University of St.Gallen

Institute for Law and Economics

NEXUS – TKS IBFD

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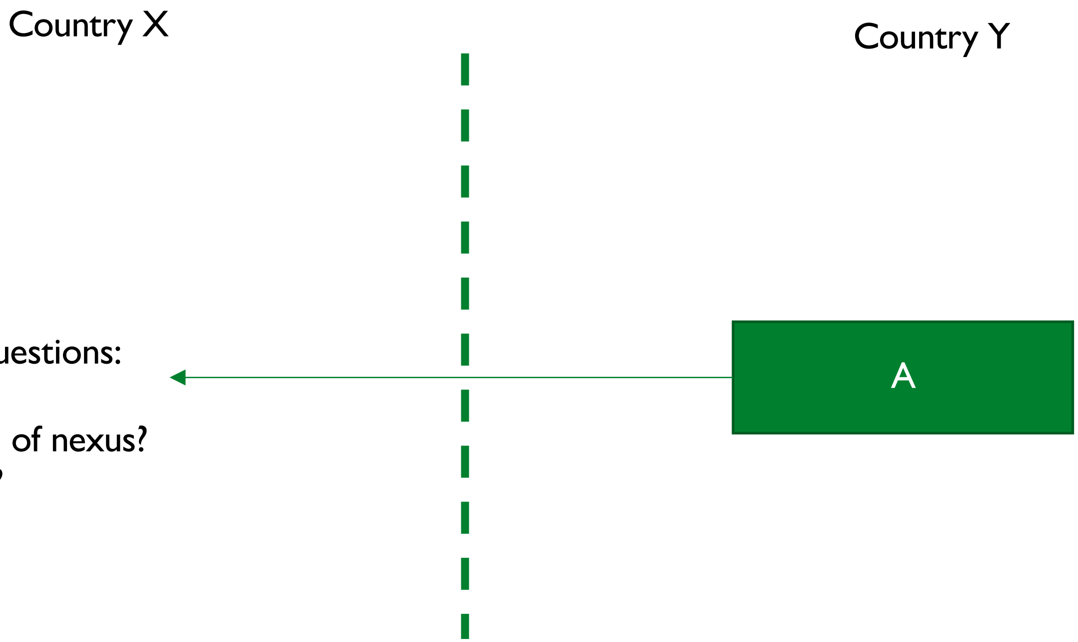
From insight to impact.

Agenda

1. Overview
2. Examples
3. International Law Limitations / Outlook

Overview

Overview



Two main questions:

1. Definition of nexus?
2. Rationale?

Terms used

Terms used to define nexus:

(i) situated in
(ii) sourced in,
(iii) listed in,
(iv) attached to
(v) incorporated in,
(vi) has assets or business in,
(vii) connected to,
(viii) (substantial) interest in
(ix) deemed to be in
(x) (etc)

Taxes Covered (Extract from the Directives)

4.3 Income Tax

4.3.3 Dividends

4.3.4 Interest

4.3.5 Royalties

4.3.6 Income from the sale of goods

4.3.7 Income from services (general and specific)

4.3.8 Pensions

4.3.9 Employment income and director fees

4.3.10 Capital gains

4.3.11 Payments or transactions between foreign persons

Taxes Covered (Extracts from the Directives)

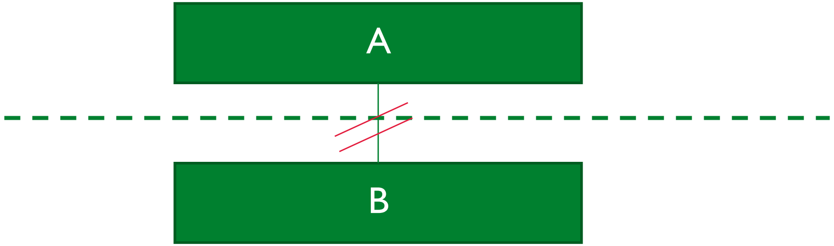
4.4 Value Added Tax (or General Sales Tax)
4.5 Real estate taxes.
4.6 Natural resources and energy taxation
4.7 Other (indirect) taxes
4.7.1 Financial transfer tax
4.7.2 Stamp duty (incl. taxes on insurance premiums)
4.7.3 Customs & excise duties
4.7.4 Inheritance or wealth taxes
4.7.5 Digital services or economic activities
4.7.6 Shipping
4.7.7 Other taxes
4.7.8 Specific issues concerning federal/regional tax systems
4.8 (Non-tax) Legal instruments & tax nexus
4.9 Nexus and legality (discretionary tax regimes)
4.10 Outlook and current policy debates
4.11 Overall assessment

