Universität St.Gallen
Institut für Finanzwissenschaft, Finanzrecht
und Law and Economics

The Swiss GAAR

Peter Hongler

From insight to impact.

Agenda

1. History
2. Requirements
2. Legal consequences
3. Areas of application
4. International sphere



History

History

- Unwritten rule
- Federal Supreme Court Decision, BGE 59 I 284, 1 December 1933
- Legal transplant from Germany
- Traditionally it was understood as an «aid for interpretation» and not as an «anti-abuse provision»
- Broadly critized in academia! No legal base

Requirements

Requirements (I)

- Unusual legal structure chosen by the tax payer
- Intention to save taxes
- Actual tax saving

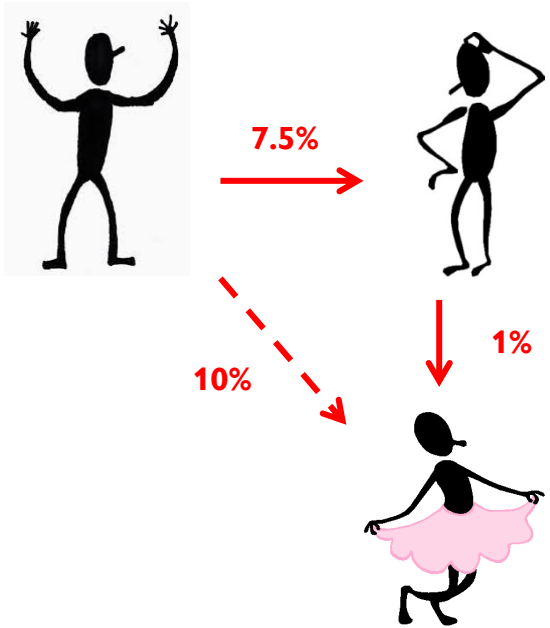
Requirements (II)

- Federal Supreme Court has tightend the requirements («arbitrary result» «highly objectional») in a VAT case (BGE 138 II 239) but the court has again deviated from ist own case law

Legal consequences

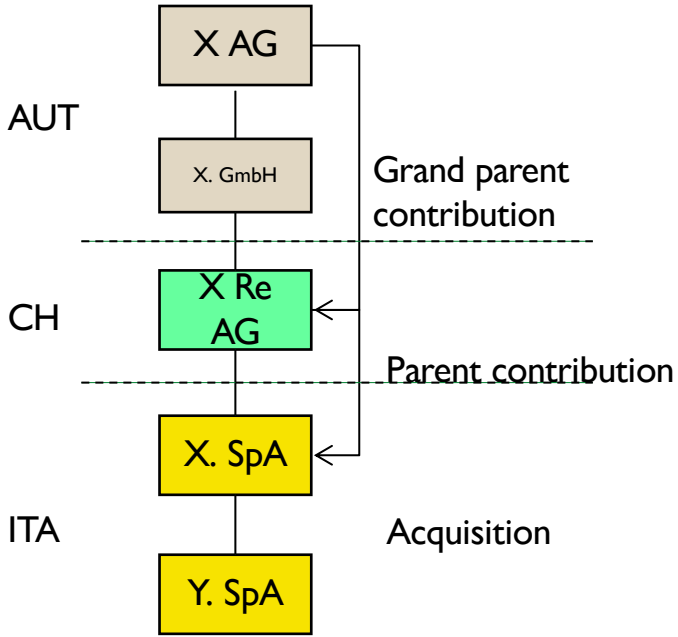
Legal consequences

- Application of ficticious/deemed facts – i.e. what kind of legal structure would be «normal»
- Example:



Areas of application

Areas of application

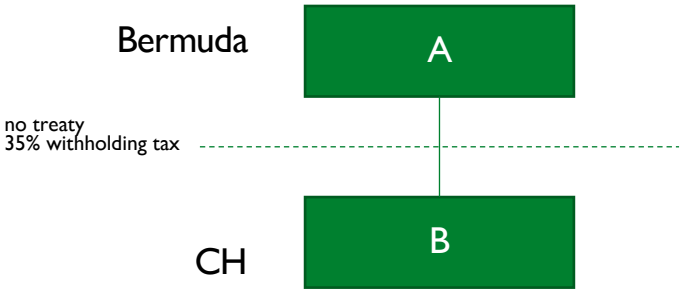


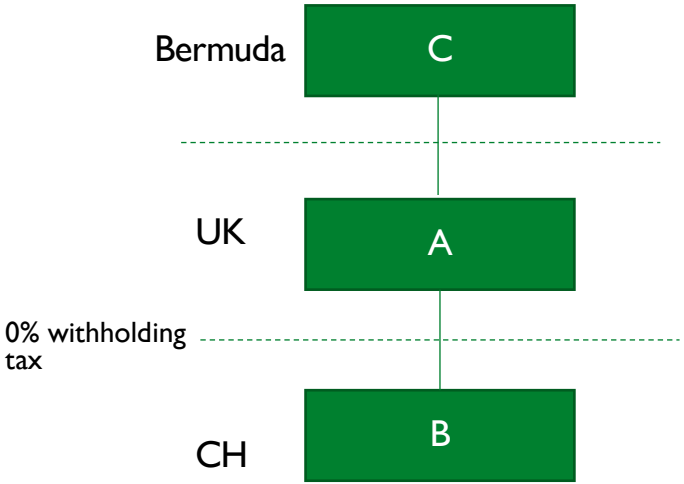
- Stamp duty of 1% on contributions by shareholders
- X AG is not a shareholder
- Application of the Swiss GAAR?

International sphere

International sphere (I)

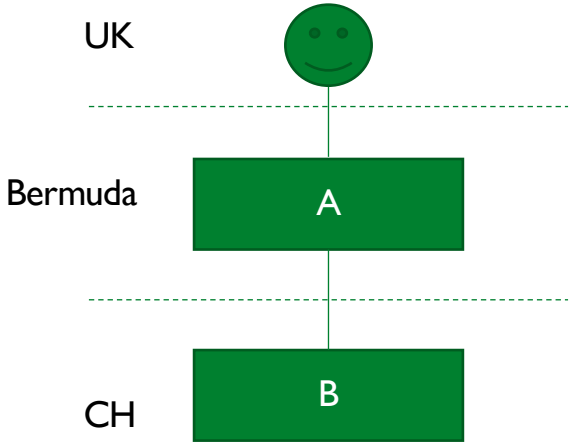
Is there room for the application of the Swiss GAAR?
What is the difference to the application of the PPT?

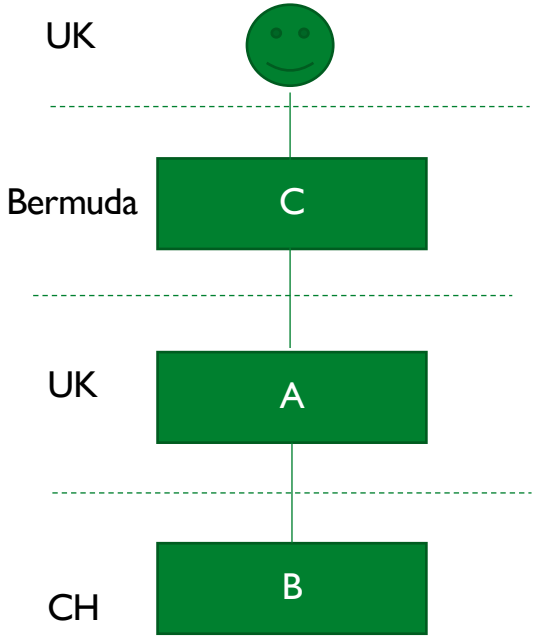




International sphere (II)

Is there room for the application of the Swiss GAAR?
What is the difference to the application of the PPT?





For the dogmatic dispute of whether there is an unwritten anti-abuse rule contained in every tax treaty see Justice in International Tax Law, A Normative Review of the International Tax Regime - Alexandria (unisg.ch)