



Conference on Company Law: The way forward

Tax and Company Law

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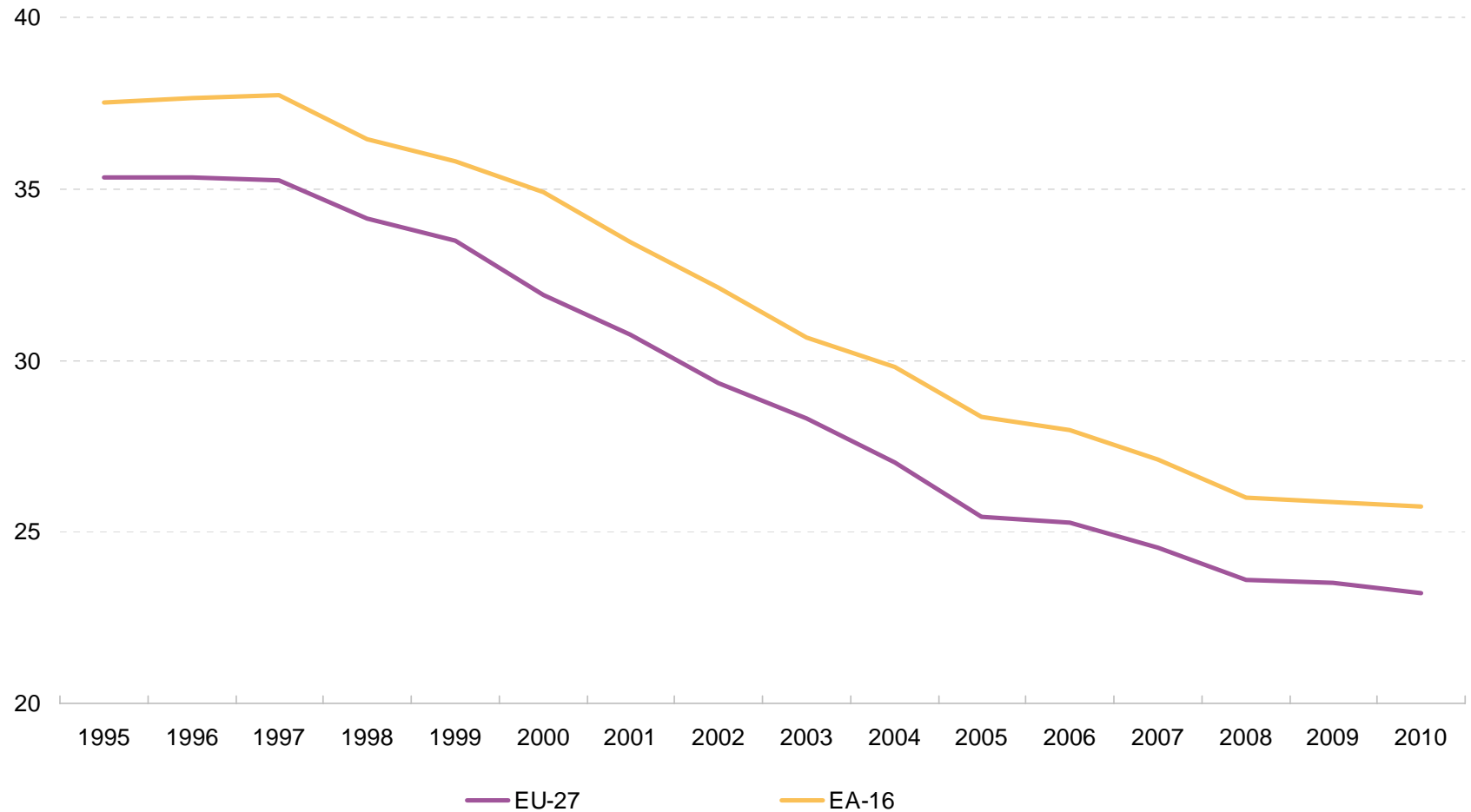
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1 Introduction – Trends in the EU – Corporate Income Tax



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1 Introduction – Trends in the EU – Corporate Income Tax as % of GDP

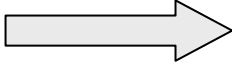
Table 59: Taxes on Capital as % of GDP - Income of Corporations

