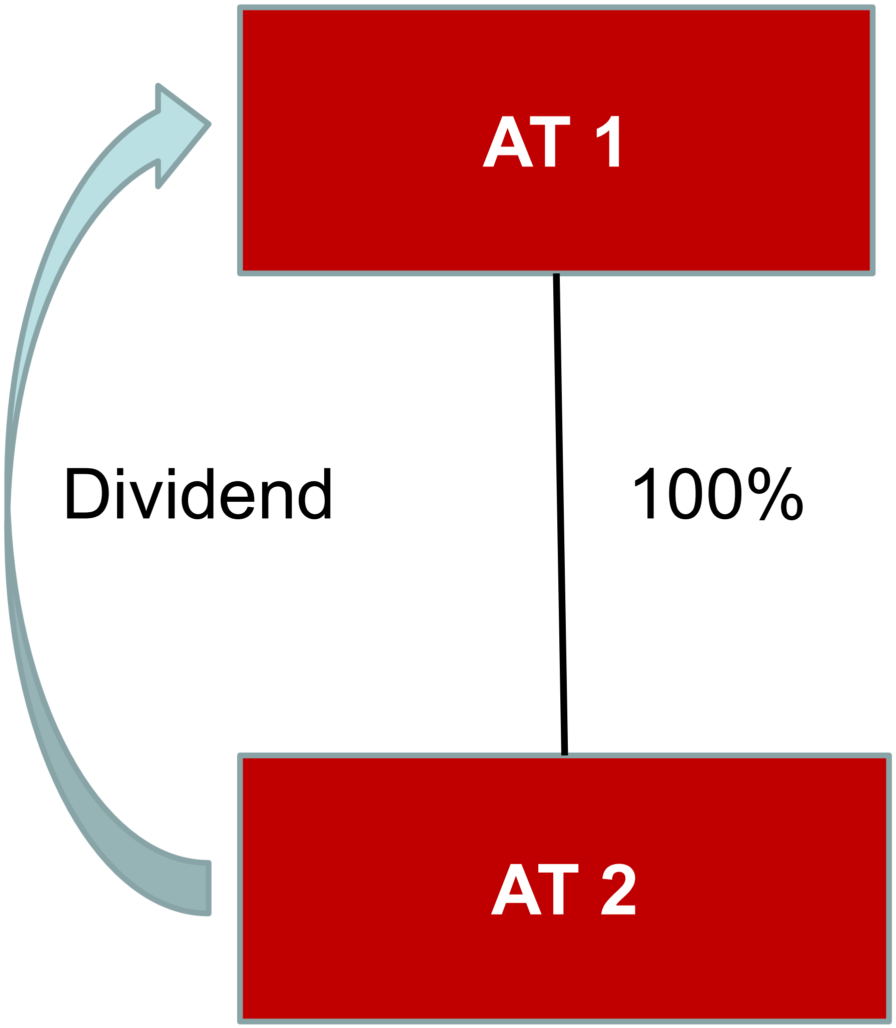
II. Withholding tax

- Withholding tax, also called retention tax, is a government requirement for the payer of an item of income to withhold or deduct tax from the payment, and pay that tax to the government, e.g.:
  - Employment income
  - Dividend
  - Interest
  - Royalty
- “Parent subsidiary-directive (PSD)” applicable: min. shareholding 10% -> no WHT
- PSD also for indirect shareholding applicable

II. Tax burden: corporation vs partnership

	Corporation	Partnership
pre-tax profit	100	100
- CIT	- 25	
= distributable profit	75	
- WHT	-20.63	
= distribution	54.37	
- personal income tax		- 50
Disposable amount	**54.37**	**50**

II. Dividend distribution

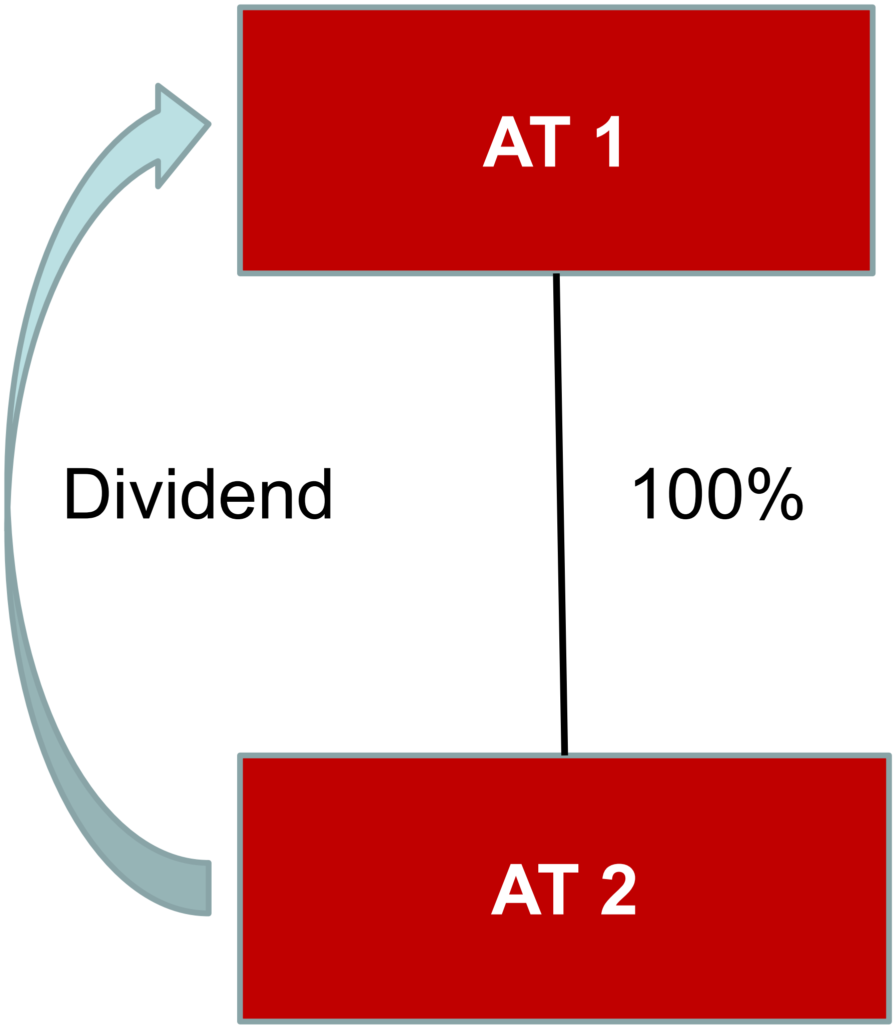


Overall tax burden?

To check:

