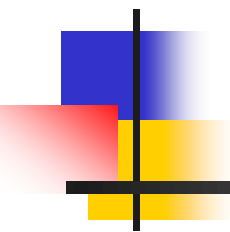


# CERTIFICATE COURSE ON INTERNATIONAL TAXATION BY WIRC OF ICAI

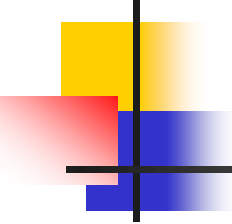


## Presentation on EU Treaties

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**Presented by:**  
**Mr. Paresh P. Shah**

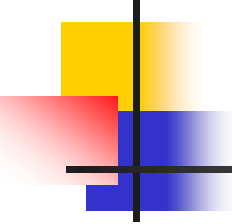
P.P. Shah & Associates  
Chartered Accountants  
Email: [ppshahandassociates@gmail.com](mailto:ppshahandassociates@gmail.com)



# Overview of Presentation

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- European Union – History & Objectives
- EU Counties
- Single Internal market
- Freedom of movement
- Tax Harmonisation
- Regulations & Directives
- Taxation Directives
- Implications – A Case Study



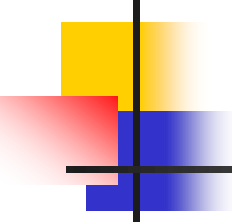
# EU history & objective

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- Objective: Harmonize national tax legislation for functioning of 'proper market' in European Union and Single market implementation
- Treaty of Paris, 18<sup>th</sup> April 1951
- Treaty of Rome, 25<sup>th</sup> March 1957
- Treaty of Brussels, Merger Treaty (Single Council & Commission), 8<sup>th</sup> April 1965
- EC Treaty, 1987 – Decision to single internal market
- Treaty of Maastricht, 7<sup>th</sup> February 1992
- Treaty of Amsterdam (Institution, 17<sup>th</sup> June 1997

**\*Date of signing with differing effective dates**

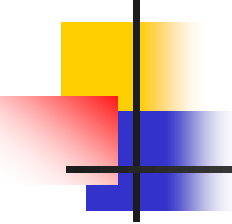
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# EU history & objective

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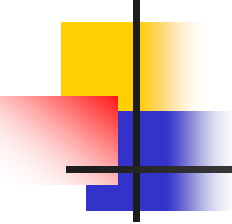
- Treaty of Nice (Change within Institution), 26<sup>th</sup> Feb 2001
- Treaty of Lisbon, 13<sup>th</sup> Dec 2007, update & amendments to EU treaties
- European Commission, Brussel
- European Parliament – Strasbourg
- General Secretariat – Luxembourg
- European Court of Justice – Luxembourg
- Council of European Union, Brussels
- Court of Auditors
- Ancillary Bodies



# EU Countries – EU members

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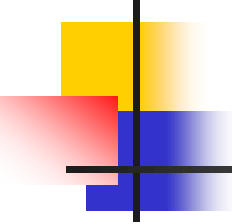
- Currently 27 countries are member of EU
  - 1957: France, Germany, Italy & Benelux - 6
  - 1973: United Kingdom, Ireland & Denmark - 9
  - 1981: Greece - 10
  - 1986: Spain & Portugal - 13
  - 1995: Austria, Finland - 15
  - 2004: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia & Slovenia - 25
  - 2007: Bulgaria & Romania - 27
  - Under Negotiation: Turkey, Croatia, The former Yugoslav Republic of Macedonia



# Single Internal Market

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- Objective: Free movement of People, Capital, Goods & right to establishment
- European Economic Communities, Treaties of 1951 & 1957
- Single Treatment, Treaty of Paris 1965
- European Act; EC Treaty, Treaty of 1987
- Union Treaty – Maastricht of 1992
- Institution and Judiciary – Treaty of 1997, Amsterdam
- Legislation during Expansion of Community, Treaty of Nice, 2001

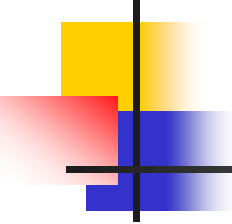


# Four types of freedom

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Free movement of

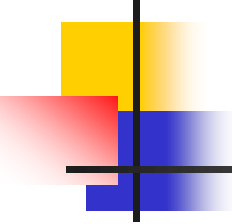
- Goods
- Persons
- Services
- Capital



# Tax Harmonisation

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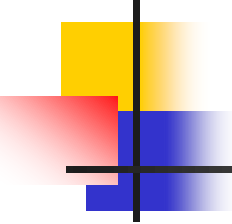
- Each Member State retains taxing right
- Principle of Subsidiary (Article 5)
- Requires unanimity under EC Constitution
- No Political Consensus
- Slow and difficult – very limited progress
- Use of directives to harmonise tax base – not tax rate



# Regulations & Directives

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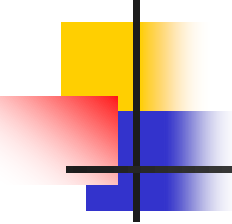
- Regulations: Binding and directly applicable
  - Regulation on European Economic Interest Grouping (EEIG)
- Directives: Binding on results but left to countries to implement and enforce
  - Mutual Assistance Directive – 77/799/EEC
  - Arbitration Directive – 90/436/EEC
  - Parent Subsidiary Directive – 90/435/EEC
  - Merger Directive – 90/434/EEC
  - Interest & Royalties Directive – 2003/49/EC
  - Savings Directive – 2003/48/EC



