

Mergers in International Taxation

An Analysis of the European and Conventional Tax Rules on Corporate Reorganizations

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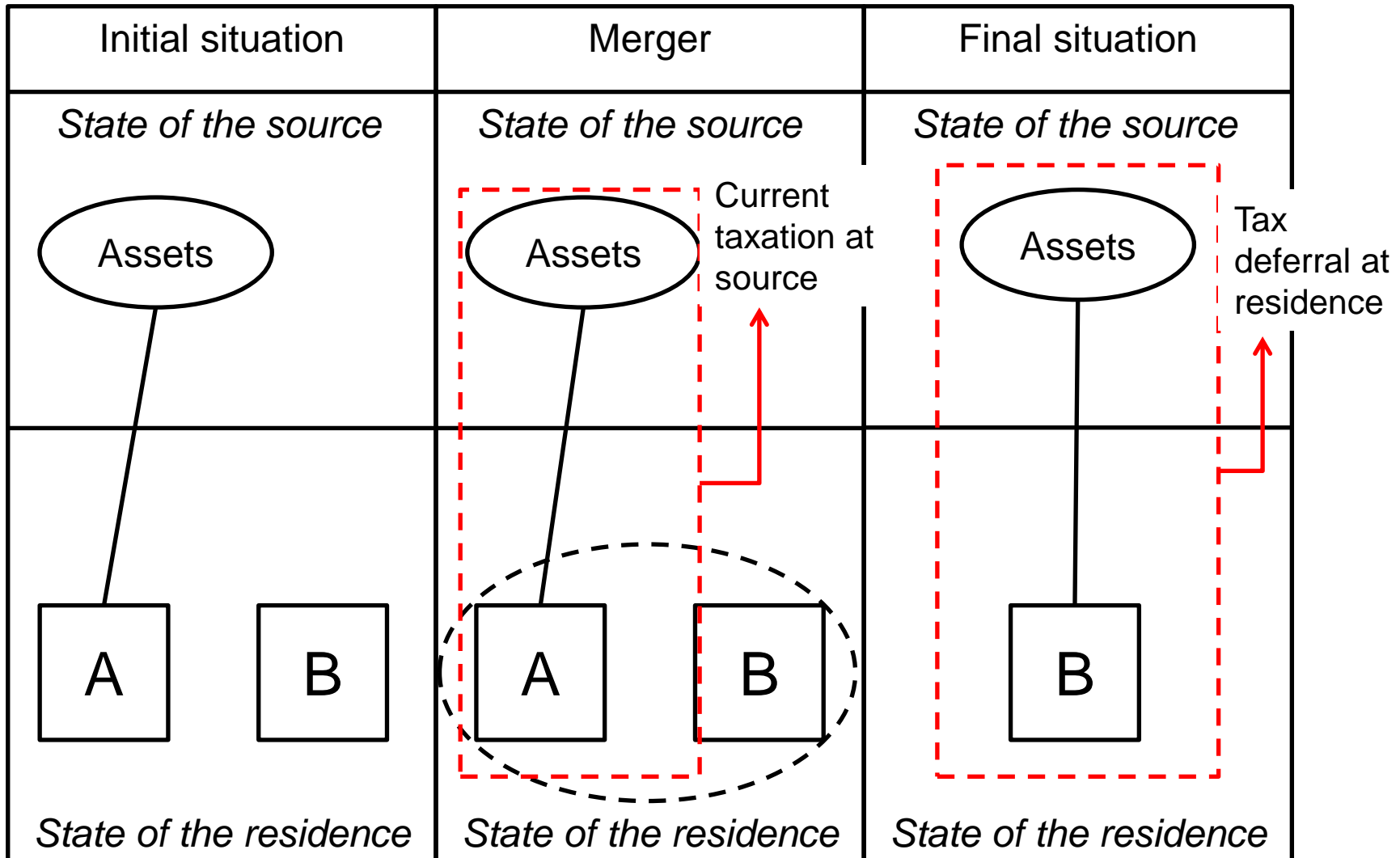
Aim of the thesis

- To analyze...
 - the rationale for tax deferral in case of corporate reorganizations and its extension to cross-border scenarios
 - the cross-border tax aspects of domestic and cross-border reorganizations in the framework of tax treaties
 - reorganization clauses in tax treaties, their implementation and tax treaty policy in this respect
 - tax rules derived from European (proposed) legislation and CJEU decisions
- In order to...
 - propose specific reorganization clauses to be included in tax treaties
 - propose mechanisms to fill the lacunae in the Merger directive and the CCCTB proposal to fulfill treaty freedoms

Structure of the thesis

- Introduction
 - I. The (in)definition of corporate reorganizations. Grounds for combination of businesses
 - II. The Taxation of Corporate Reorganizations
 - III. The cross-border tax effects of mergers
 - IV. Reorganization clauses in tax treaties
 - V. Cross-Border Taxation of Mergers in European Tax Law
- General Conclusions

Cross-border tax aspects of reorganizations



Cross-border tax aspects of reorganizations and tax treaties

- Timing mismatches → International economic double taxation
 - Limitation of taxing rights at source by tax treaties
 - Credit method v. exemption method
 - No solution under OECD model
 - Commentaries to arts. 23A and 23B
 - Non-Discrimination/mutual agreement procedure
- Unilateral solutions granted by state of residence
 - Carryover of tax credits, renounce of tax deferral,...
 - Eliminate double taxation... but tax neutrality?

Reorganization clauses in tax treaties

- Over 120 tax treaties and “agreements” include specific provisions for reorganizations... but few examples of consistent treaty policy
- Most of them are partial solutions...
 - Respecting gains from sale of shares in immovable property companies/Gains from alienation of substantial participations...
 - And most of them tend to distribute taxing rights on certain sources of income arising in the course of the reorganization...
- While others provide comprehensive solutions and material rules of the application of tax deferral in each contracting state.
 - Benchmark: Art. XIII(8) 1980 US-Canada tax treaty
 - Specific mutual agreement procedure before source state administration
 - Discretionary nature of relief
 - Implementation by both states

Reorganization clauses in tax treaties

- Only this last category of reorganization clauses seems to be likely to be included in tax treaties at their current development
- Inclusion of these type of clauses in tax treaties?
 - Situation outside international juridical double taxation
 - Rules beyond distribution of taxing rights
 - Tax policy option
 - Practical arrangements
 - Coherence with ultimate aims of tax treaties

Thanks for your attention!