

# Cross Border investment and the changing face of tax in Europe

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# Topics

- The effect of community law and international conventions on common group structures
- The relevance to investment from the US and outside the EU
- Examples of arrangements affected

# EC Treaty

- Purpose to create a single market with no trade barriers within the community.
- A tax system which gives advantages to those who invest or set up businesses nationally as compared with in another Member State will:
  - Inhibit establishments of businesses abroad
  - Inhibit movements of capital
- Protects investing from or in countries outside the EU

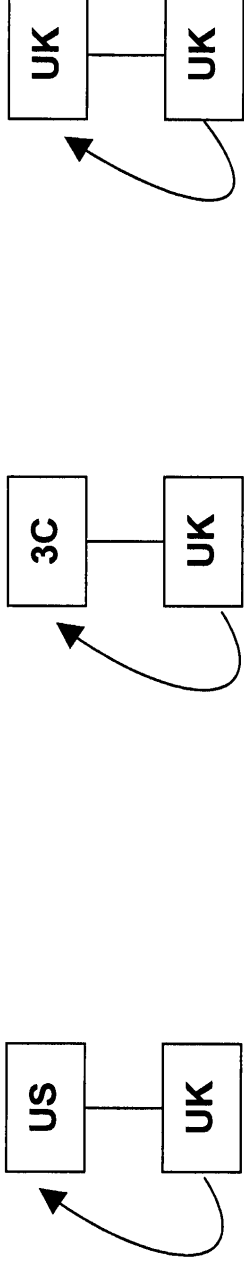
## Basic Concepts Under Attack

- Domestic groupings
  - *Marks & Spencer (2005); Esab*
- Withholding taxes
  - *Denkavit (2006)*
- Loan interest
  - *Lankhorst-Hohorst (2002); Thin Cap Group Litigation*
- Controlled foreign companies rules
  - *Cadbury Schweppes (2006); CFC and Dividend Group Litigation*
- Exit taxes
  - *X & Y (2002); De Lasteyrie (2004); N (2006)*
- Tax treatment of dividends
  - *Verkooijen (2000); Lenz (2004); Manninen (2004); FII Group Litigation (2006)*

# So What?

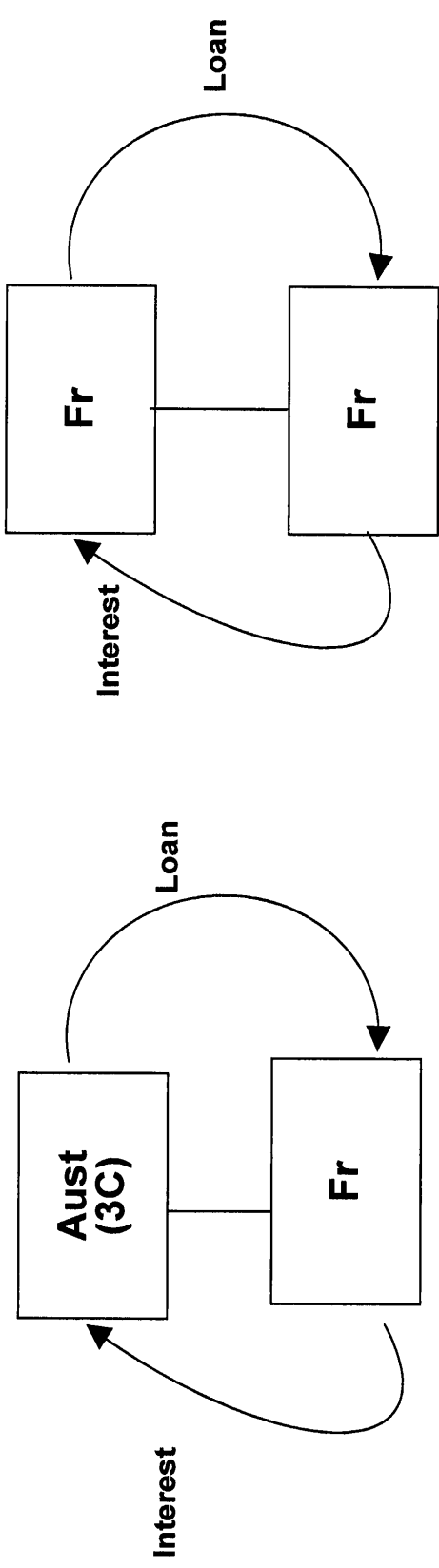
- Non Discrimination Articles (NDAs): e.g. Art 25(4) US UK DTC:
- UK cannot impose:
  - on a UK resident wholly or partly owned or controlled directly or indirectly by US resident(s)
  - “other or more burdensome” tax or requirements
  - to which “**other similar enterprises**” of the UK are or may be subjected