1. CIT / subsidiary level
2. WHT
3. CIT / parent level

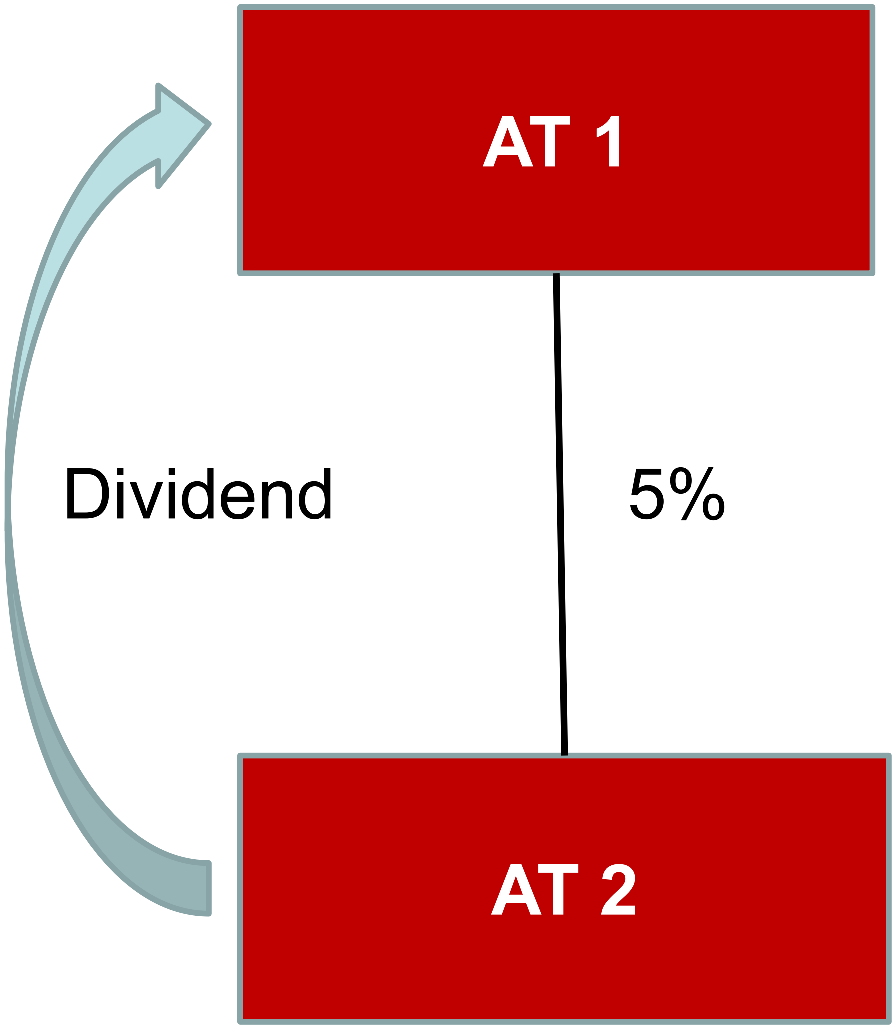
II. Dividend distribution



Solution:

1. 25% CIT
2. No WHT
3. No CIT, regardless of shareholding, as long as domestic shareholding

II. Dividend distribution

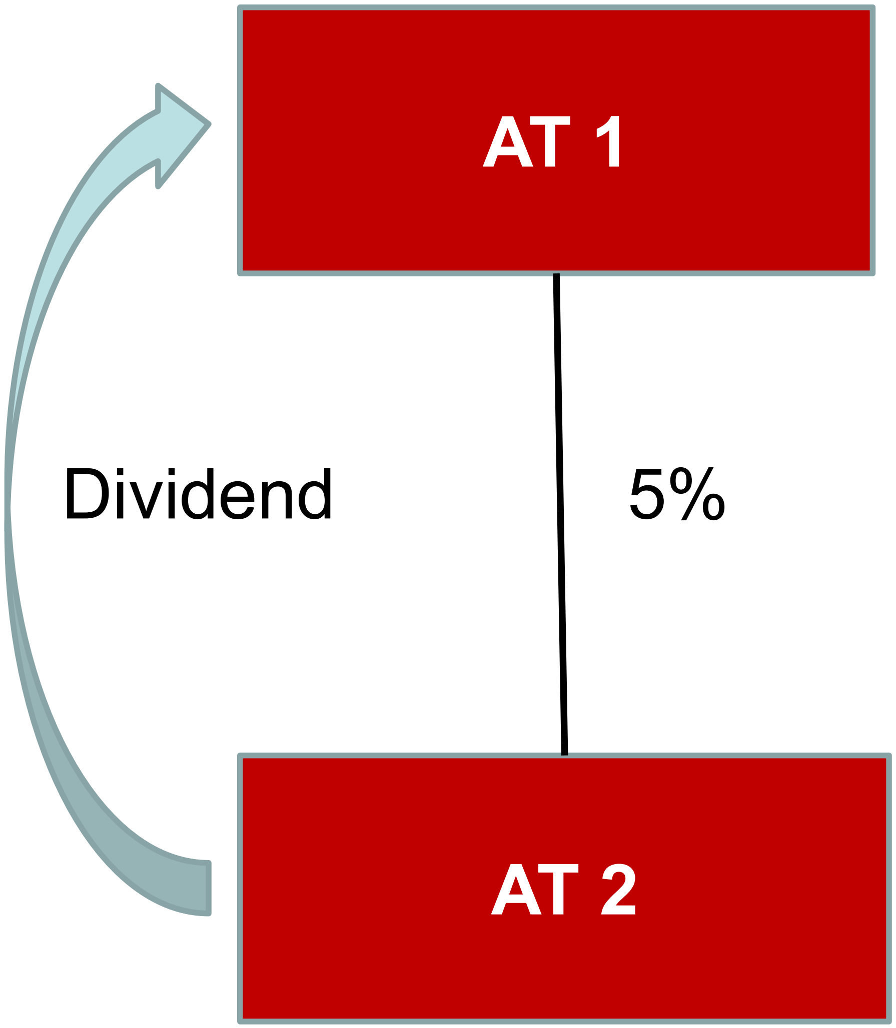


Overall tax burden?

To check:

1. CIT / subsidiary level
2. WHT
3. CIT / parent level

II. Dividend distribution



Solution:

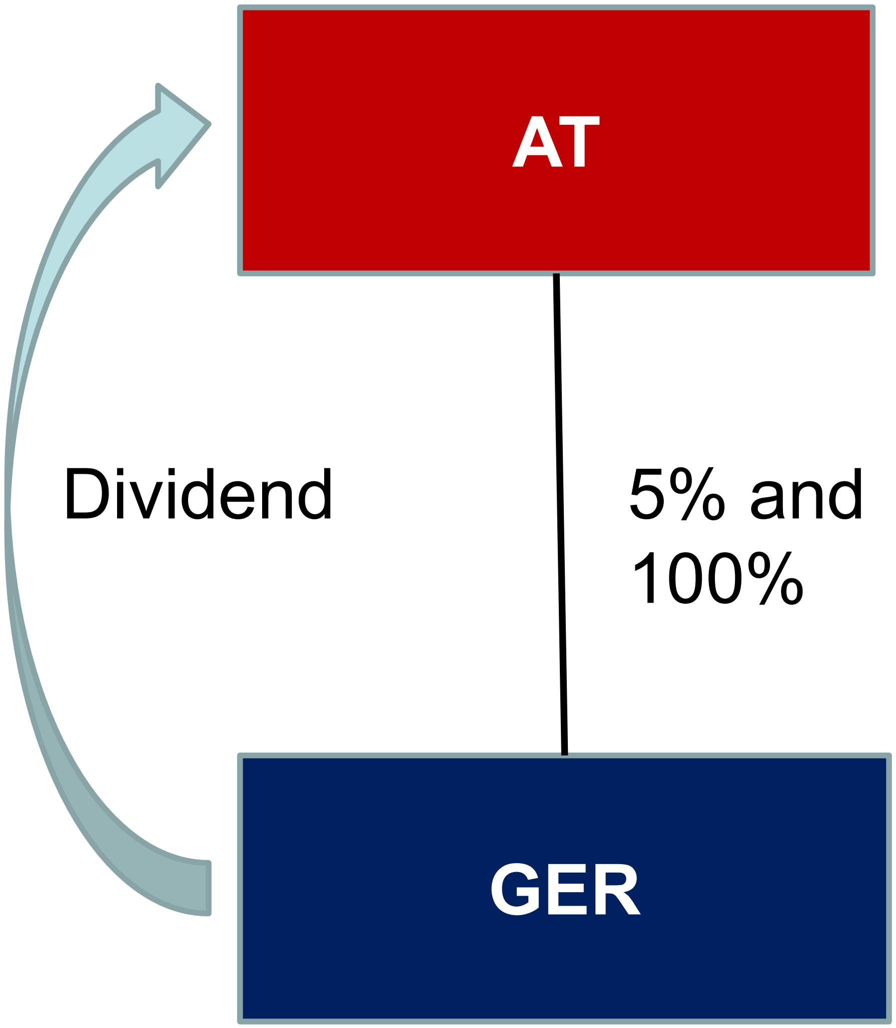
1. 25% CIT
2. 25% WHT → Double taxation ?
3. No CIT (domestic shareholding!)

