

EU & OECD measures against tax avoidance and tax evasion & reform of the Dutch tax system

Jeroen Adeler - 24 September 2015



Agenda

- EU developments (general comments)
- Anti-abuse measures
- Information and exchange measures
- OESO: Base Erosion and Profit Shifting (“BEPS”)
- Former Netherlands Antilles: what to do?

Tax evasion: new?

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VRYPHEDEN

By de Vergaderinghe van
de Regenthiene van de Geoctroyeerde
West-Indische Compagnie vergunt aen allen
den ghenen / die eenighe Colonien in Nieu-
Nederlandt sullen planten.

In het licht ghegeven.

Om bekend te maken wat Profijten ende Voordeelen
aldaer in Nieu-Nederlandt, voor de Coloniers ende der
selver Patroonen ende Meesters, midtgaders de
Participanten, die de Colonien aldaer
planten, zijn becomen.



Westindien Kan sijn Nederlands groot gewin.
Verkleynt sijns Macht brengt siluer-platen in.

T A M S T E L R E D A M,
Door Marten Iansz Brande Boeckverrooper / woonende by
de nieuwe Kerck / in de Oerspoornes Caterijnsz, Anno 1639.

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Responsible tax – background

- Tax avoidance
- Harmful taxation / Incentives
- Low(er) tax rates
- Tax havens
- Letter-box companies / Tax structuring
- Limited information exchange
- Mismatches tax regulation between countries
- Mismatches double tax treaties and domestic tax laws

EU developments (2012-2016)

- Improving existing measures
 - Administrative cooperation
 - Savings directive
 - VAT
- New measures
 - Minimum standard third countries good tax governance
 - CUR/SXM: BG, HV, EST, GR, I, LT, P, E
 - Aruba: + PL, LV
 - Measures against aggressive tax planning
 - Code of conduct
 - Tax Identification Number (TIN) (public consultation - portal)

EU recommendations

- Rules to prevent double non taxation: no application of double taxation rules if the other country does not levy
- Including anti-abuse rules in treaties
- Better automatic exchange of information
- Measure the effect of maintaining and concluding treaties with third countries

New taxes?

- Financial transaction tax
 - Levy on financial transactions between financial institutions
 - Buyer and seller
 - 11 Member states
- (C)CCTB
 - Common tax base
 - No consolidation
 - Voluntary to mandatory
 - Loss compensation

Anti-abuse measures

- General measures vs. Specific measures
- Parent Subsidiary Directive
- Interest & Royalty Directive
- Anti-abuse measures in double tax treaties and domestic law
- Case Law European Court of Justice

State aid / Code of conduct

- State aid
- Code of conduct
- Rulings
 - Amazon
 - Fiat
 - Apple
 - Starbucks
 - Gibraltar
 - (TAXE)
- Innovation boxes



AMAZONE

Exchange of Information

- EU Exchange of Information Directive 2014
 - DAC1 and DAC2
- The end of the EU Savings Directive
- Measures OECD – CRS
- Measures U.S. – FATCA

BEPS Action plan: Overview

Action 1: Address the tax challenges of the digital economy			
“Gaps”	“Frictions”		“Transparency”
i. Establishing international coherence of corporate income taxation	ii. Restoring the full effects and benefits of international standards		iii. Ensuring transparency while promoting increased certainty and predictability
Action 2: Neutralise the effects of hybrid mismatch arrangements	Action 6: Prevent treaty abuse		Action 11: Establish methodologies to collect and analyze data on BEPS and the actions to address it
Action 3: Strengthen controlled foreign company (CFC) rules	Action 7: Prevent the artificial avoidance of PE status		Action 12: Require taxpayers to disclose their aggressive tax planning arrangements
Action 4: Limit base erosion via interest deductions and other financial payments	Assure that transfer pricing outcomes are in line with value creation	Action 8: Intangibles	Action 13: Re-examine transfer pricing documentation
Action 5: Counter harmful tax practices more effectively, taking into account transparency and substance		Action 9: Risk and capital	
		Action 10: Other high-risk transactions	Action 14: Make dispute resolution mechanisms more effective
Action 15: Develop a multilateral instrument			

