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General Secretariat

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MEETING DOCUMENT

From: General Secretariat of the Council
To: Working Party on Tax Questions (Direct Taxation)

Subject: Proposal for a COUNCIL DIRECTIVE laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU
- Presentation by the European Commission

As the follow-up to the meeting of the Working Party on Tax Questions on 27 September 2022 delegations will find attached the presentation made by the European Commission on "UNSHELL - Tax Consequences: Simplified proposal".



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UNSHELL –Tax Consequences: Simplified proposal

Working Party on Tax Questions (WPTQ) 27 September 2022

A simplified art. 11

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- Art. 11§2 sub. 1-2: treatment of purely EU scenarios (EU Payer + EU Shareholder) remains the same
- Art. 11§3: treatment of real estate and other luxurious property scenarios (no income flow) remains the same
- Art. 11§2 sub. 3 & 4 will be reduced to accommodate the following scenarios alone, i.e., in scenarios beyond the following art. 11§1 will be the sole rule.
 - (i) Non-EU Payer paying royalties to EU Shareholder;
 - (ii) EU Payer paying royalties to Shareholder (in the EU or third country) with a potential final recipient a non-EU Third Party

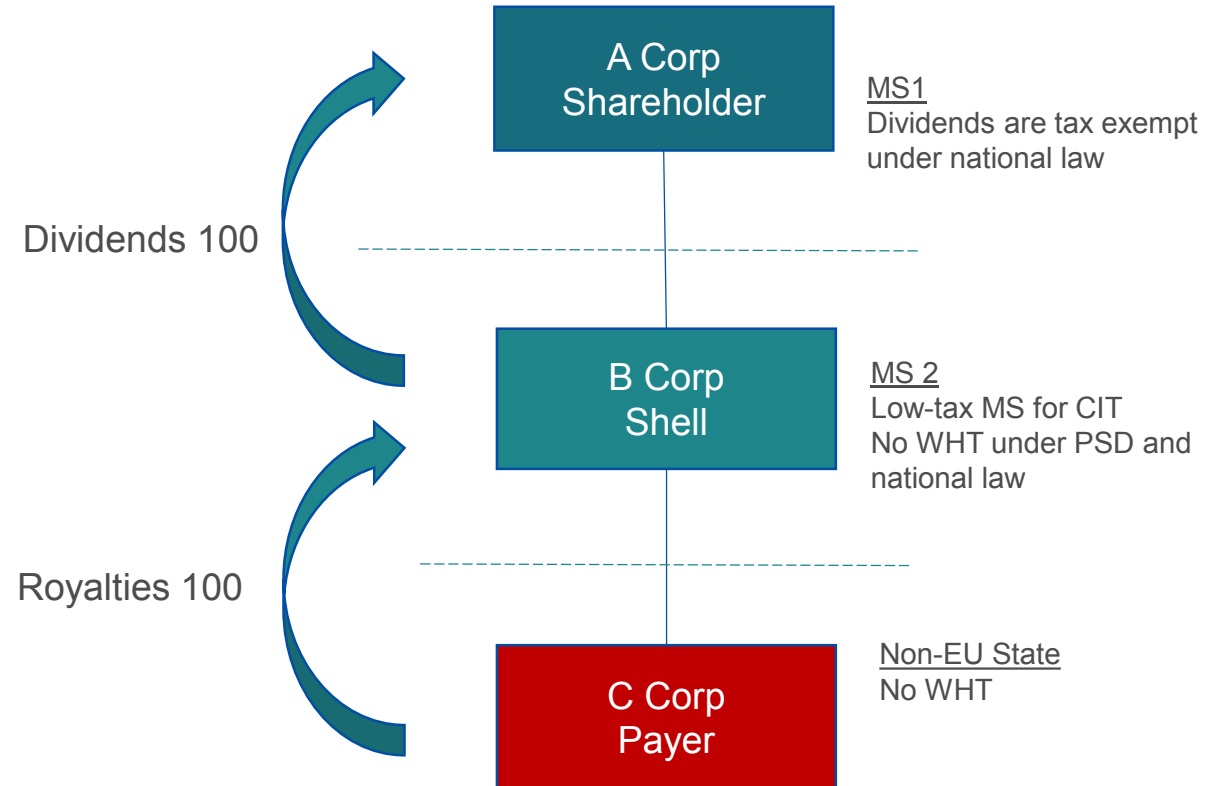
If non-EU payer or shareholder/third party receiving on shareholder's behalf