Examples

Examples

Example: Capital gains

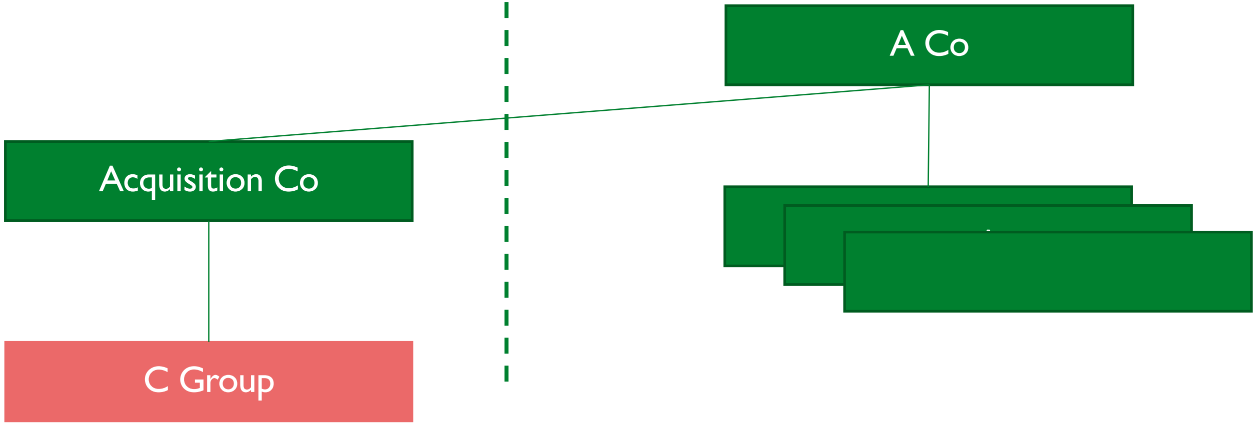
For instance, a capital gains tax is triggered if the sold company "is situated in" your state.



What does that mean? Why is that? Value creation? Formal approach? Anti-abuse? Benefit principle? Maybe courts/legislator deem value creation? Why is the situation different with real estate companies? Has there been a debate why there should be a difference? Is there a debate about changing the nexus?