# EC Directives – Meaning

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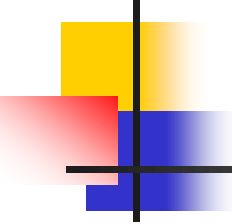
- Meaning:  
“A directive is a legislative act of the EU which requires member states to achieve a particular result without dictating the means of achieving that result”
- Only binding on member states to whom they are addressed
- Provides freedom of choice of ways of achieving underlying objectives
- Taxpayers see effects of a directive through their national legislation
- Specifies a date by which the Directives have to be put into effect by member states
- EC can initiate legal action in the European Court of Justice (ECJ) against member states for failure to comply with EU Directives



# Parent-Subsidiary Directive

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- 90/435/EEC adopted by EC Council on 23<sup>rd</sup> July 1990, amended by directive 2003/123/EC & 2006/98/EC
- Objective – Eliminating double taxation of profits distributed by subsidiary in one member state to parent or PE in other member state
- Applies to Intra EU distributions of profits
  - by Subsidiary in Member State
  - received by Parent or Permanent Establishment (PE) in another Member State
- Does not apply if Subsidiary and Parent/PE in same State
- No rules prescribed for accumulated profits realized on sale of shares of a subsidiary

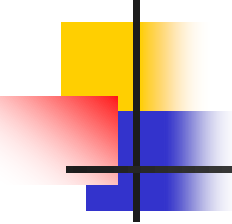


# PS Directive-Conditions

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- Conditions

- Companies created under the Laws of Member State or should be Permanent Establishment
- Company should be resident in a Member State
- Company should not be considered to be resident outside the Community under the terms of double taxation agreement concluded with a third State
- Company or PE should be subject to Corporate Income Tax
- Minimum Holding in capital/voting rights (if specified by member State) of 20% (15% from 1<sup>st</sup> Jan 2007 & 10% from 1<sup>st</sup> Jan 2009). The qualifying holding rates are maximum – can be less or NIL
- Minimum Uninterrupted period of holding of at least 2 years (Optional)