Scenarios where there is income flow (art. 11§2 subpara. 3, 4)

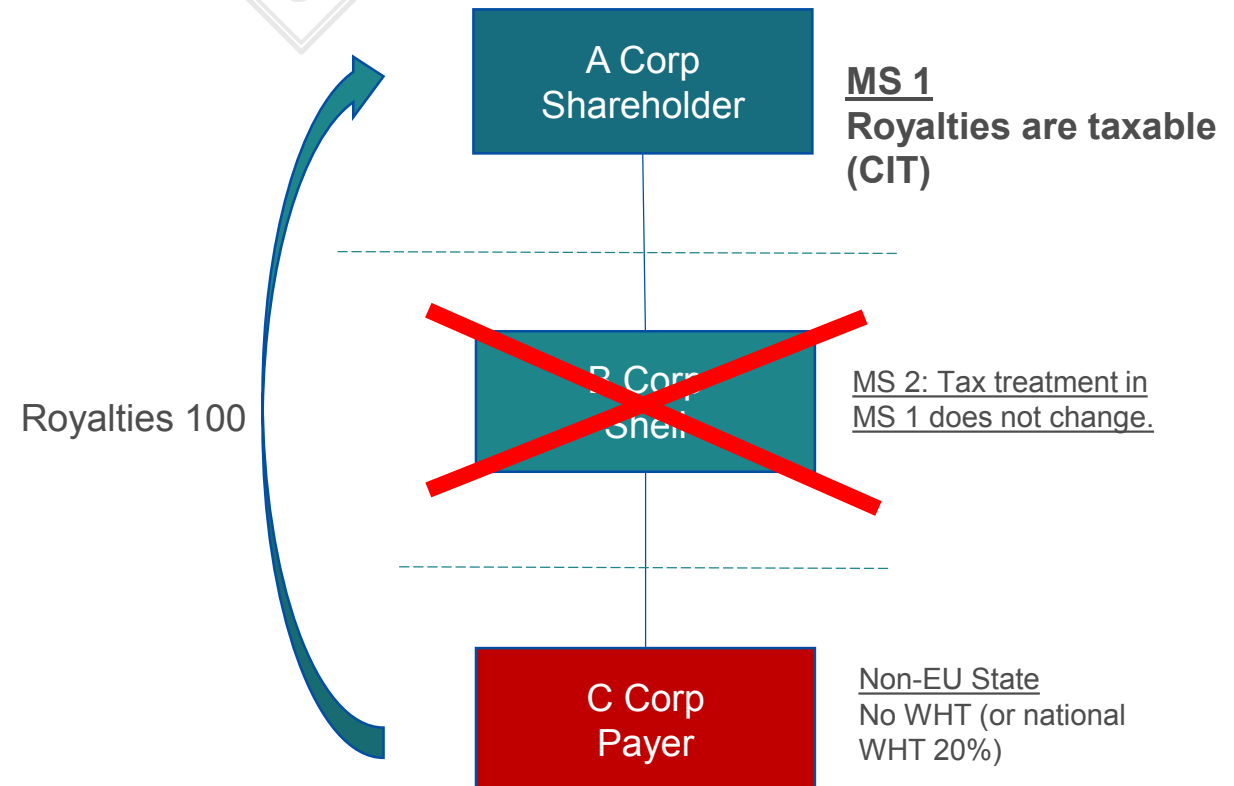
- MS of the EU payer / EU shareholder shall disregard tax treaty concluded with MS of shell
- If the payer is outside the EU, the MS of the shareholder shall **tax** the income of the shell **in accordance with its national law**, as if it had directly accrued to the shareholder & give **credit** for tax paid at the MS of the shell or at source
- If the shareholder is outside the EU, the MS of the payer shall apply **withholding tax in accordance with its national law**
- The rules of the Directive are **without prejudice to tax treaties with non-EU countries**