																Difference ¹⁾		Ranking	Revenue ²⁾
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	1995 to 2008	2000 to 2008	2008	2008	
BE	2.4	2.7	2.8	3.4	3.2	3.2	3.1	3.0	2.9	3.1	3.3	3.5	3.5	3.3	1.0	0.1	13	11 462	
BG	:	:	:	4.0	3.2	2.8	3.9	3.1	3.2	2.6	2.5	2.9	3.4	3.5	-	0.7	8	1 208	
CZ	4.6	3.4	3.8	3.4	3.8	3.5	4.1	4.3	4.6	4.7	4.5	4.8	5.0	4.4	-0.1	1.0	4	6 566	
DK	2.3	2.5	2.7	3.0	2.4	3.3	2.8	2.9	2.9	3.2	3.9	4.4	3.8	3.4	1.1	0.2	11	7 970	
DE	2.1	2.4	2.6	2.7	2.8	3.0	1.7	1.7	1.9	2.2	2.5	3.0	3.0	2.7	0.7	-0.2	21	68 550	
EE	2.4	1.6	1.8	2.4	2.0	0.9	0.7	1.1	1.6	1.7	1.4	1.5	1.7	1.7	-0.8	0.8	27	266	
IE	2.8	3.1	3.2	3.4	3.9	3.8	3.6	3.7	3.8	3.7	3.5	4.0	3.5	2.9	0.1	-0.9	18	5 213	
EL	2.3	2.0	2.3	2.8	3.1	4.1	3.4	3.4	2.9	3.0	3.3	2.7	2.5	2.5	0.1	-1.7	26	5 875	
ES	1.9	2.0	2.7	2.5	2.9	3.1	2.9	3.3	3.1	3.5	3.9	4.2	4.8	2.9	1.0	-0.2	17	31 428	
FR	1.8	2.0	2.3	2.3	2.7	2.8	3.1	2.5	2.1	2.3	2.3	2.9	2.9	2.8	1.0	0.0	19	54 415	
IT	2.9	3.3	3.8	2.8	3.2	2.9	3.7	3.1	3.5	3.1	2.9	3.5	3.9	3.7	0.9	0.8	6	58 539	
CY	4.2	4.7	4.6	5.8	6.7	6.2	6.2	6.0	4.3	3.7	4.6	5.5	6.8	7.1	2.8	0.9	1	1 218	
LV	1.8	1.8	2.2	2.3	2.0	1.6	1.9	2.0	1.5	1.8	2.0	2.3	2.7	3.1	1.3	1.6	14	727	
LT	2.0	1.7	1.5	1.3	0.8	0.7	0.5	0.6	1.4	1.9	2.1	2.8	2.6	2.8	0.7	2.1	20	888	
LU	6.6	6.8	7.5	7.6	6.7	7.0	7.3	8.0	7.3	5.7	5.8	4.9	5.3	5.1	-1.5	-1.9	3	2 003	
HU	1.8	1.8	1.9	2.1	2.3	2.2	2.3	2.3	2.2	2.1	2.2	2.4	2.8	2.7	0.8	0.5	23	2 836	
MT	2.6	2.3	2.6	2.5	2.7	2.9	3.2	3.9	4.5	4.1	4.5	5.0	6.7	6.8	4.2	3.9	2	386	
NL	3.3	4.1	4.5	4.5	4.5	4.3	4.2	3.6	3.0	3.3	3.6	3.7	3.5	3.4	0.2	-0.9	10	20 410	
AT	1.6	2.1	2.2	2.3	2.0	2.2	3.3	2.4	2.3	2.4	2.3	2.3	2.6	2.6	1.1	0.5	24	7 462	
PL	2.7	2.7	2.7	2.6	2.4	2.4	1.9	2.0	1.8	2.2	2.5	2.4	2.8	2.7	0.0	0.3	22	9 838	
PT	2.4	2.8	3.2	3.2	3.6	3.9	3.4	3.4	2.9	3.0	2.8	3.0	3.7	3.7	1.4	-0.1	5	6 235	
RO	4.0	3.4	4.4	3.7	3.8	3.0	2.7	2.6	2.8	3.2	2.7	2.8	3.1	3.0	-1.0	0.0	15	4 185	
SI	0.5	0.9	1.0	1.0	1.2	1.2	1.3	1.6	1.7	1.9	2.8	3.0	3.2	2.5	2.0	1.4	25	936	
SK	6.6	5.0	4.4	4.1	4.1	3.5	3.4	3.2	3.4	3.0	3.0	3.2	3.2	3.4	-3.2	-0.1	12	2 203	
FI	2.3	2.8	3.5	4.3	4.3	5.9	4.2	4.2	3.4	3.5	3.3	3.4	3.9	3.5	1.2	-2.4	9	6 471	
SE	2.6	2.6	2.8	2.6	3.1	3.8	2.6	2.1	2.2	2.9	3.6	3.7	3.9	3.0	0.4	-0.8	16	9 700	
UK	2.8	3.2	3.9	3.9	3.5	3.5	3.5	2.8	2.7	2.9	3.4	4.0	3.4	3.6	0.8	0.0	7	65 369	