II. Portfolio shareholding

European court of justice: *Haribo und Salinen*

- Dividend from portfolio shareholding (< 10%) is also free of CIT (same as PSD)
- Portfolio shareholding for domestic and foreign (**only European**) shareholding
- At least credit for third country shareholding is granted (if exchange of information is guaranteed)
- If there is no exchange of information => dividend is taxable

II. Dividend distribution

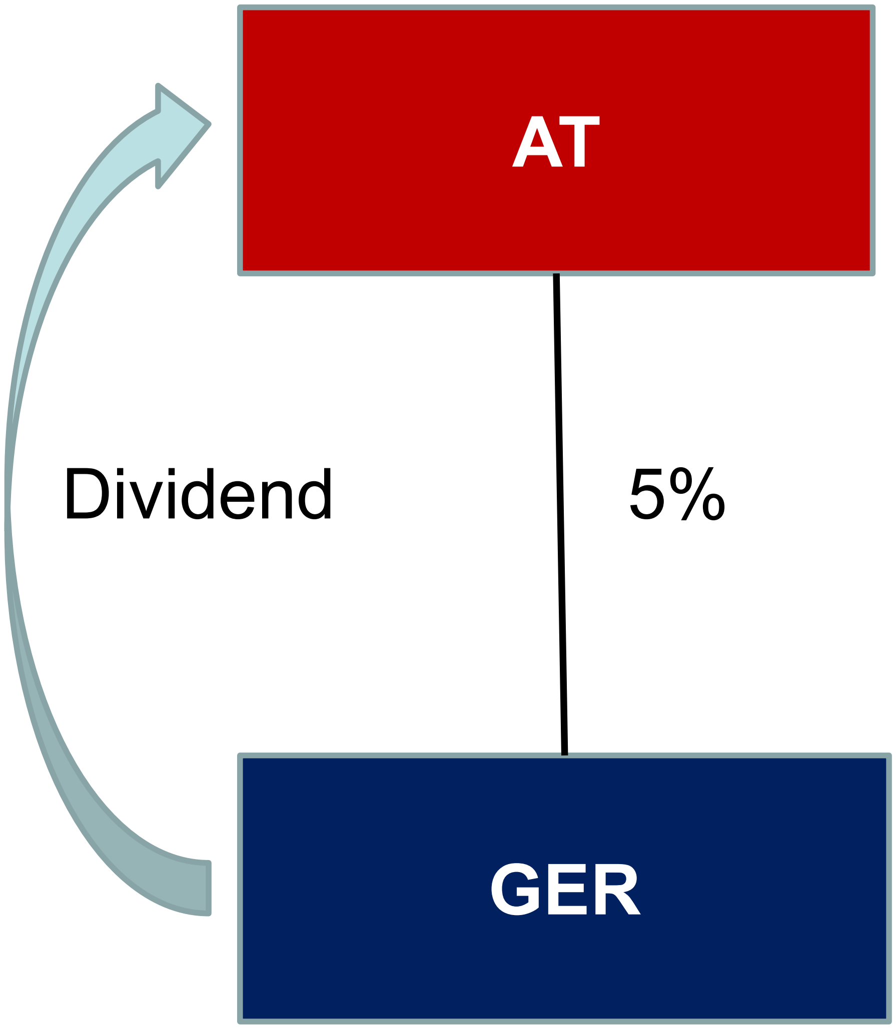


Overall tax burden?

To check:

1. CIT / subsidiary level
2. WHT
3. CIT / parent level

II. Dividend distribution

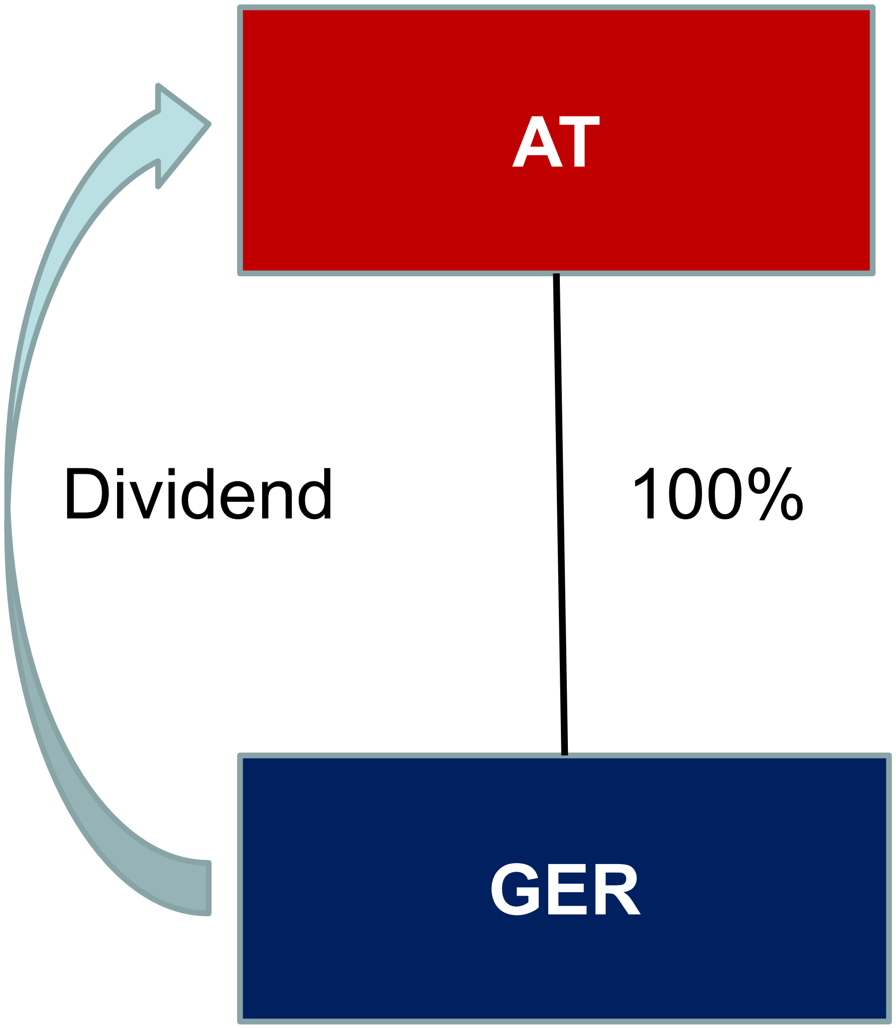


Solution:

1. 15% German CIT *)
2. 25% WHT ➡ Double taxation ?
3. No CIT (portfolio shareholding)

*) German speciality concerning WHT is not considered

II. Dividend distribution



Solution:

1. 15% German CIT *)
2. No WHT
3. No CIT (PSD)

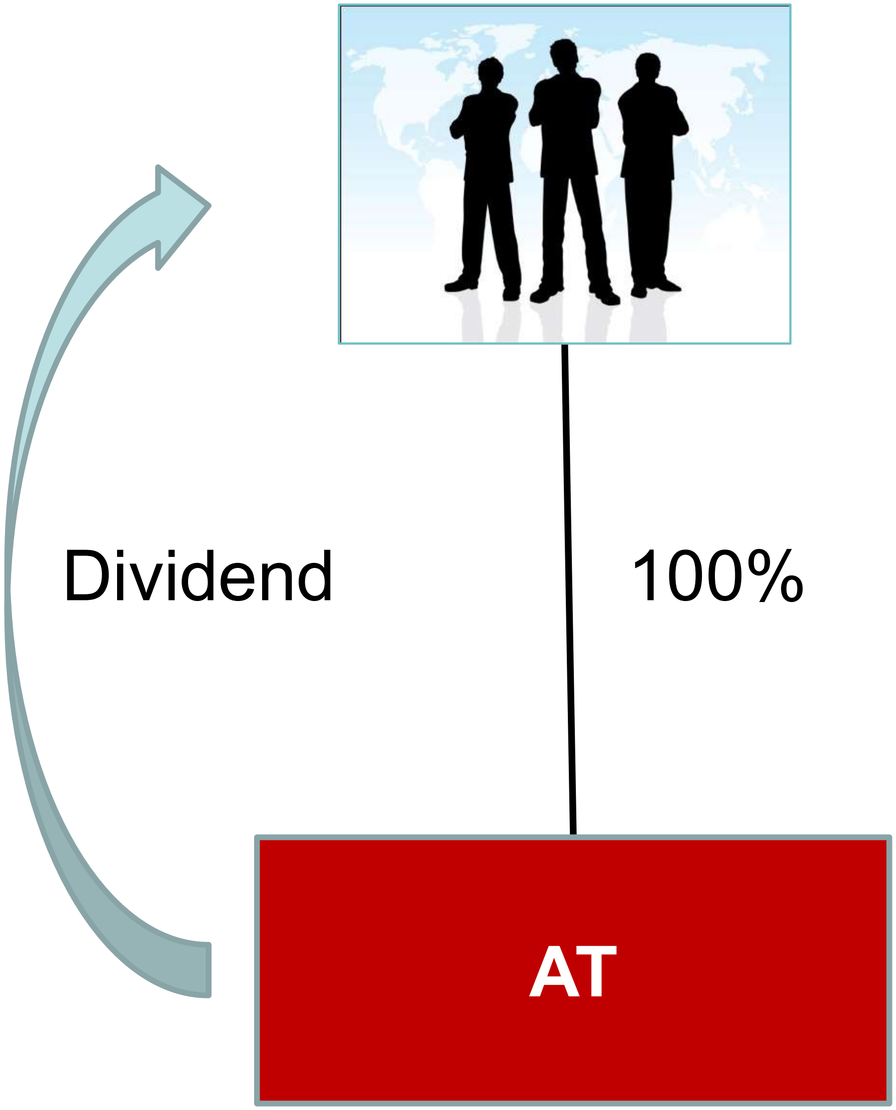
*) German speciality concerning WHT is not considered