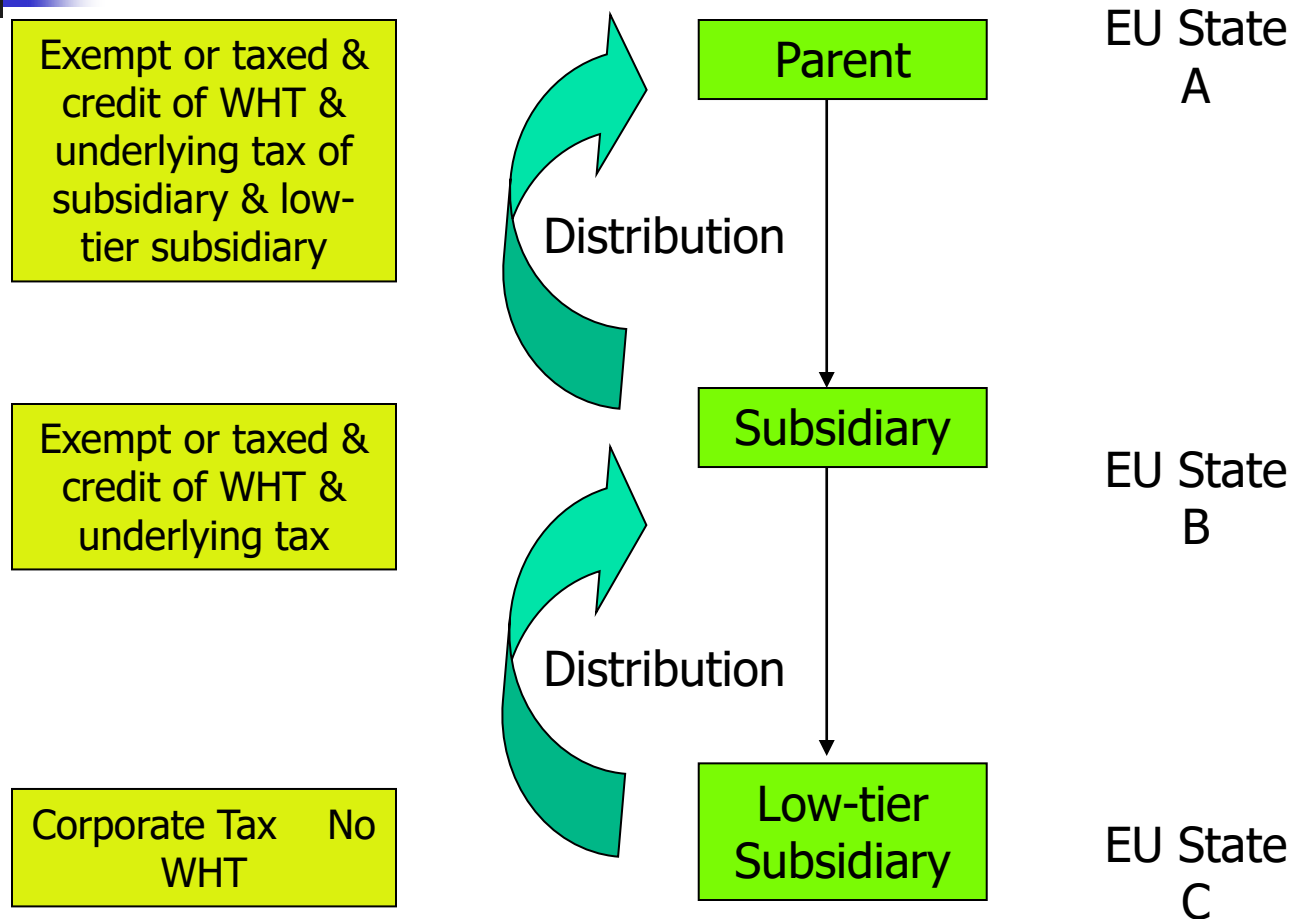


# PS Directive-Implications

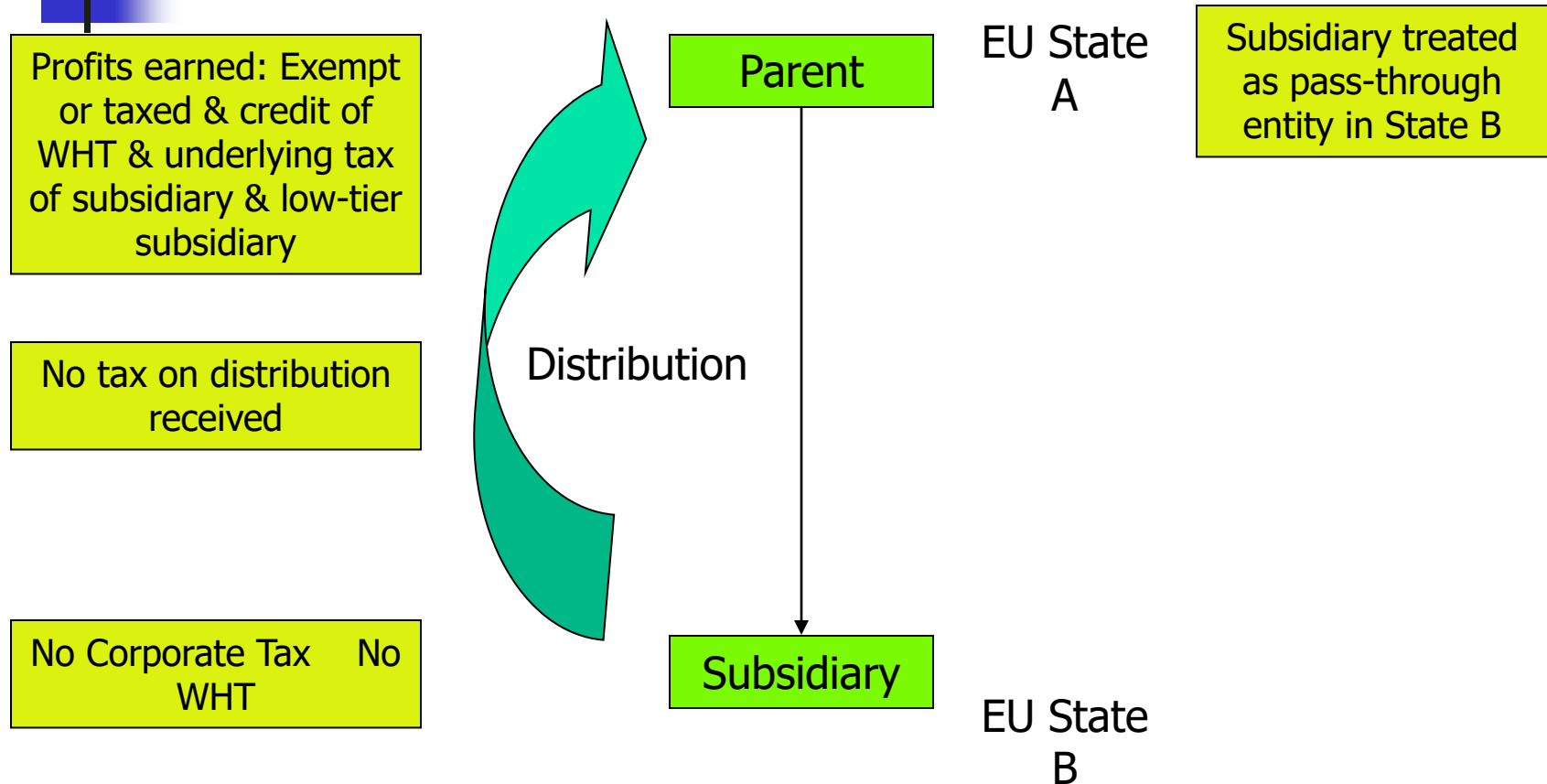
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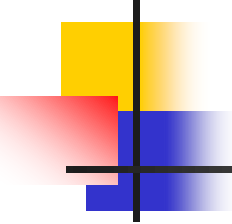
- Implications for Subsidiary
  - No withholding tax on distributions (unless fraudulent or abusive)
- Implications for Parent or PE (except when subsidiary is liquidated) on taxability of amount of profits, where subsidiary is treated as fiscally transparent entity or of amount distributed, in other cases
  - Full exemption and no deduction of holding charges, or
  - Taxed in the home country and credit is allowed for withholding tax and corporation tax relating to the profits distributed and paid by subsidiary and any lower-tier subsidiary complying with the conditions, of an amount upto the tax due
  - Expense Deduction limited to 5%