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2 Status Quo – General problem

- 1. EU direct tax law is very complicated**
 - No real harmonisation (except from targeted directives)**
 - Not even coordination**

 **Contradiction to the internal market**
 - 2. The application of fundamental freedoms is of great help for companies**
 - 3. But it can not – in itself – lead to a coherent tax system**
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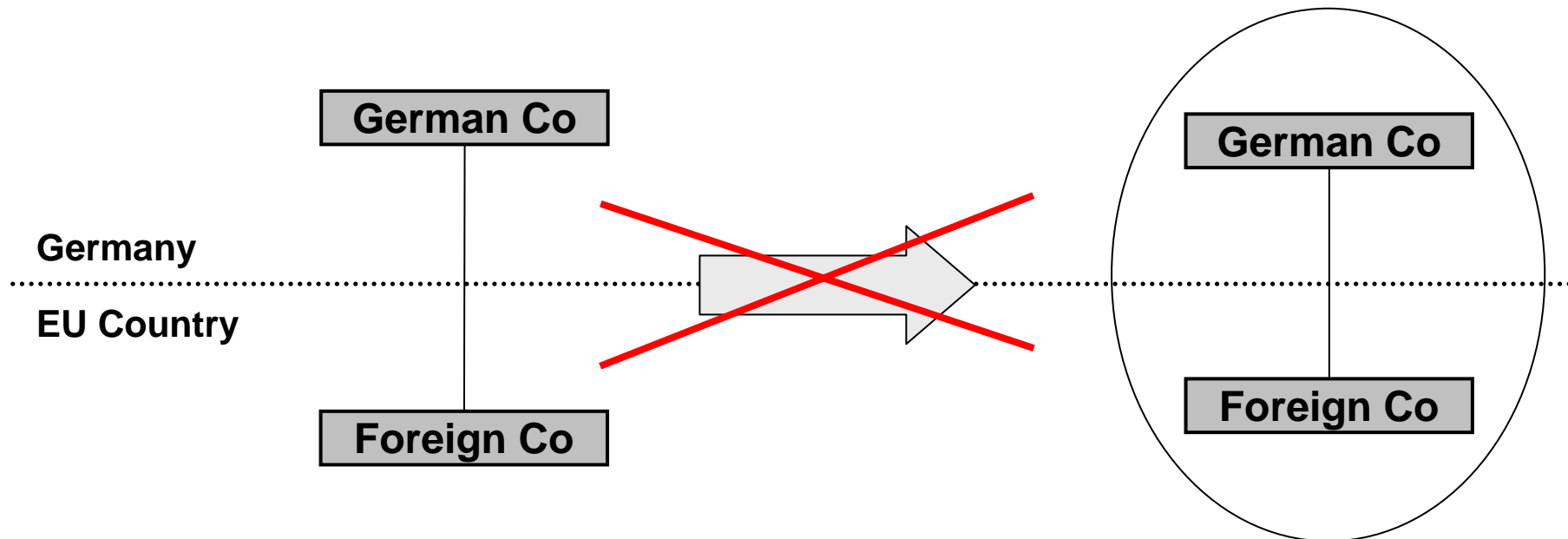
2 Status Quo – Albert Einstein

“Filing a tax return takes a philosopher. It is too difficult for a mathematician.”