II. Dividend distribution

To remember:

- CIT from distributing country has to be paid
- No WHT, if shareholding minimum 10%
- Otherwise WHT is kept
- % of WHT depends on DTT
- WHT might be refundable
- CIT at parent level has not to be paid, due to PSD or portfolio

II. Dividend distribution

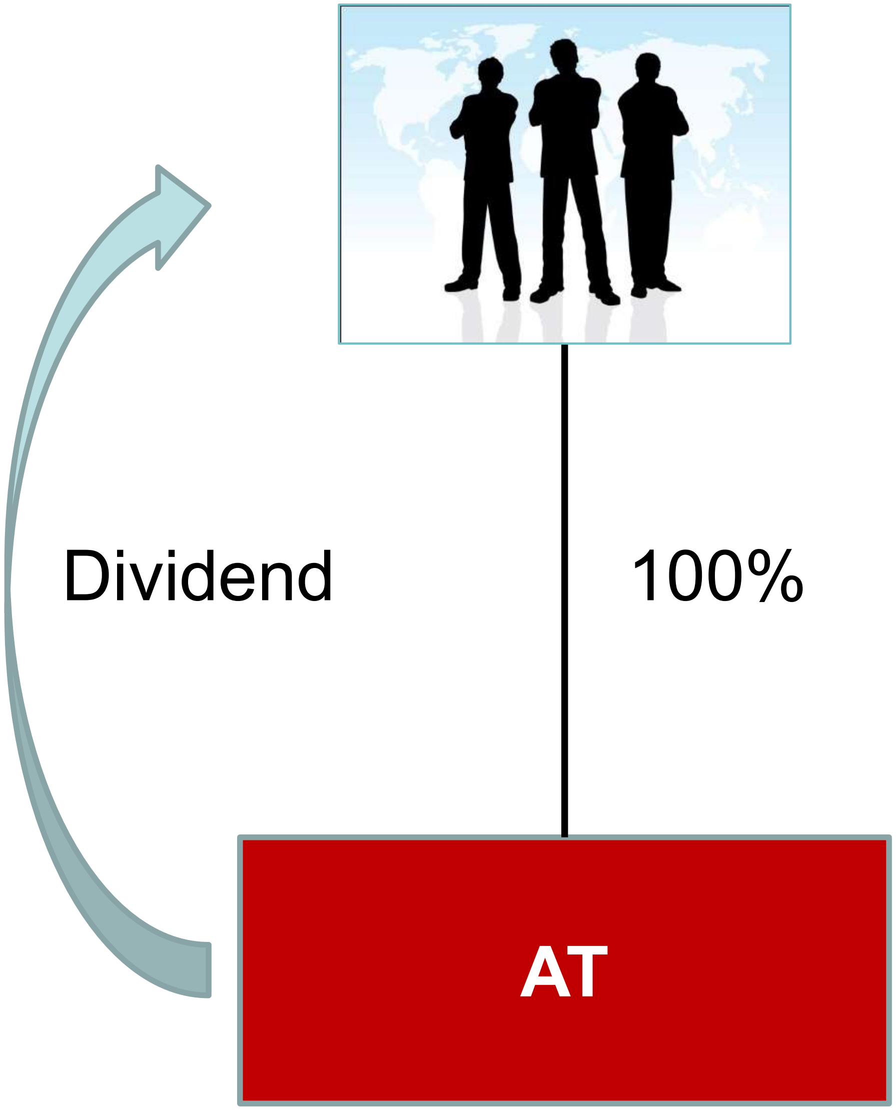


Overall tax burden?

To check:

1. CIT / subsidiary level
2. WHT
3. Personal income tax

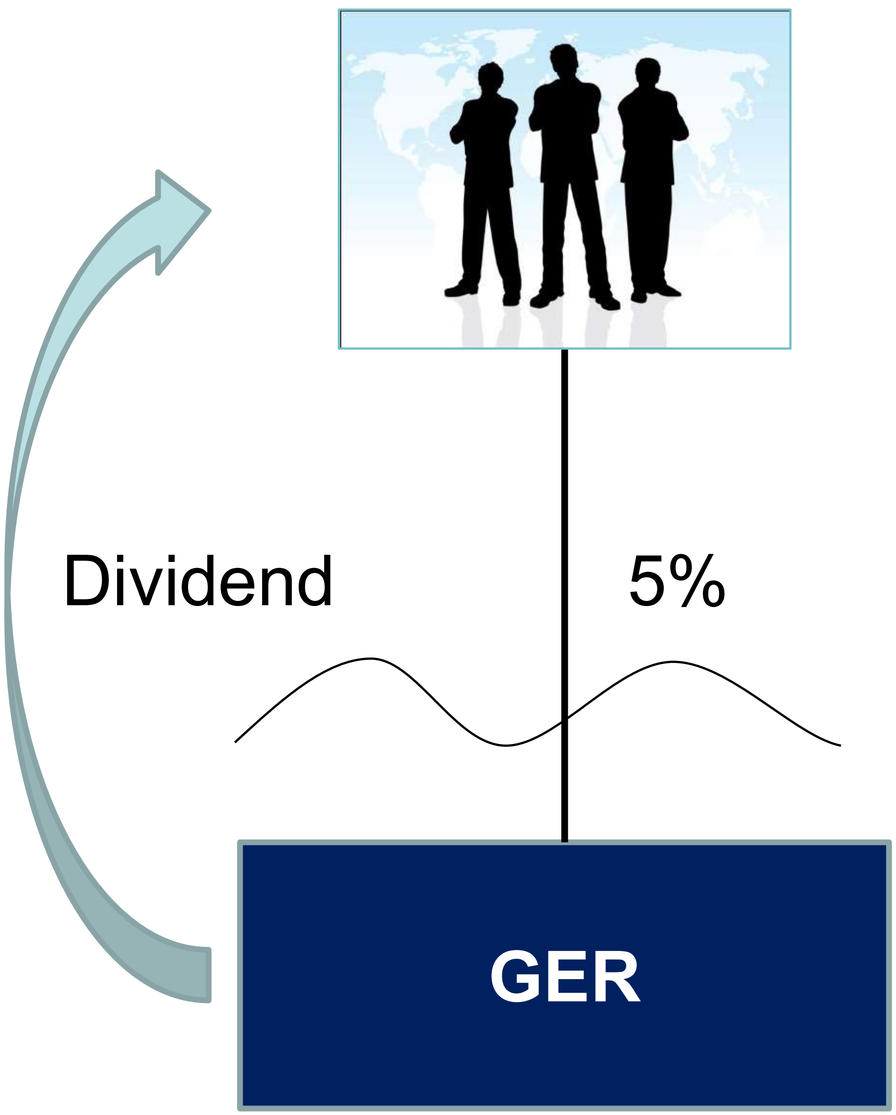
II. Dividend distribution



Solution:

1. 25% Austrian CIT
2. 25% WHT
3. In general: no personal income tax

II. Dividend distribution

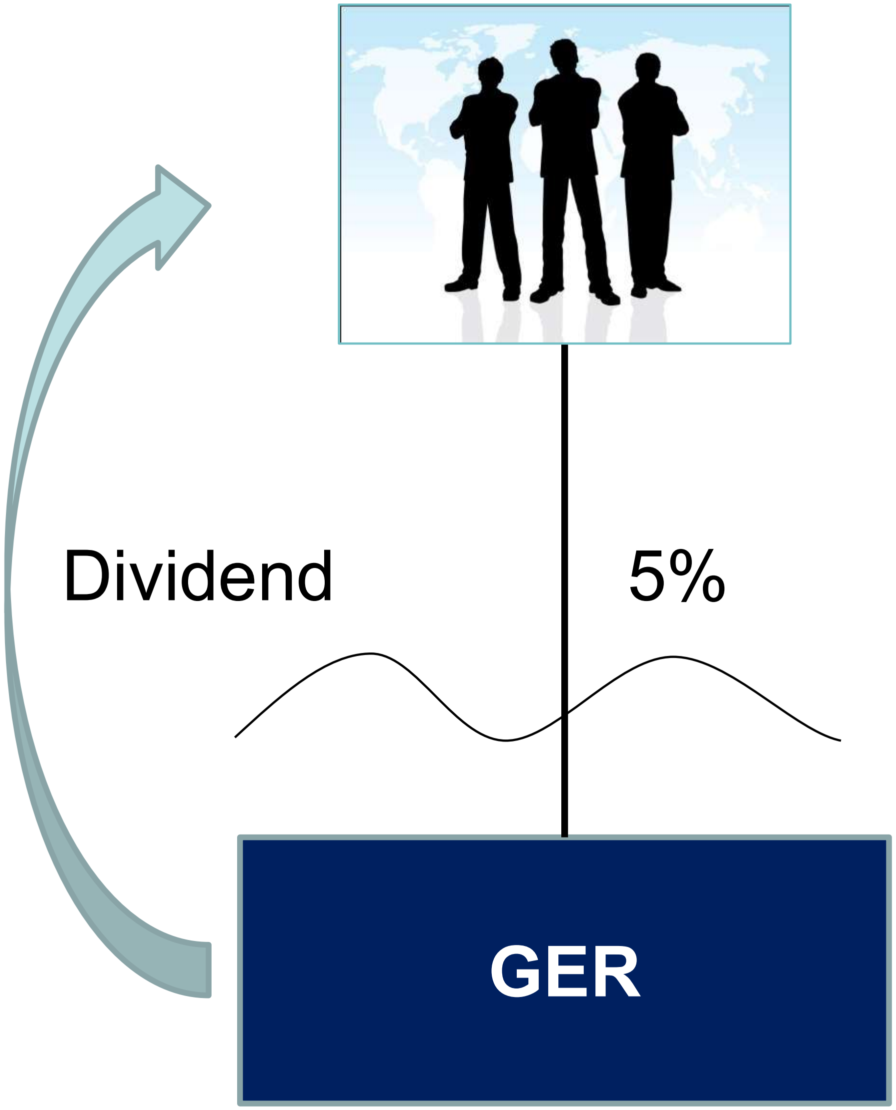


Overall tax burden?

To check:

1. CIT / subsidiary level
2. WHT
3. Personal income tax

II. Dividend distribution



Solution:

1. 15% German CIT
2. 25% WHT
3. In general: no personal income tax

=> WHT depending on the existance of a double tax treaty (DTT)

II. Depreciation of shareholding

- **Domestic** shareholding always possible
- 1/7 per year for tax purposes

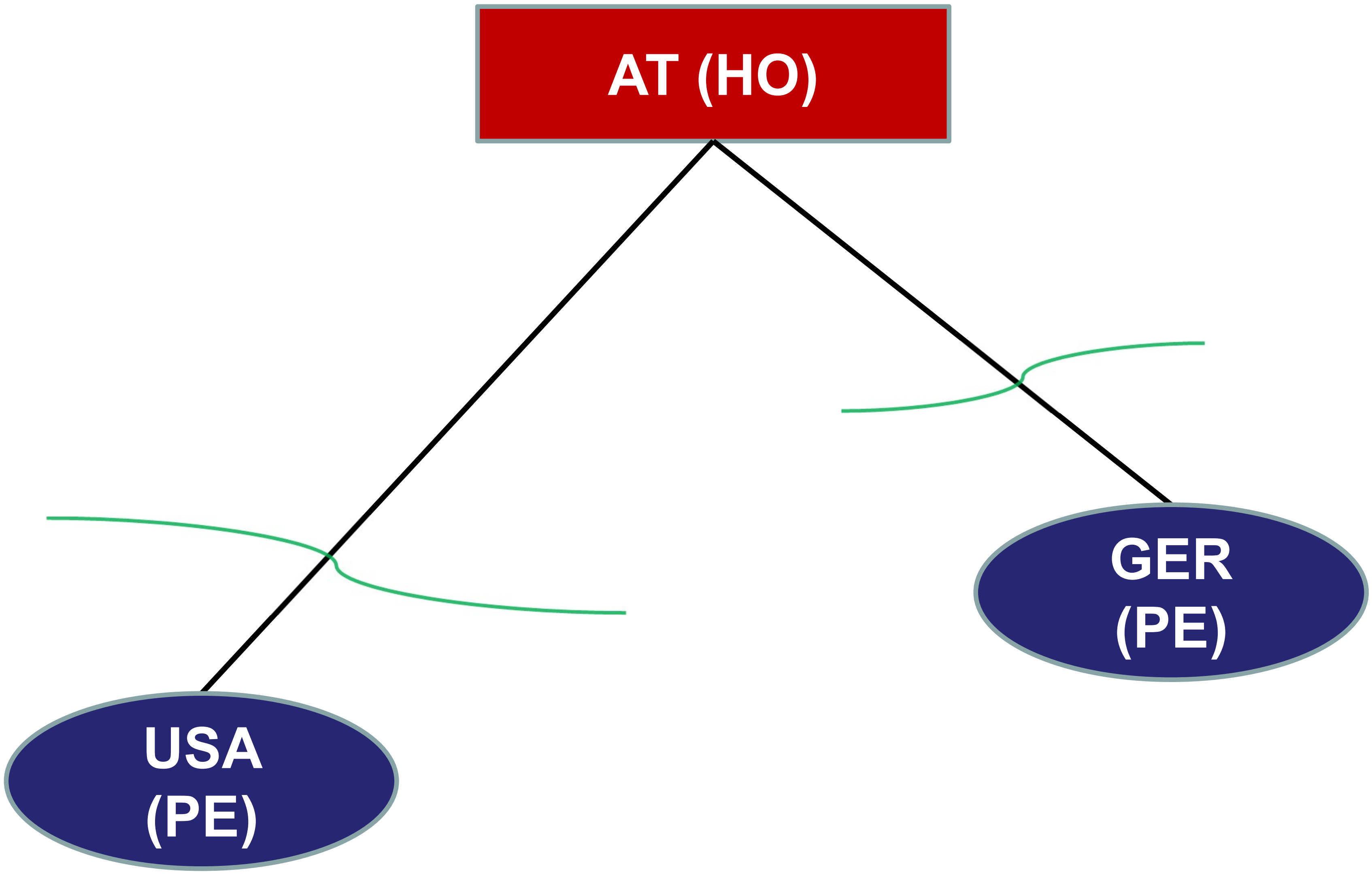
- Depreciation on **international** shareholding in general not possible
  - Only if option to tax effective treatment in the year of acquisition was taken
  - Then 1/7 per year

II. Sale of domestic shareholding

- **Domestic** shareholding always tax effective

- **International** shareholding in general tax free
  - Only if option to tax effective treatment in the year of acquisition was taken
  - Then tax effective for losses and gains

III. Double taxation: Head Office (HO) and Permanent Establishment (PE)



III. Double taxation: reasons

- The interaction of two tax systems each belonging to a different country
- Every country seeks to tax the income generated within its territory on the basis of one or more connecting factors such as location of the **source**, residence of taxable entity, maintenance of Permanent Establishment and so on
- Double Taxation of the same income

⇒ Double taxation agreements between two countries therefore aim at eliminating or mitigating the incidence of double taxation

III. Double taxation: reasons

Problem: Two countries claim taxes on the same income of a taxpayer due to

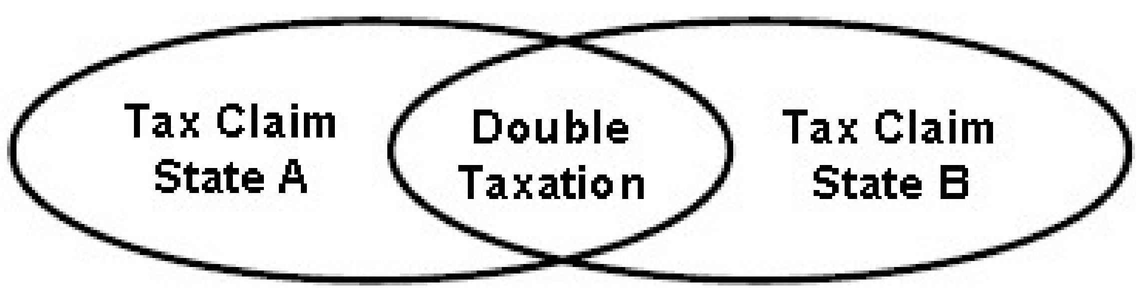
- Residence taxation,
- Source taxation or
- Differences in the definition of “residence”