# PS Directive-Example

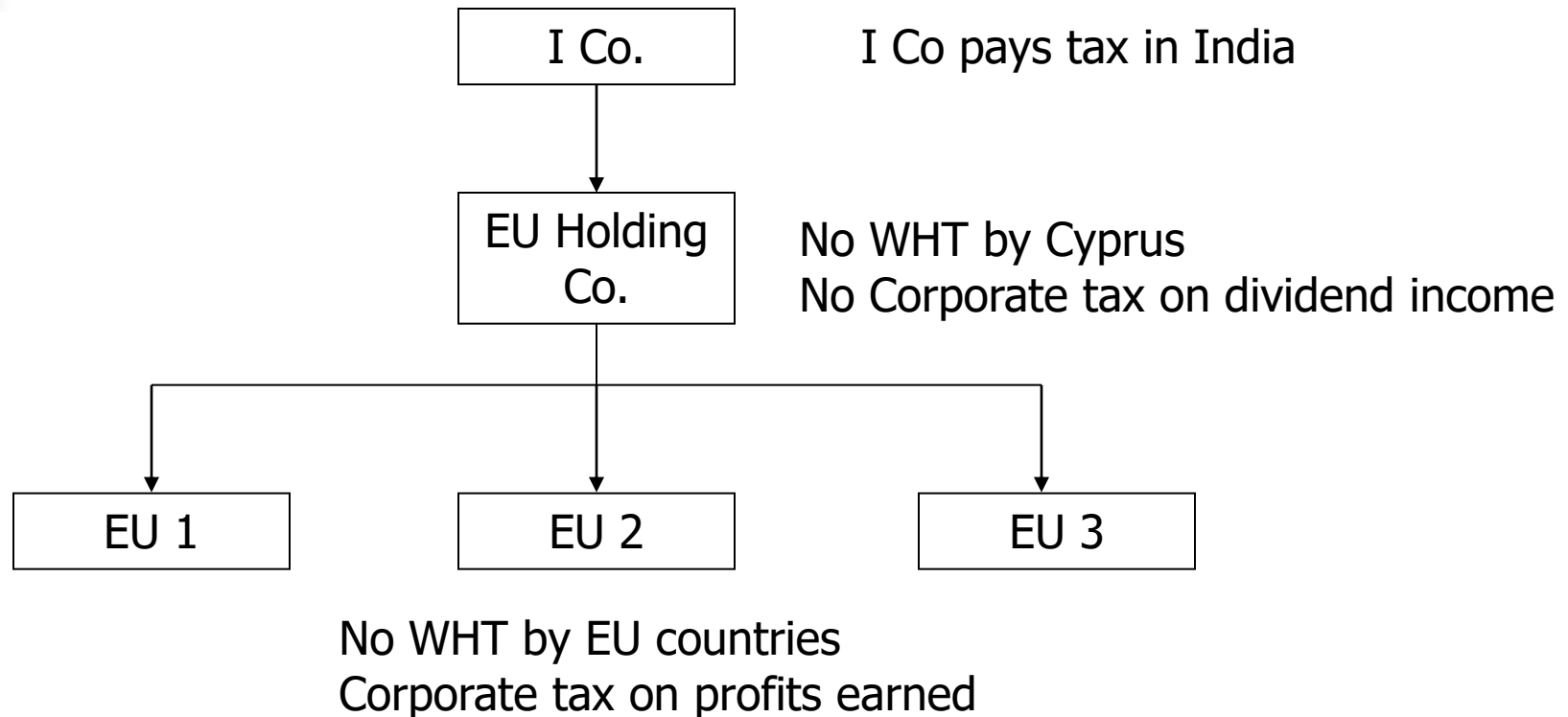


# PS Directive-Example

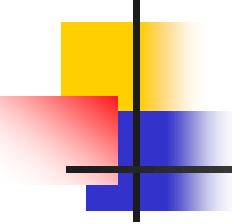




# PS Directive-Planning Opportunities



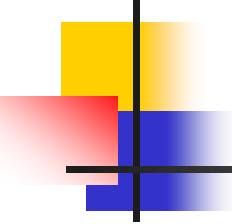
- Under ITA, although dividend is exempt, there is additional liability in the form of DDT u/s 115O



# Merger Directive

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- 90/434/EEC adopted on 23<sup>rd</sup> July 1990
- Objective: Establishment of a common system of taxation for cross-border restructuring operations
- Conditions
  - Companies created under the Laws of Member State or should be Permanent Establishment
  - Company should be resident in a Member State
  - Company should not be considered to be resident outside the Community under the terms of double taxation agreement concluded with a third State
- Directive provides for deferral of capital gains provided not more than 10% of nominal value of shares is paid in cash