## “Other Similar Enterprise”



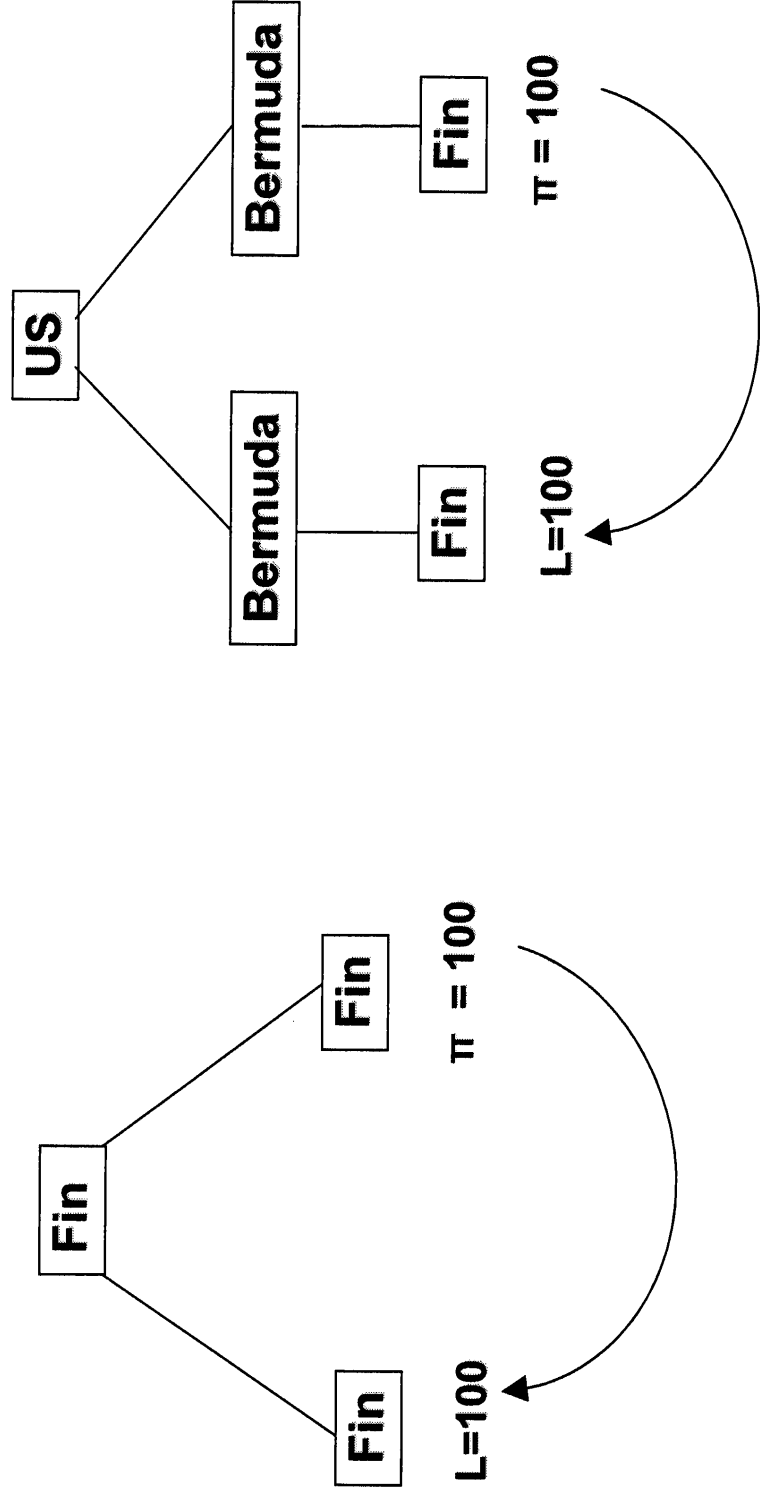
- Impact of EC Treaty: third country comparator problematic
- Domestic grouping used as comparator by
  - Swedish Supreme Court
  - Dutch Supreme Court
  - Finnish Supreme Court (group contributions)
  - French Supreme and lower Courts (thin cap and CFCs)
  - German Federal Tax Court
  - UK Court of Appeal