Double taxation of same income of one taxpayer

III. Treaty Situation

Tax Treaties

- **do not create** the taxability of income in the contracting states
- **limit the rights** of contracting states to impose existing tax obligations



III. Relief for double taxation

1. Exemption method

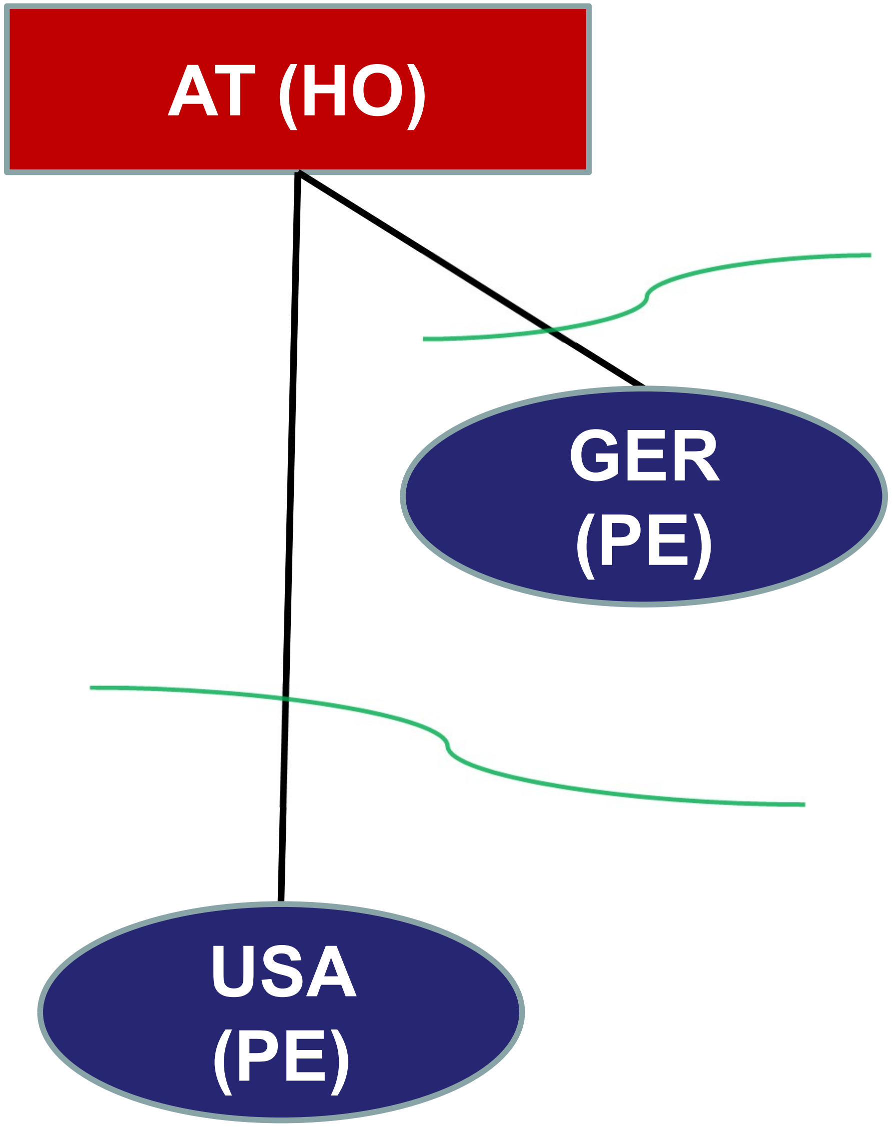
- Residence country excludes foreign income from its tax base
- The country of source is then given exclusive right to tax such incomes

III. Relief for double taxation

2. Credit method

- Resident remains liable in the country of residence on its global income
- However as far as the quantum of tax liabilities is concerned, credit for tax paid in the source country is given by the residence country against its domestic tax, as if the foreign tax were paid to the country of residence itself

IV. DTT Art 23: exemption



	Tax Profits 2021	Tax Profits 2022	Tax Loss 1.1.2021
AT	300	80	-300
German PE *)	-150	300	-200
USA PE	400	100	n.a.

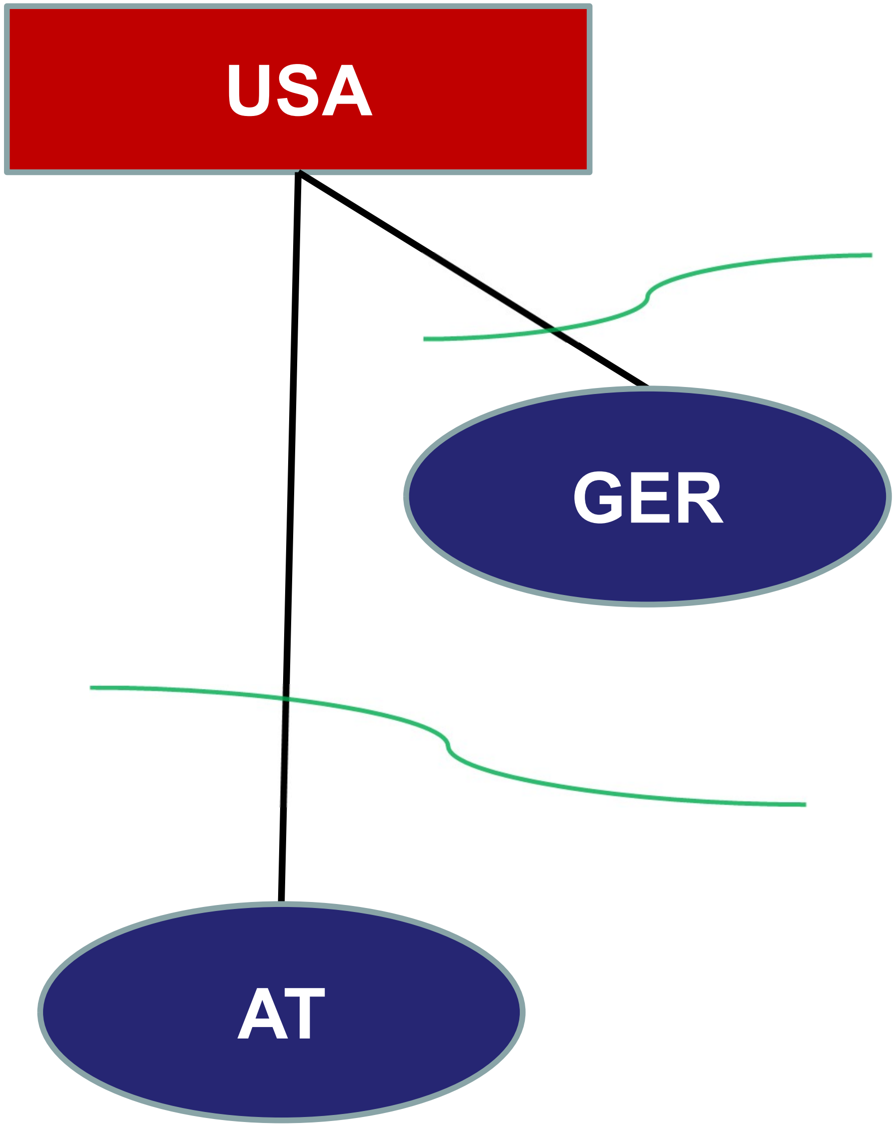
*) GER: max. use of 60% of TLCF

IV. DTT Art 23: exemption solution

GER (exemption)		2021	2022
	Result PEE	-150,0	300,0
	+use of loss in GER	0,0	-180,0
	Tax base in GER	-150,0	120,0
30,0%	**CIT GER**	**0,0**	**-36,0**
40,0%	**CIT USA**	**-160,0**	**-40,0**
	Result head office	300,0	80,0
GER	Result PEE	-150,0	300,0
	Exemption PEE gain	150,0	-300,0
USA	Result PEE	400,0	100,0
	Exemption PEE gain	-400,0	-100,0
	tax base	300,0	80,0
	max use TLCF	-225,0	-60,0
	rest TLCF	-300,0	-75,0
	use TLCF	-225,0	-60,0
	tax base after use TLCF	75,0	20,0
25,0%	**CIT AT**	**-18,75**	**-5,00**

TLCF AT 1.1.	-300,0	-75,0
use	225,0	60,0
TLCF AT 31.12.	0,0	0,0
Total TLCF 31.12.	-75,0	-15,0

IV. DTT Art 23: credit



	Tax Profits 2021	Tax Profits 2022	Tax Loss 1.1.2021
USA *) CIT 40%	300	80	-300
German PE **) CIT 30%	-150	300	-200
AT PE CIT 25%	400	100	n.a.