Examples

Example: Financial Transaction Stamp Duy

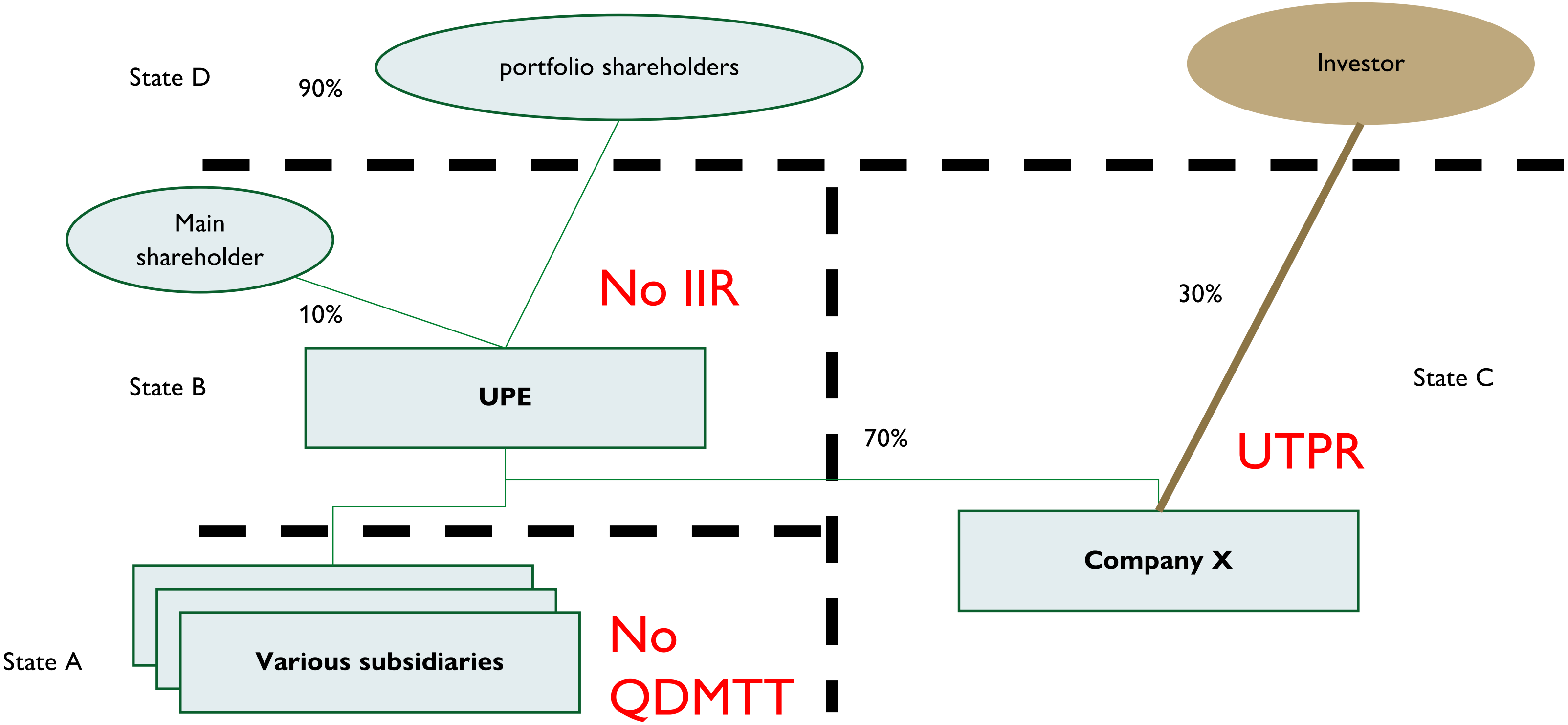


Art. 13[1] Stamp Duty Act (Switzerland) clarifies that for the duty to apply, a securities dealer must be **involved** in the transaction either as a contracting party or as an **intermediary**.

In connection with the acquisition of the U.S. company, the court examined whether the three managers of company A had an influence on the willingness of the target company's (C Group) shareholders to sell — that is, whether they acted like an intermediary broker.

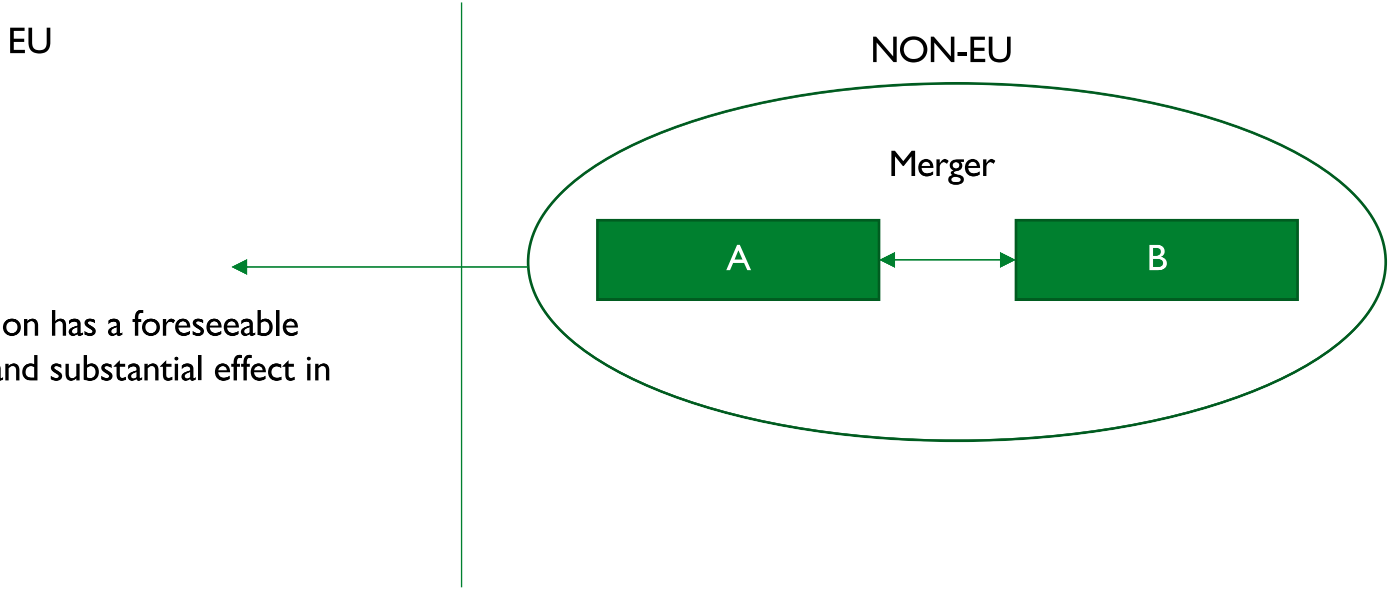
Nexus = local broker - Why is that? Value creation? Formal approach? Anti-abuse? Benefit principle? Maybe courts/legislator deem value creation?