BEPS Action plan: Timetable

September 2014

- Digital economy
- Hybrid mismatches
- Harmful tax practices – phase 1
- Treaty abuse
- Intangibles – phase 1
- Transfer pricing documentation
- Multilateral instrument – phase 1

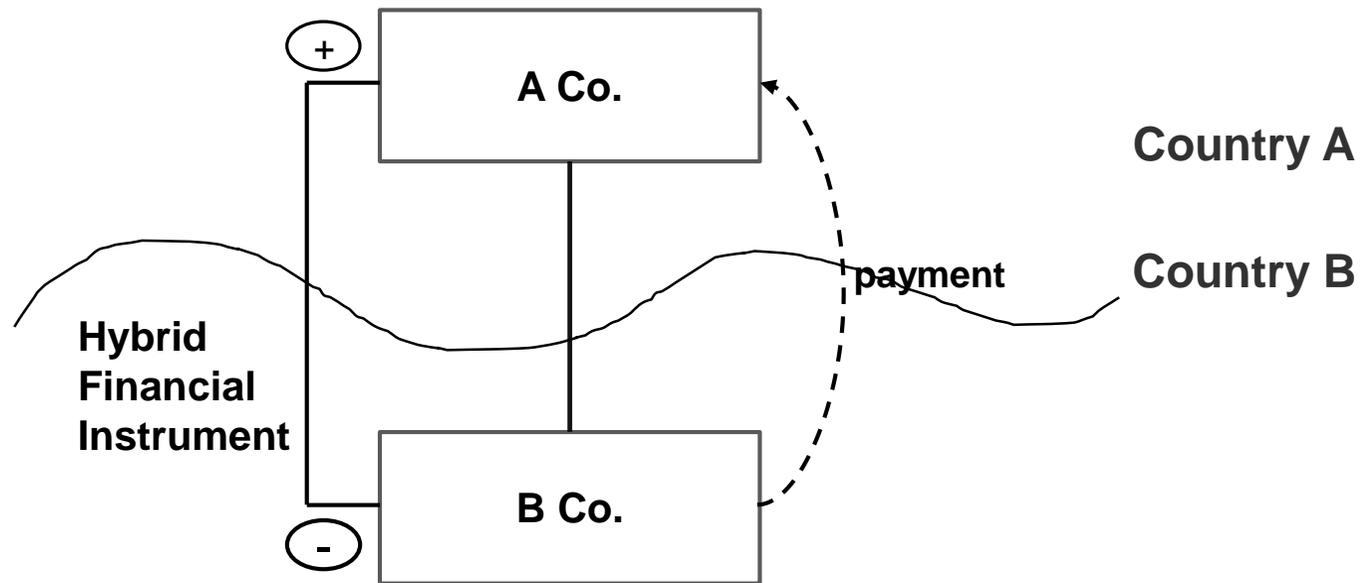
September 2015

- CFC rules
- Permanent establishment
- Interest deductions – phase 1
- Harmful tax practices – phase 2
- Intangibles – phase 2
- Risks and capital
- Other high-risk transactions
- Disclosure of aggressive tax planning
- Dispute resolution
- Data collection and analysis measuring BEPS