*) USA max. use 100% of TLCF
**) GER: max. use of 60% of TLCF

IV. DTT Art 23: credit solution

USA (credit)		2021	2022
AT	Result PEE	400,0	100,0
	+use of loss	0,0	0,0
	Tax base in AT	400,0	100,0
25,0%	**CIT**	**-100,0**	**-25,0**
GER	Result PEE	-150,0	300,0
	+use of loss	0,0	-180,0
	Tax base in GER	-150,0	120,0
30,0%	**CIT**	**0,0**	**-36,0**

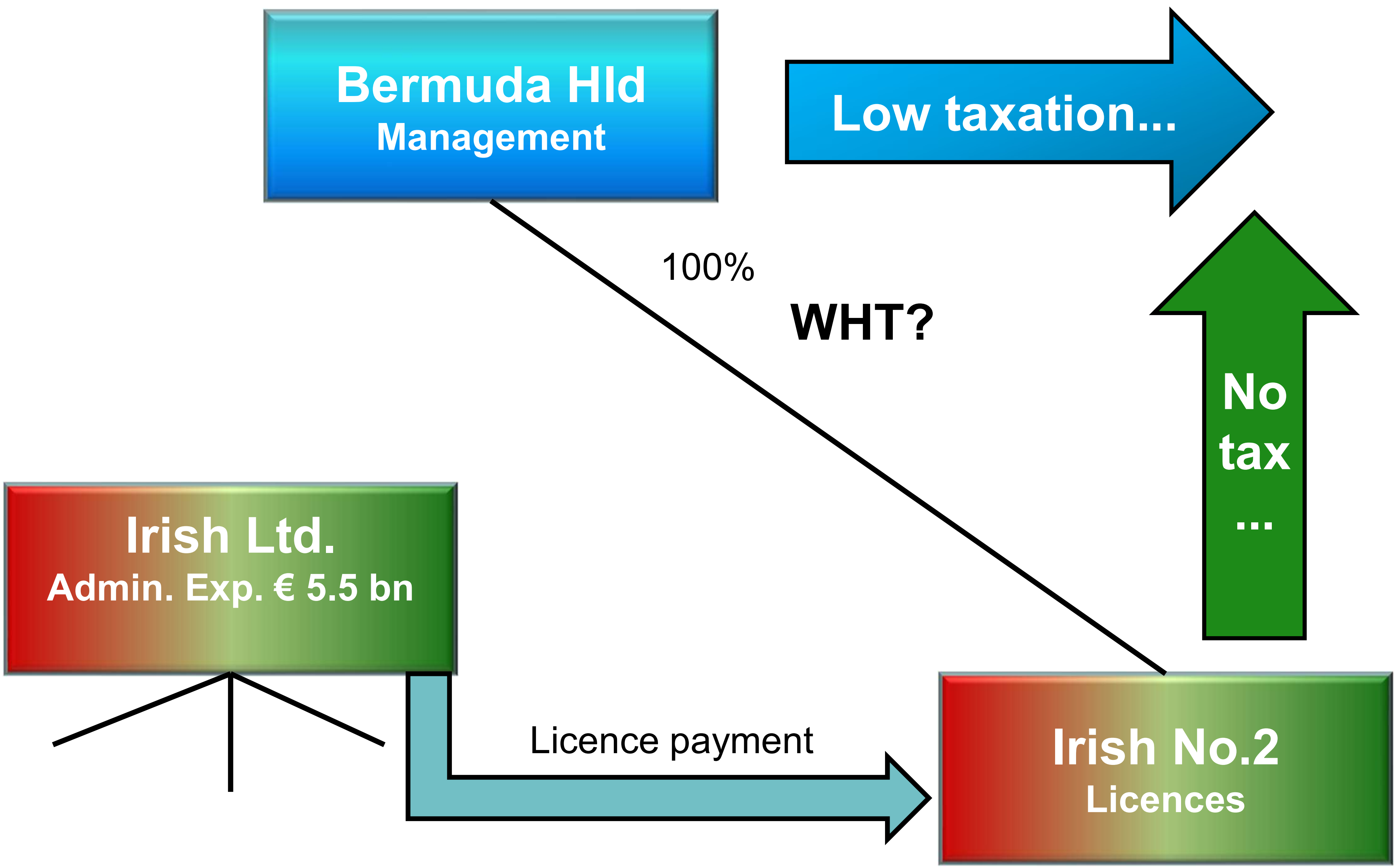
	Result head office	300,0	80,0
	Result GER	-150,0	300,0
	Result AT	400,0	100,0
	"give back" used loss	n.a.	150,0
	tax base	550,0	630,0
	use TLCF	-300,0	0,0
	tax base after use TL	250,0	630,0
40,0%	**CIT USA**	**-100,0**	**-252,0**
	TLCF USA 1.1.	300,0	0,0
	use	-300,0	0,0
	TLCF 31.12.	0,0	0,0
	Total TLCF 31.12.	0,0	0,0

III. Objectives of DTT

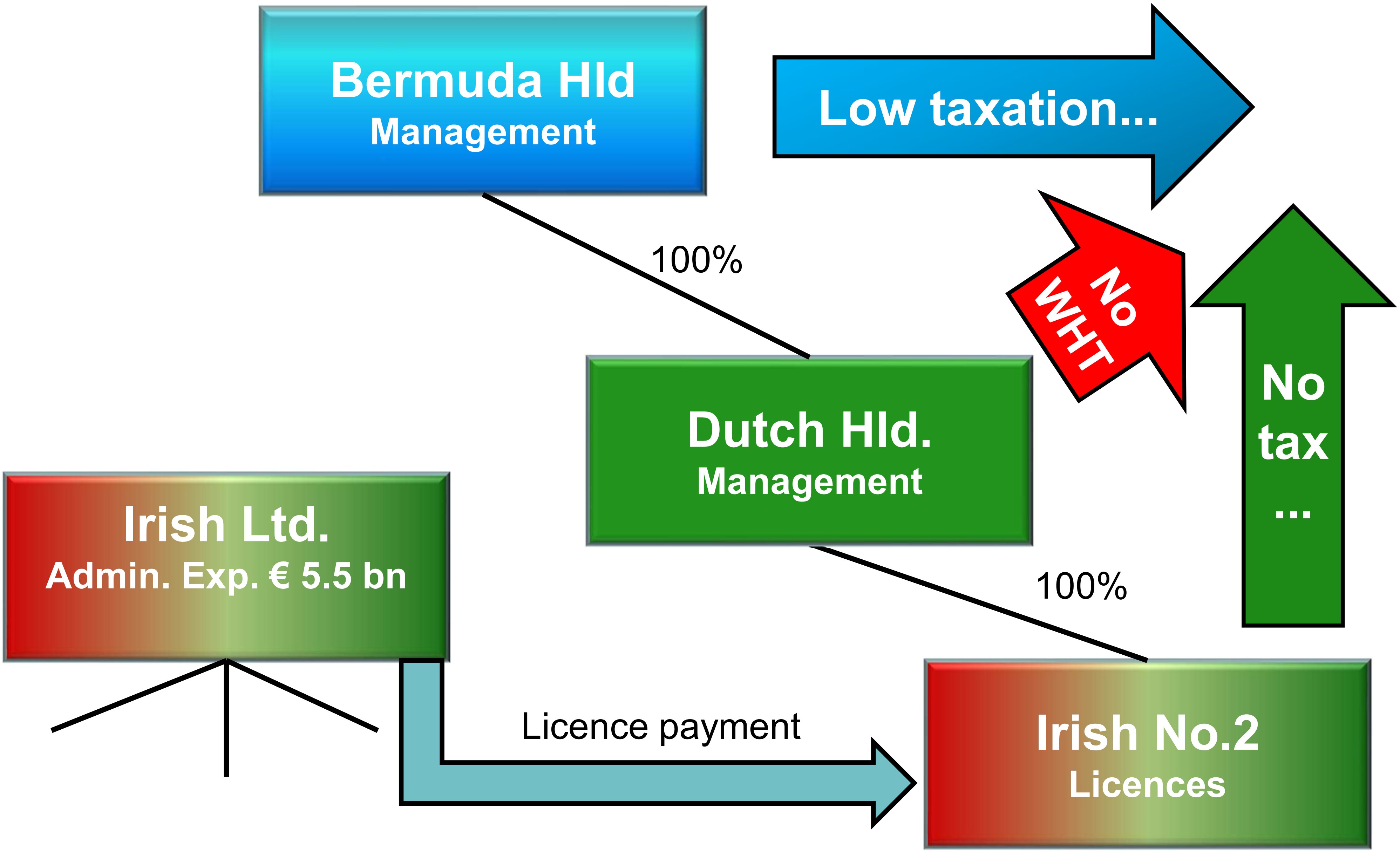
1. Avoiding the adverse burden of international double taxation, by
   a) **laying down rules** for division of revenue between two countries
   b) **exempting** certain incomes from tax in either country
   c) **reducing** the applicable rates of tax on certain incomes taxable in either countries