International Law Limitations


State D
90%
portfolio shareholders
Investor
Main shareholder
10%
No IIR
30%
State B
UPE
State C
70%
UTPR
Company X
State A
Various subsidiaries
No QDMTT

What is a sufficient link?

Example 1: Antitrust law



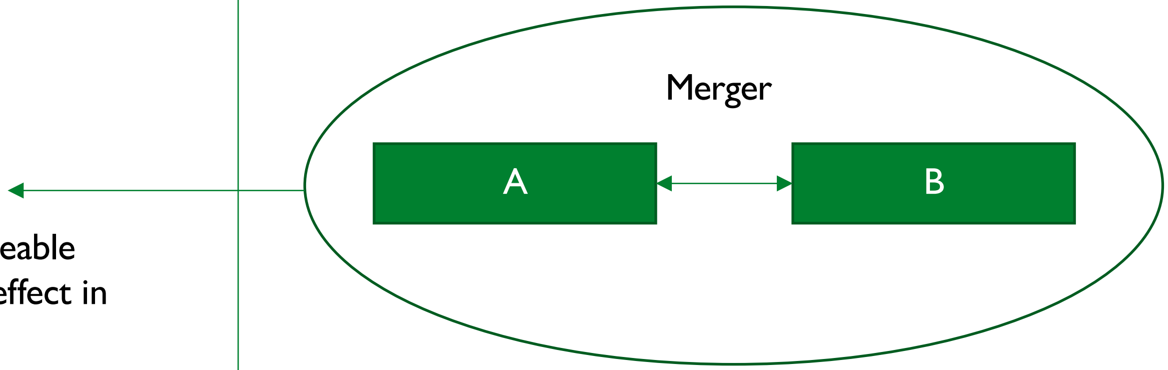
Concentration has a foreseeable immediate and substantial effect in the EU

What is a sufficient link?