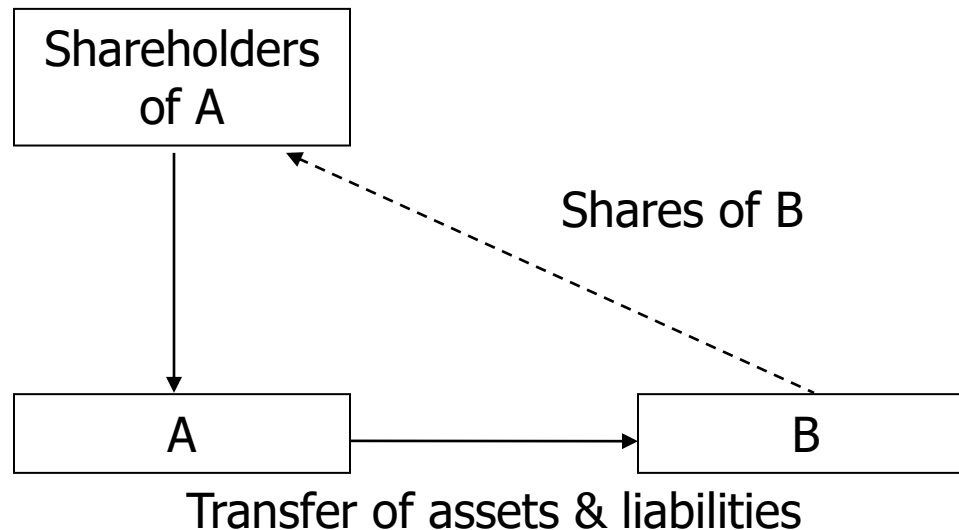
# Merger Directive-Applicability

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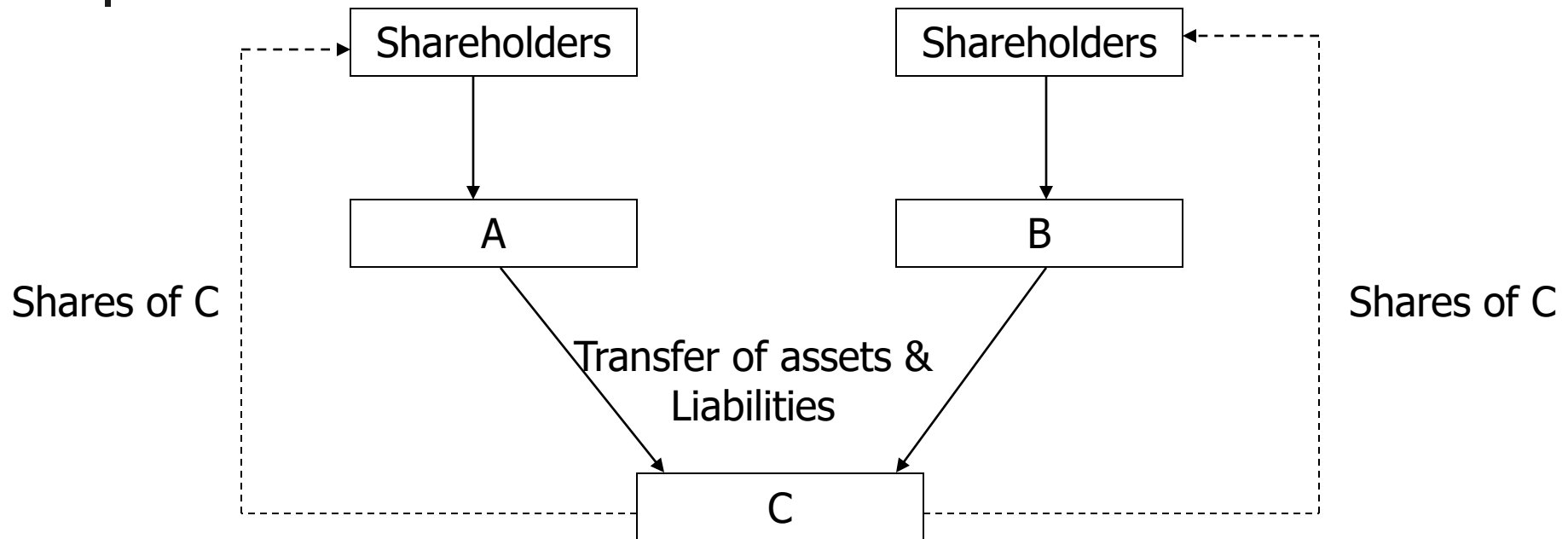
- Merger
- Division
- Partial Division
- Transfer of Assets
- Exchange of Shares
- Transfer of registered office
- PE of a company either in a State of transferee or third State

# Merger – Situation I

- One or more company is dissolved without liquidation, transfers all its assets & liabilities to another existing or new company
- Company A transfers assets to Company B
- Company B issues shares to shareholders of Company A