2. Help a taxpayer of one country to know with greater certainty the potential limits of his tax liabilities in the other country

III. „Double Irish“



III. „Dutch Sandwich“



VII. VAT

- VAT = indirect tax
- Custom duties
- Sometimes refundable
- Refundable for private individuals?
- Refundable for VAT registered business?

VII. VAT

- All entrepreneurs are liablefor VAT if they **trade**
  - **in goods or**
  - **services on a commercial basis**

- Trade covers sales of goods,
- the provision of services,
- exchange and own withdrawals from the business

VII. VAT

- If registered,
  - Company must charge VAT on sales
  - Company may reclaim VAT suffered on purchases

- VAT **is levied at every stage** of the production and distribution chain, up to and including sale to the consumer!

VII. VAT as cost?

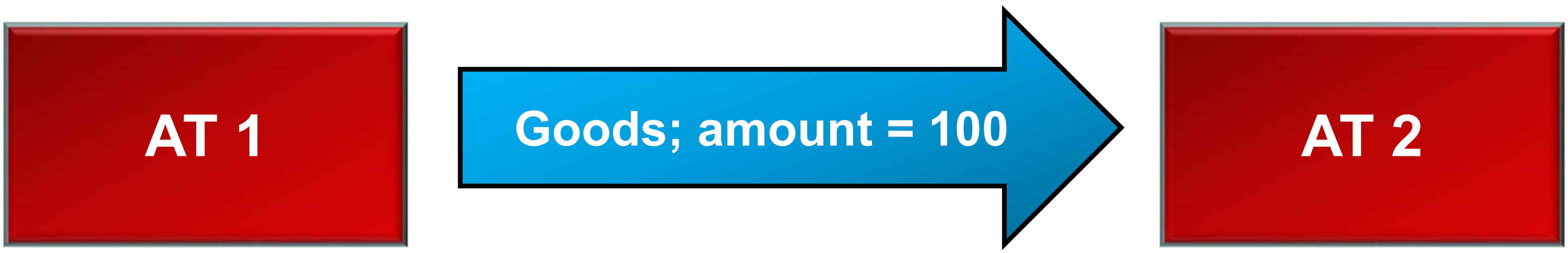
- If entrepreneur, -> **VAT is not a cost**
  - VAT is deductible on purchases by the business
  - Payable is only the difference between the VAT the entrepreneur collects on sales (output VAT) and the VAT the entrepreneur pays on purchases (input VAT)

VII. VAT: Rates in AT

- **20% general tax rate**
- 19% in special region
- 12% for wine
- **10% reduced tax rate, e.g.**
  - Food
  - Renting of real estate for living
  - Passenger transportation
  - Income of artists

VII. Supply of goods B2B

1. Supply of goods between two entrepreneurs



- VAT on the invoice?
- Amount of VAT?
- Who can claim input VAT?
- Amount of input VAT?

VII. Supply of services B2B

2. Supply of services between two entrepreneurs

- VAT on the invoice?
- Amount of VAT?
- Who can claim input VAT?
- Amount of input VAT?

VII. Intra-community supply of goods & reverse charge system

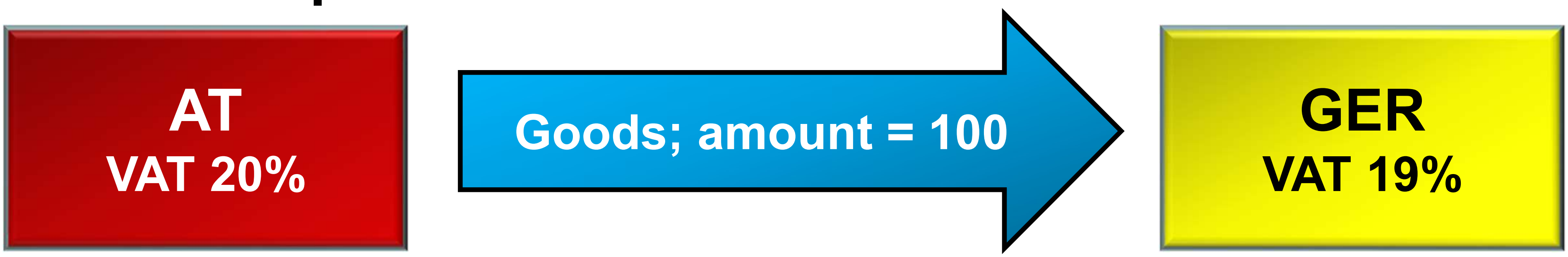
- The terms 'intra-community supply' and 'intra-community acquisition' relate to goods
  - supplied by a business in one EU Member State to a business in another
  - which have been dispatched or transported from the territory of one Member State to another as a result of such supply.
  - The terms also apply to new means of transport supplied by a person in one Member State to a person, including a private individual, in another Member State and transferred to that Member State.

VII. Intra-community supply of goods B2B

- The purchase of goods in other Member States by entrepreneurs is subject to VAT in the country of destination
- REVERSE CHARGE MECHANISM!!!
- Exception: in the case of private individuals who are not entitled to a VAT deduction, VAT on the acquisition of a new means of transport is normally payable with the Vehicle Registration Tax (VRT) or, if no VRT is payable, at the time of registration of the vehicle.

VII. Intra-community supply of goods B2B

3. Intra-community supply of goods and services between two entrepreneurs



- VAT on the invoice?
- Amount of VAT?
- Who can claim input VAT?
- Amount of input VAT?

VII. Intra-com. acquisition of goods B2B

- The supply will be zero-rated in the Member State of dispatch as an EU intra-Community supply.
- The accountable customer becomes liable for VAT on the acquisition of goods at the appropriate rate in his/her own Member State.
- The accountable customer declares a liability for VAT in the VAT return.
- Where an accountable person is entitled to full deductibility (input VAT), the VAT payable on the intra-Community acquisition is deducted in the same VAT period, thus effectively cancelling out the VAT liability.
- The accountable customer accounts for VAT on any subsequent supply of the goods in the appropriate VAT return

VII. Intra-community acquisition of goods B2B

4. Intra-community acquisition of goods and services between two entrepreneurs

GER
VAT 19%

Goods; amount = 100 →

AT
VAT 20%

- VAT on the invoice?
- Amount of VAT?
- Who can claim input VAT?
- Amount of input VAT?

VII. Intra-community acquisition of goods B2B

4. Intra-community acquisition of services between two entrepreneurs

- Exception to reverse charge mechanism, if e.g.
  - Service refers to immovable property
  - Accomodation
  - Right to use immovable property

VII. Importation of goods

5. Importation of goods from third country

USA
VAT 10%

goods; amount = 100 →

AT
VAT 20%

- Customs duty
- Importation VAT
- Export delivery free of tax, if from EU-country -> 3rd country