Example 2: Corporate income tax law

EU

NON-EU

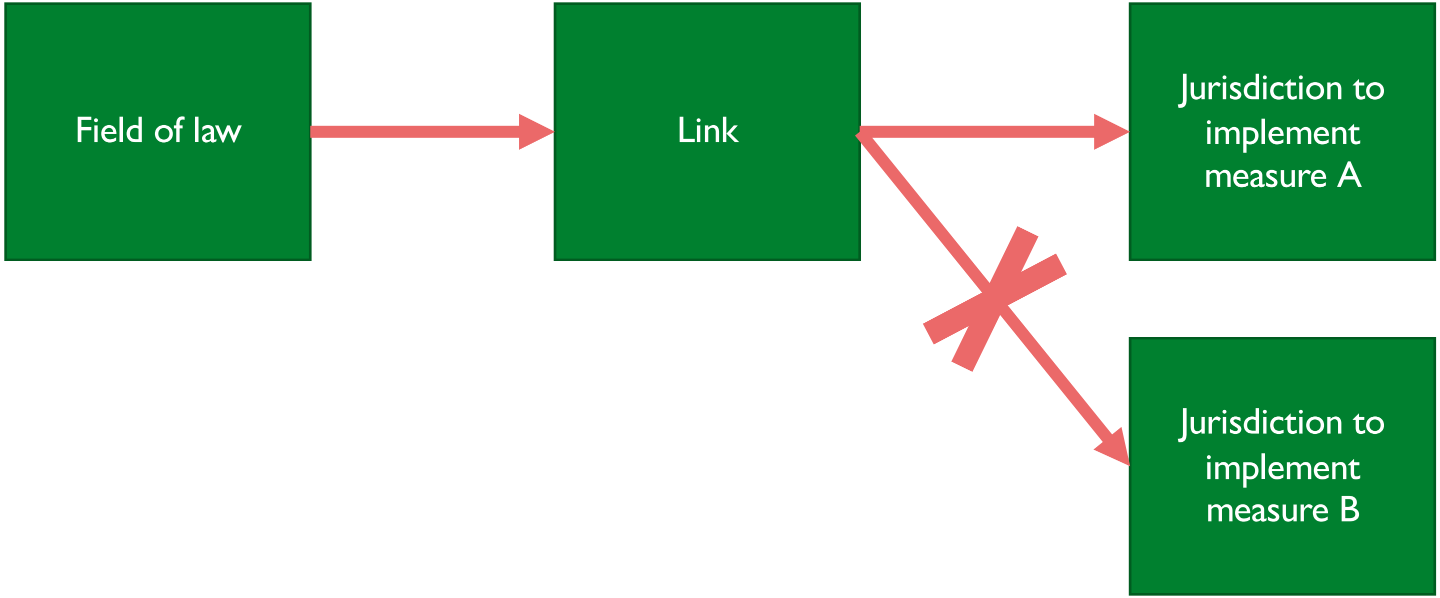


Concentration has a foreseeable immediate and substantial effect in the EU

Is «the EU» allowed to tax A and B as corporate tax payers?

What is a sufficient link?

Each link justifies jurisdiction **<u>to a certain extent</u>** in a **<u>certain field of law</u>**



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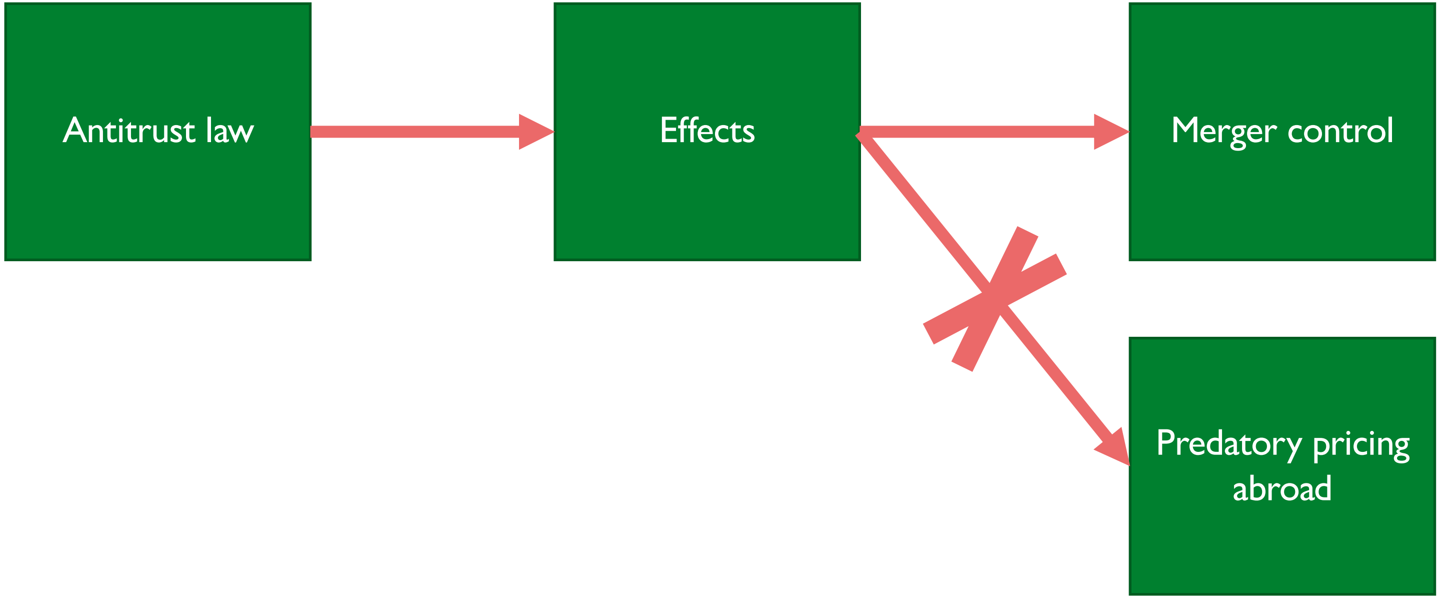