Albert Einstein

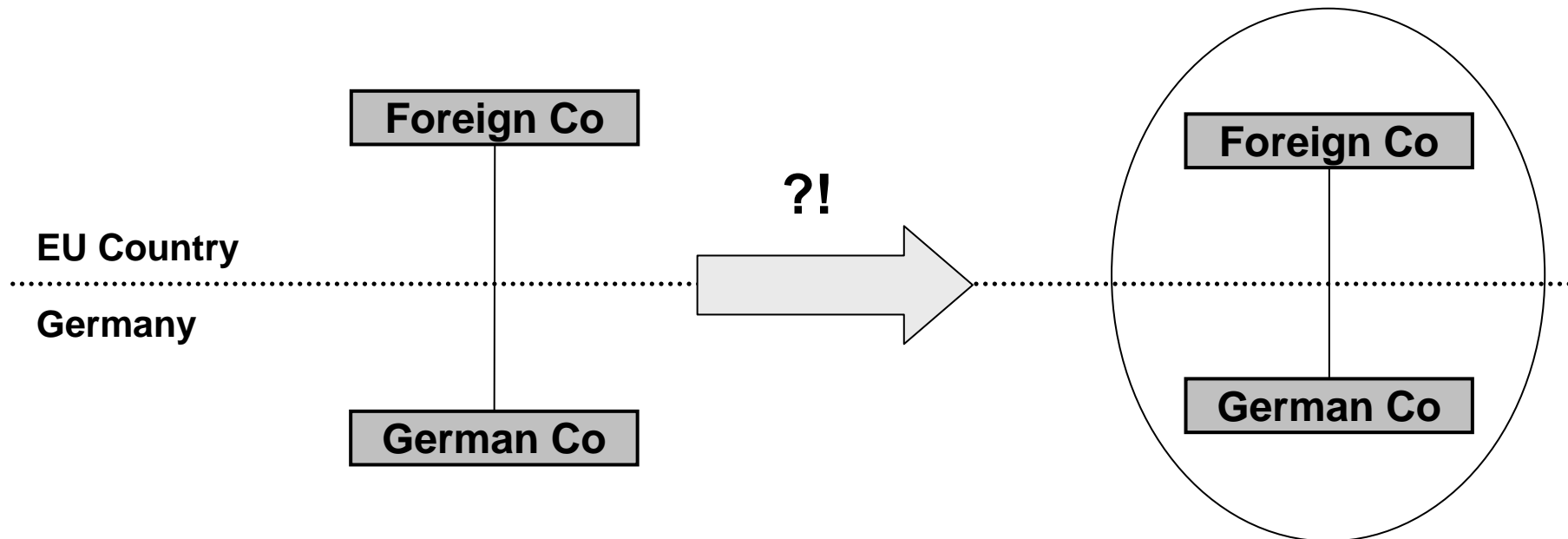
This is especially true in the EU ...

2 Status Quo – Cross border grouping



The discussion always turned around cross border grouping with a German parent company according to German tax law

2 Status Quo – Cross border grouping



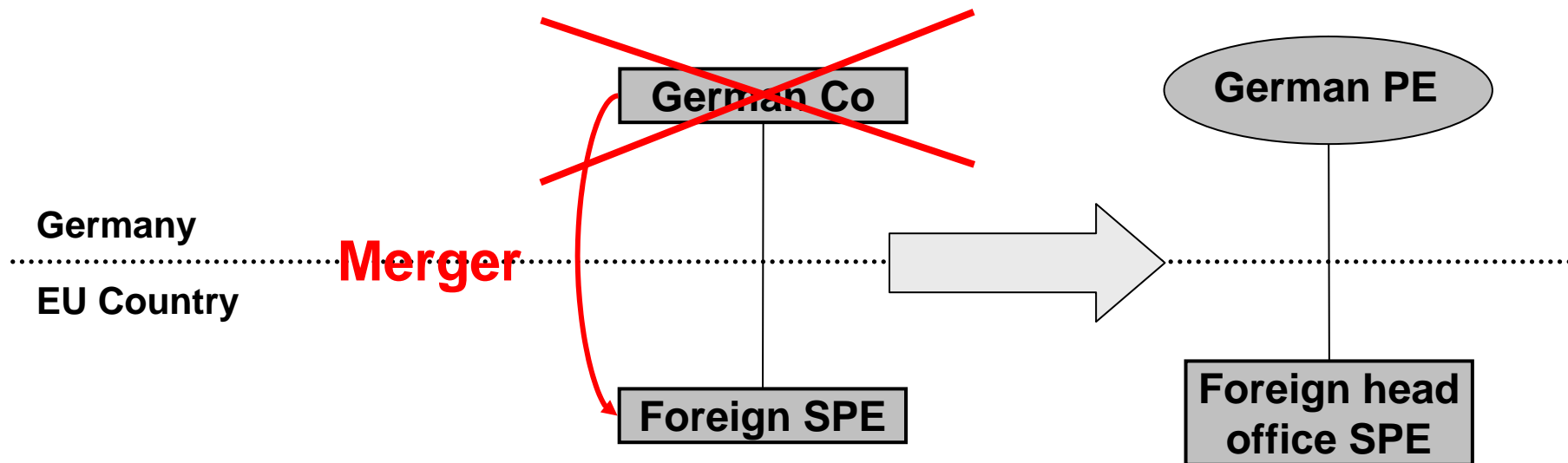
Now the German Federal Tax Court has decided, that a cross border group with a foreign parent company under German tax law can be possible (under certain circumstances)