# Basic Claim: Loans

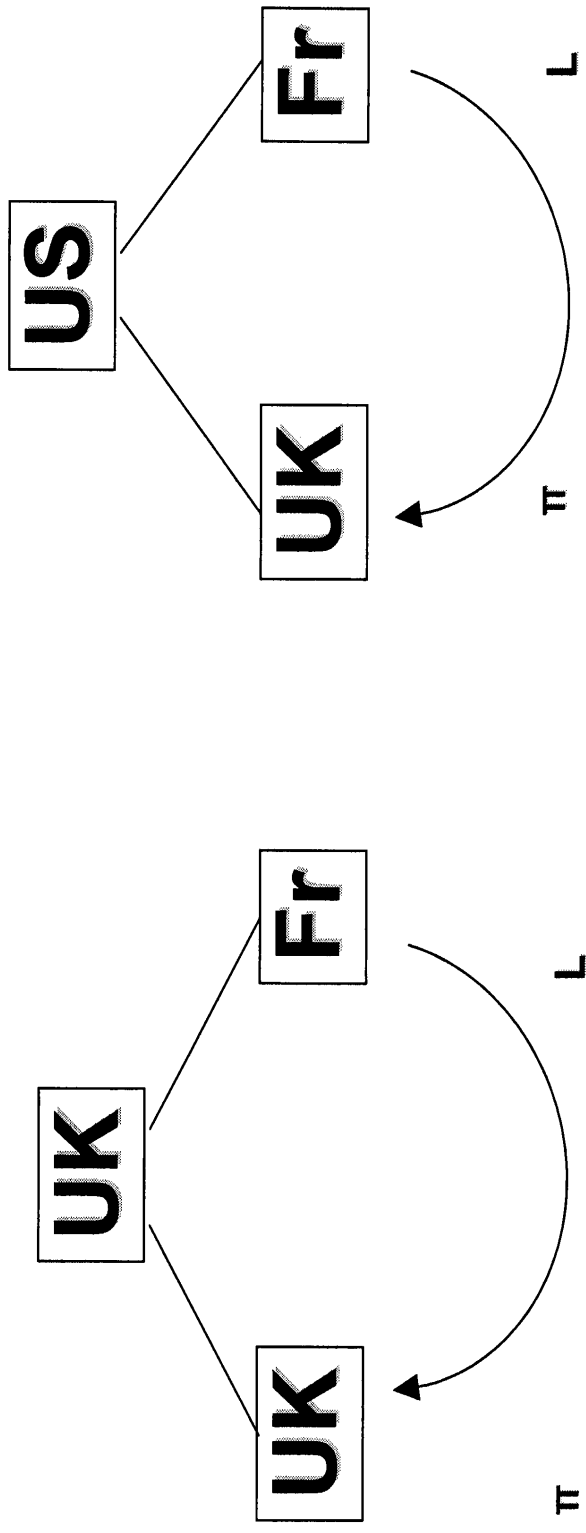


Disallowed interest deduction ⇒ more burdensome tax

# Basic Claim: Domestic Groupings

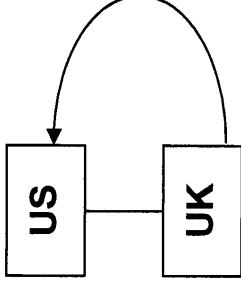


# More Complicated: Interacting NDA and Community Claims



# The next stage

- Directly exercising community rights:



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