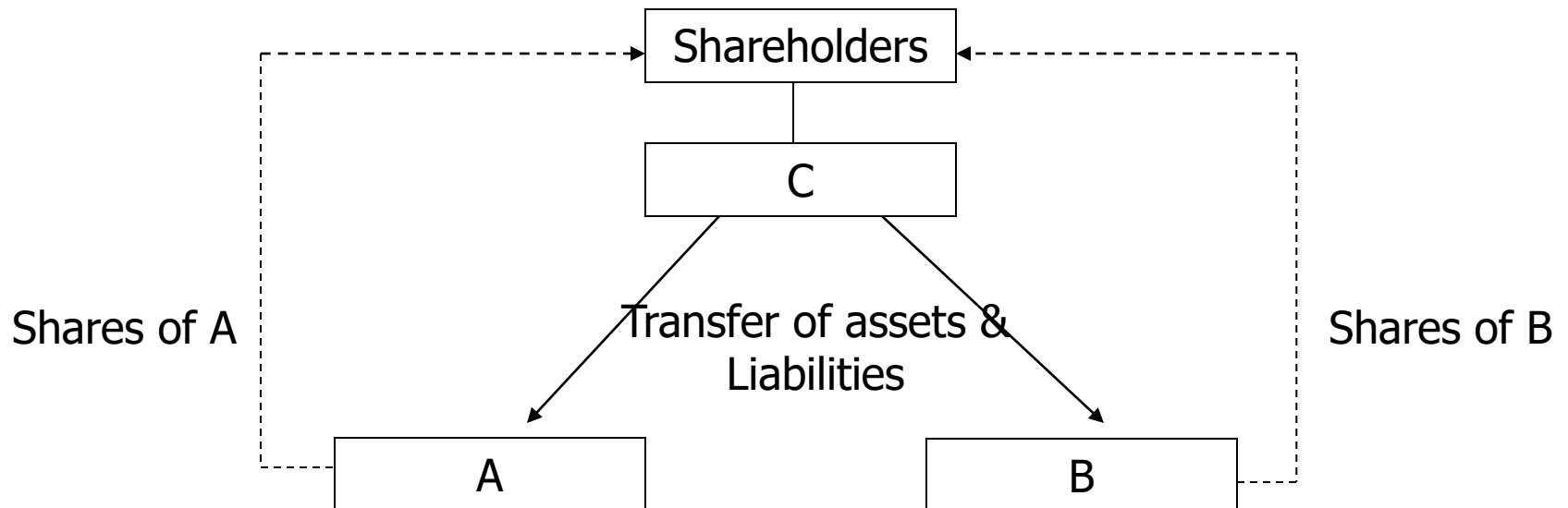
# Merger – Situation II



- Issue of shares by C Ltd. to shareholders of A & B
- Indian ITA 1961: Exempt transfer if C Ltd. is I Co

# Division (Demerger)

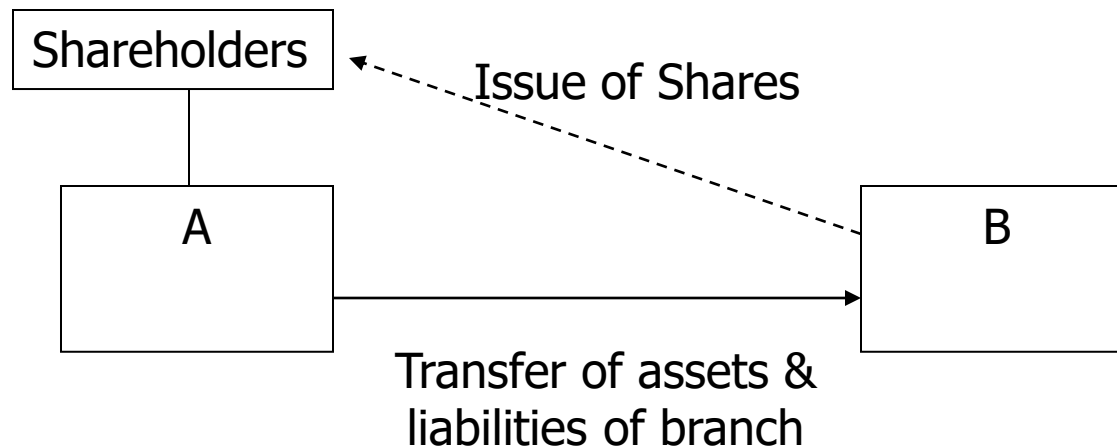
- Company on dissolution without liquidation transfer its assets & liabilities to more than one existing or new company in exchange for shares in the capital of new company to shareholders of transferring company



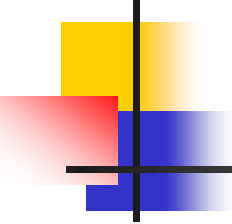
- ITA 1961: Demerger defined u/s 2(19AA) & exempt u/s 47 if resultant co is I Co

# Partial Division

- company transfers, without being dissolved, one or more branches of activity, to one or more existing or new companies, leaving at least one branch of activity in the transferring company in exchange for shares in the capital of new company to shareholders of transferring company

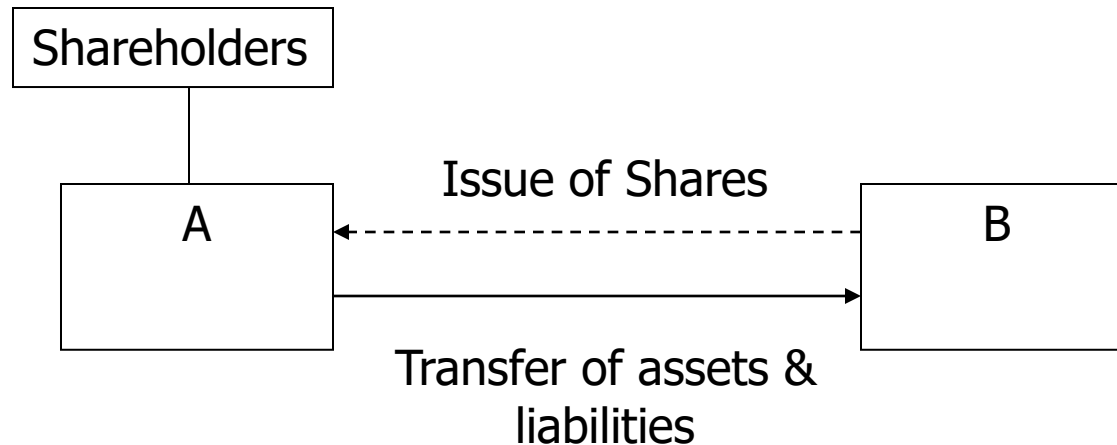


- ITA 1961: No exemptions however slump sale provisions of section 50B may be applicable