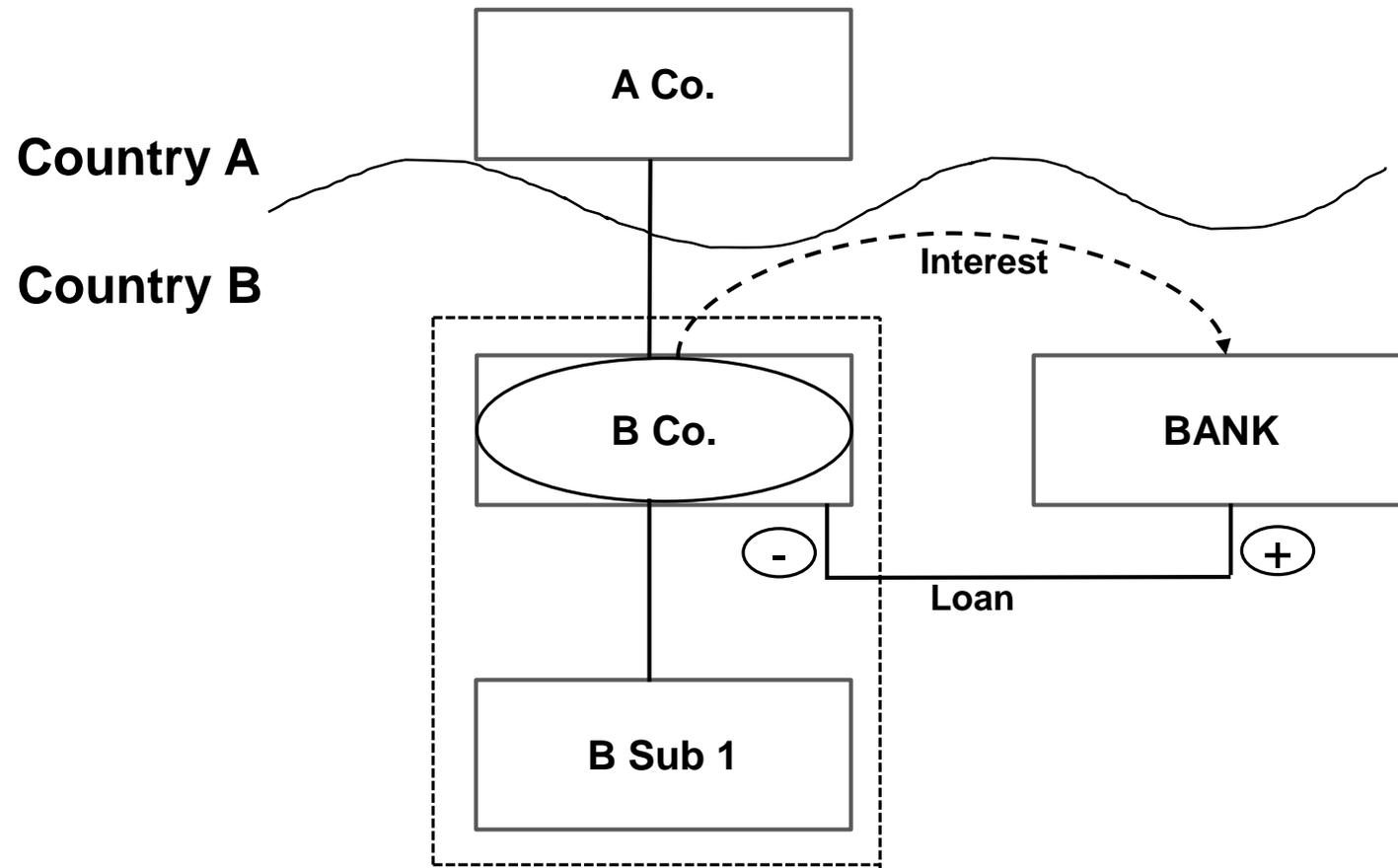
December 2015

- Interest deductions – phase 2
- Harmful tax practices – phase 3
- Multilateral instrument – phase 2

BEPS Action 2: Hybrid Financing



BEPS Action 2: Hybrid Entities



OECD: exchange of information

- Basis FATCA and Art. 26 Model Treaty
- Standard for automatic exchange of information
- Model competent authority agreement (CAA)
- Common Reporting and Due Dilligence standard
- Interest, dividends, insurance income by banks, investment companies, insurance companies
- 60+ countries
- January 2016

Former Netherlands Antilles

- TIEA's in decline
- Domestic GAAR?
- Domestic laws BEPS-proof
- International Exchange of Information
- Double tax treaties
- Reconsider UPG-Status?