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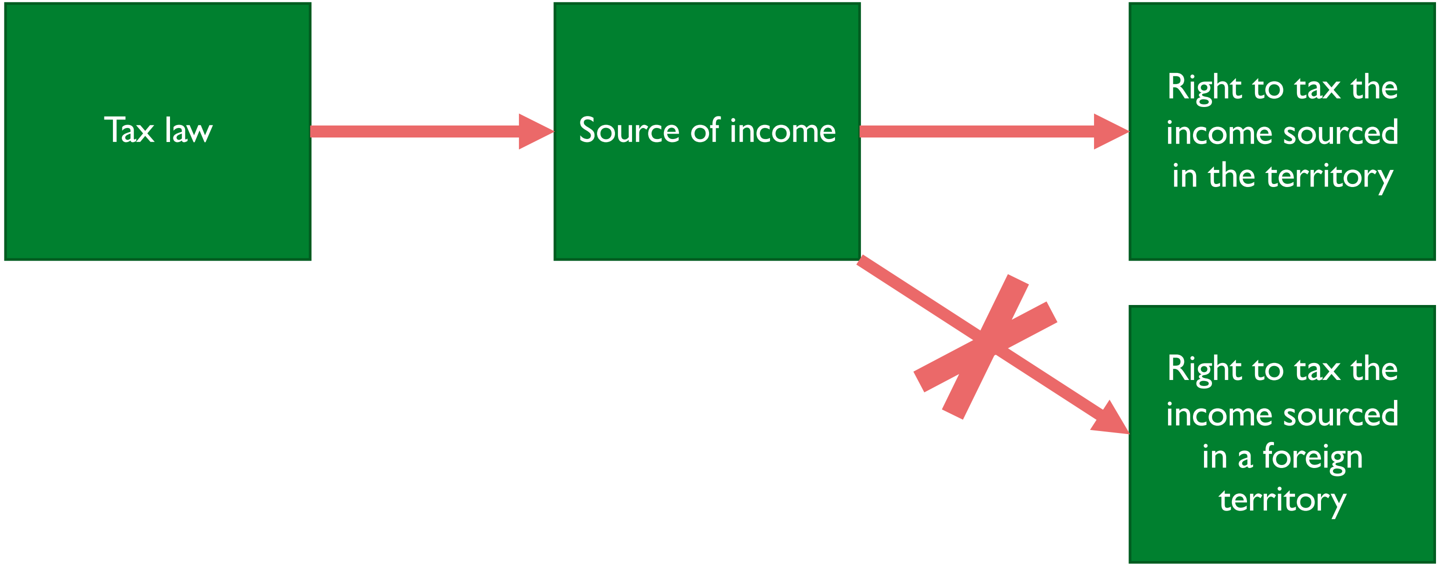

What is the legal base?

Two situations need to be distinguished:

- **Explicit legal base (constitutional or treaty base):**
  - Germany-USA Treaty of Friendship, Commerce and Navigation of 1954 (prohibition of extraterritorial taxation)
  - Constitutions?

- **No explicit legal base at an international level**
  - What is the base?

What is the legal base?

Two options:

1. Customary international law
    - Opinio iuris
    - State practice
2. Legal precondition of the international law regime

Thank you!!

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