Example 1: Non-EU Payer – MS Shell – MS Shareholder

Before UNSHELL

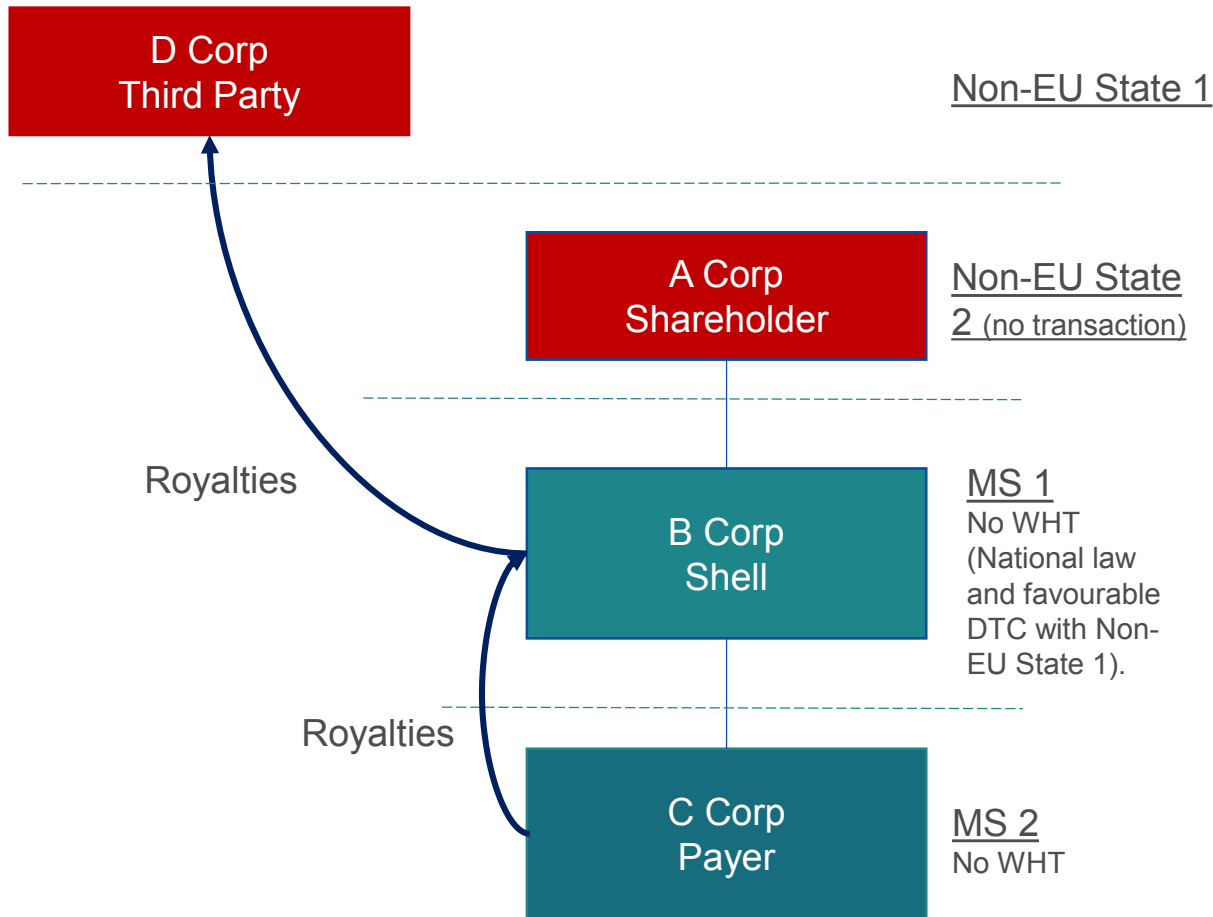


After UNSHELL

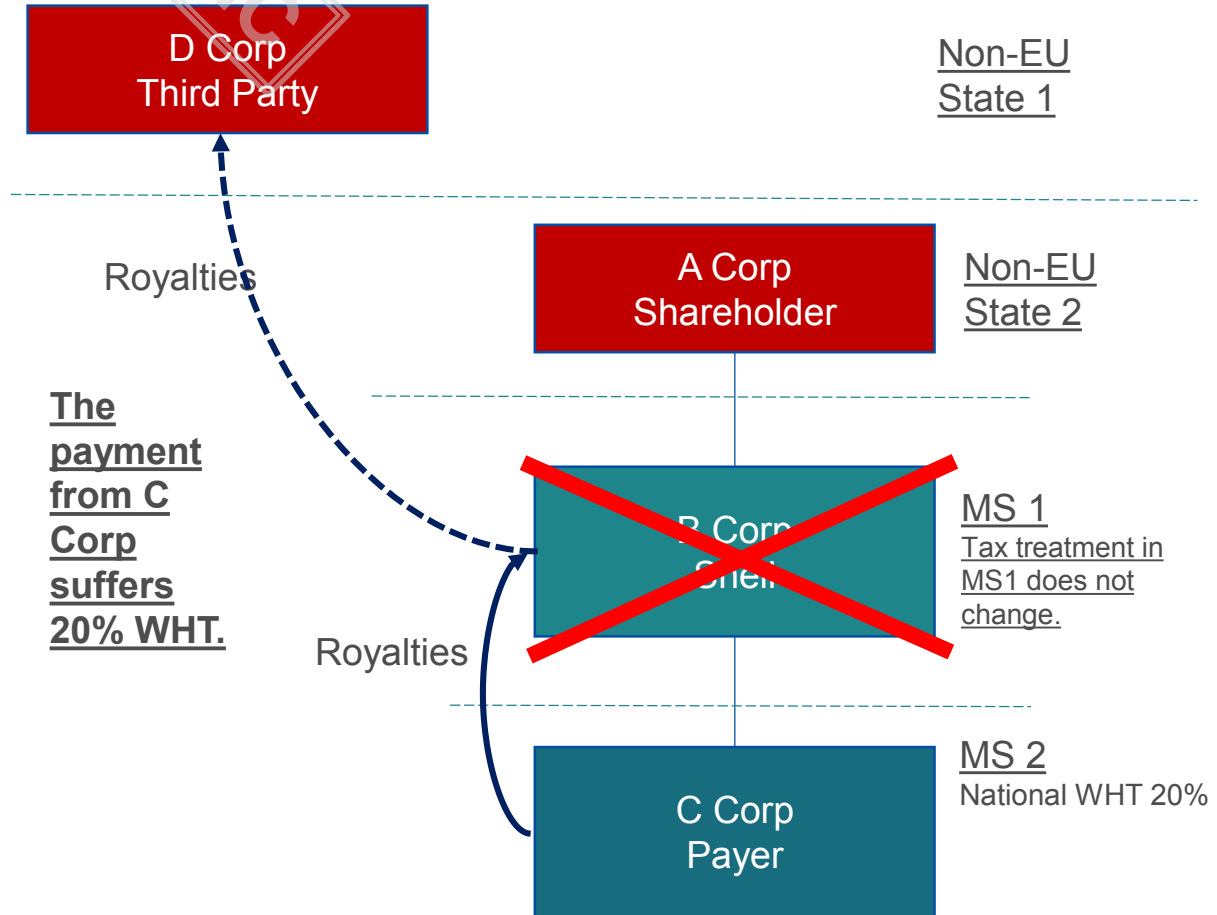


Example 2: MS Payer – MS Shell – Non-EU Shareholder / recipient: Payment to non-EU third party on behalf of Shareholder

Before UNSHELL



After UNSHELL



Thank you

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