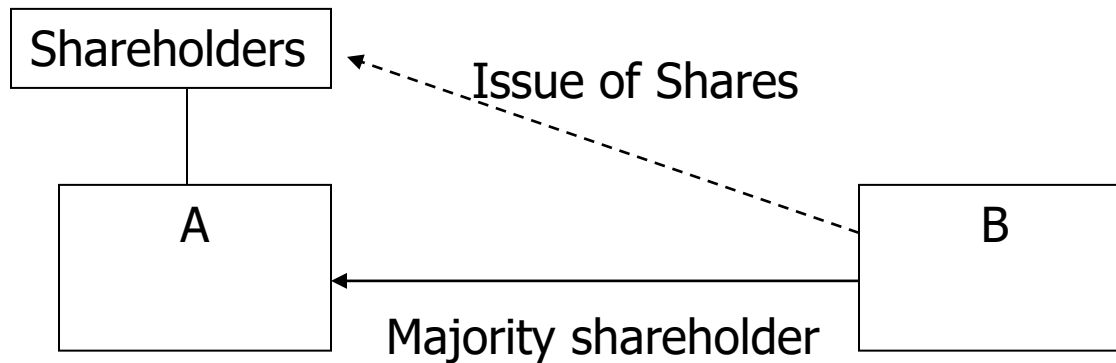
# Transfer of Assets

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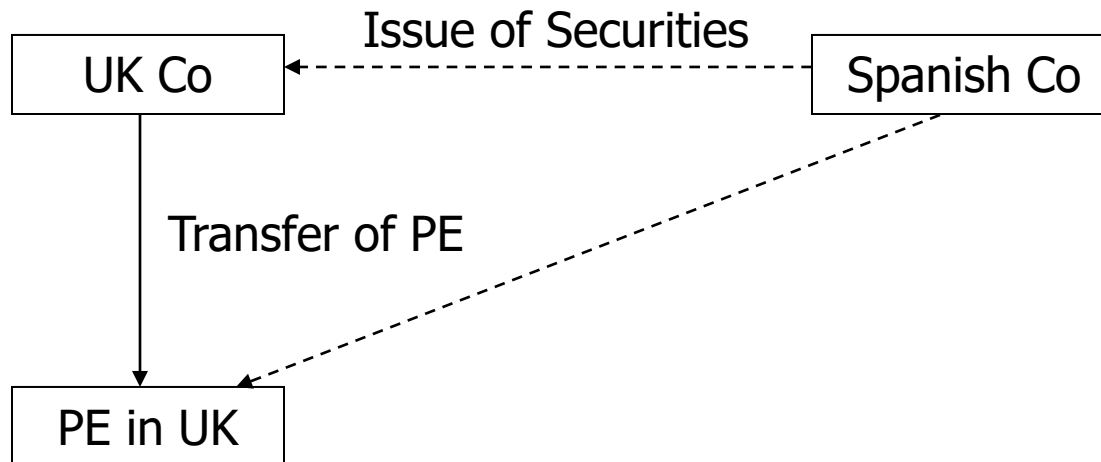
- ITA 1961: No exemptions however slump sale provisions of section 50B may be applicable

# Exchange of shares



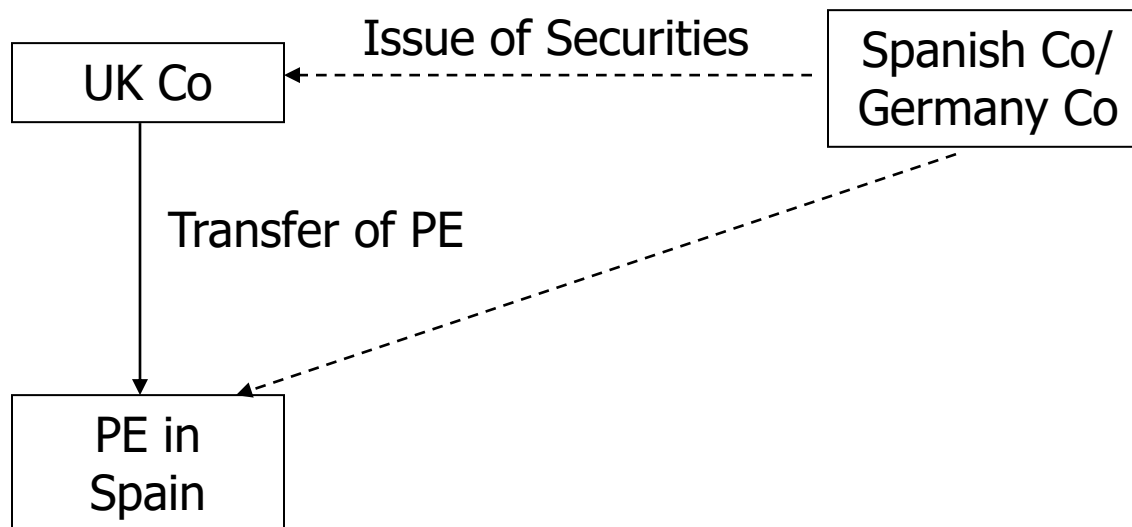
- ITA 1961: Act does not contemplate such an exchange of shares where shares are acquired

# Transfer of Permanent Establishment

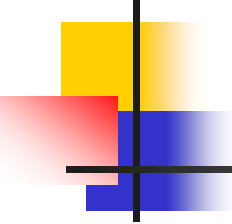


- ITA 1961:
  - If I Co is acquirer, the IT Act may not apply as well as Foreign Taxation Law may apply
  - If I Co is target, then provisions of slump sale may apply

# Transfer of PE (Overseas)



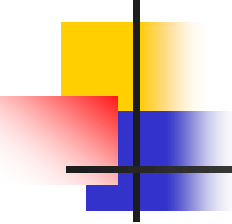
- ITA 1961: Do not exempt such transfers unless Indian PE of a Foreign Company is qualified subsidiary company in accordance with section 47