3 SPE – Split of seats – a remark to the current legislative process

- 1. Some tax administrations fear that SPEs would register in one MS and have the real seat in another MS**
 - 2. Tax revenue losses?**
 - 3. The majority of MS allows the split of seats according to already applicable law**
 - 4. Furthermore: Any in a foreign country registered company must register for tax purposes, when it transfers its real seat!**
 - 5. The same tax revenue losses could arise, if a foreign company acts through a Permanent Establishment without registering**
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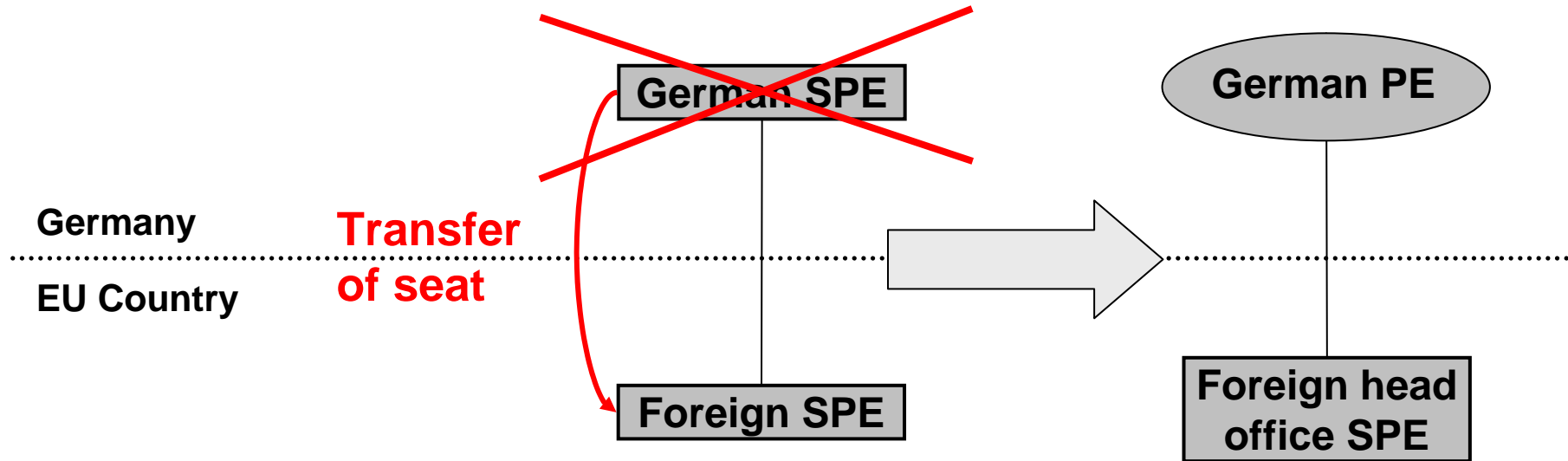
3 SPE – Formation

1. “Ex nihilo” – tax neutral, of course!
2. Merger – according to German Law: loss carry forwards and interest carry forwards can not be transferred



3. Change of corporate form – tax neutral: loss carry forwards and interest carry forwards are preserved
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3 SPE – Transfer of seat



The transfer of seat is tax neutral, if a PE remains in the originating country

4 CCCTB – Group membership and consolidation

- 1. Eligibility for consolidation is being determined in a two-part test based on:**
 - Control: more than 50 % of voting rights**
 - Ownership: more than 75 % of equity**
- 2. In calculating the consolidated tax base, profits and losses arising from transactions between group members are ignored: Such income/expenses are excluded from the consolidated tax base**



4 CCCTB – Formula apportionment and tax rate

- 1. The consolidated tax base is being shared among MS:**
 - 1/3 Sales per destination**
 - 1/3 Assets**
 - 1/6 Payroll**
 - 1/6 Number of employees**
 - 2. On the attributed portion of the tax base the national corporate tax rate will be applied**
-

4 CCCTB – Administrative framework

1. **“One stop-shop”:**
 2. **Filing tax returns only at the “principal tax authority”**
 3. **Group audits are coordinated by the “principal tax authority**
 4. **Other tax authorities can:**
 - **request audits**
 - **Challenge decisions of the principal tax authority**
 5. **The proposal also includes an advance ruling mechanism**
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4 CCCTB – Four conditions for Businesses

- 1. Optional for companies**
 - 2. Consolidation of profits and losses**
 - 3. Reduction of compliance costs („one stop-shop)**
 - 4. No harmonisation of tax rates**
-

4 CCCTB – Advantages

- 1. Tax neutral cross border restructuring**
 - 2. Less Transfer pricing issues**
 - 3. Less double taxation**
 - 4. Intra-EU loss relief**
 - 5. Simplification**
 - 6. Cut in compliance costs**
 - 7. Cut in dispute resolution costs**
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Thank you!

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