# Interest and Royalty Directive

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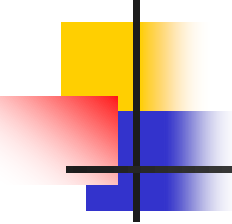
- Adopted on 3<sup>rd</sup> June 2003, effective from 1<sup>st</sup> Jan 2004
- Objective: Relieves Source tax on Inter-EU company payments of Interest/Royalties
- Definitions
  - "Interest" to include income from debt-claims; income from securities, bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payment shall not be regarded as interest
  - "royalties" means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and software, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; payments for the use of, or the right to use, industrial, commercial or scientific equipment shall be regarded as royalties



# IR Directive-Associated Company

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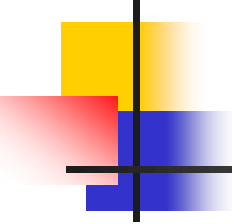
- A company is an "associated company" of a second company if, at least:
  - the first company has a direct minimum holding of 25 % in the capital of the second company, or
  - the second company has a direct minimum holding of 25 % in the capital of the first company, or
  - a third company has a direct minimum holding of 25 % both in the capital of the first company and in the capital of the second company.
- Holdings must involve only companies resident in Community territory
- Member States shall have the option of replacing the criterion of a minimum holding in the capital with that of a minimum holding of voting rights



# IR Directive-Applicability & Exclusions

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- **Applicability**
  - Payments of Interest or Royalty arising in one Member State
  - Beneficial owner of interest or royalty should be a company or PE situated in another Member State
  - Payer and the beneficial owners are associated companies
- **Exclusions**
  - Payments treated as distribution of profits/repayment of capital
  - Payments from debt-claims carrying right to participate in debtor's profits
  - Payments from debt-claims entitling creditor to exchange his right to interest to right to participate in debtor's profits
  - Payments from debt-claims containing no provision for repayment of principal amount or where principal amount is due for more than 50 years
- Directive does not affect application of domestic or agreement based provisions going beyond the Directive and designed to eliminate or mitigate double taxation of interest and royalties

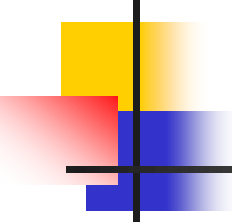


# IR Directive-Conditions

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## ■ Conditions

- Companies created under the Laws of Member State or should be Permanent Establishment
- Company should be resident in a Member State
- Company should not be considered to be resident outside the Community under the terms of double taxation agreement concluded with a third State
- Interest & Royalty payments should be subject to tax at least once in a Member State
- Arrangement must be on arm's length price
- In case paying company withholds exempt taxes, claim for repayment of the tax allowed
- Minimum Uninterrupted period of being associated company of at least 2 years (Optional)

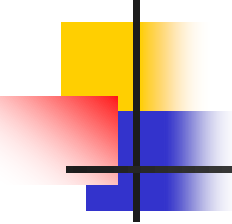


# Savings Directive

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- Directive 2003/48/EC, adopted on 3<sup>rd</sup> June 2003, applicable from 1<sup>st</sup> July 2005
- Objective – Effective taxation of interest on savings received by individuals resident of EU Member State, paid by tax resident in another Member State, dependencies & other States included in the directive
- Applicability
  - Interest paid to Individuals resident in EU Member State
  - To Debt-claims of every kind including accrued & capitalised interest
- Exclusions
  - Interest paid beneficially to companies, trusts and Non EU resident individuals
  - Issues related to taxation of pensions and insurance benefits
  - Benefits may be withdrawn or refused in case of transactions designed for purposes of tax avoidance or tax evasion

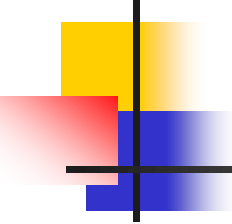
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# Savings Directive

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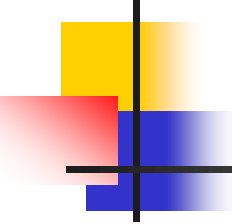
- Conditions
  - Setting up of automatic exchange of information system between Member States
- Implications
  - No withholding tax in the payer State, however free exchange of information
  - Optional withholding tax on interest paid @ 15% in 2005-07, 20% in 2008-2011, 35% after 2011
- Directive not to preclude Member States from levying other types of withholding tax in accordance with their national laws or double tax conventions
- Directive also adopted by Switzerland (linked with Switzerland Savings Agreement), Liechtenstein, San Marino, Monaco & Andorra
- Amending Proposal 2008 based on Commission's Report dt. 15<sup>th</sup> September 2008



# Accession to EU-A Case Study

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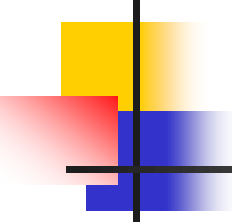
- When a prospective State determines to join EU, the issue arising out of negotiations are discussed with Cyprus as the joining member. Broadly these factors could be
  - Tax & Non tax factor
  - Direct & Indirect Tax
  - Mutual Assistance and information
  - Public Aid System
- These are arising out of the EU system while considering the Accession of Cyprus with EU



# Tax & Non tax factors

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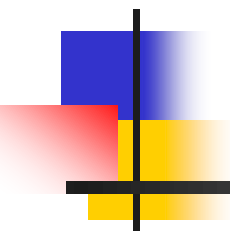
- A political subdivision and development of Growth
- Indirect Taxation
  - VAT, Central Excise & Customs
- Direct Taxation
- EU Directives & Regulations
- System of Public Aid



# Accession Agreement

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- Satisfactory Compliance
- Potential amendment in the domestic Law/s
- Directives and Implementation machineries
- Reservations & Abeyances



# Thank You

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