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## MEETING DOCUMENT

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

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**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  
- Information from the European Commission

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In view of the meeting of the Working Party on Tax Questions (Direct taxation) on 9 June 2022, delegations will find attached a note and examples on tax consequences prepared by the European Commission.

**Note for the Council Working Party on Tax Questions**

**Subject: ‘UNSHELL’: suggestions for modifications**

**1. Towards clearer definitions and more coherent carve-outs**

In light of the discussion on the definition of various terms, the Commission Services believe that a convergence is possible on the following three points:

*“Beneficial owner”*

Concerns have been expressed by delegates on the definition of “beneficial owner” in the UNSHELL proposal, which refers to the term as set out in the EU anti-money laundering legislation.

The Commission Services note that the term “beneficial owner” is only used in two provisions (Articles 6(2)(c) and 10) and that these references can be substituted (the former with the term “shareholder”) or removed (the latter, as further detailed below regarding Article 10).

Member States could agree on these changes, which would then make redundant the definition of the term “beneficial owner” and resolve the issue.

*“Undertaking”*

Concerns have also been expressed on the definition of “undertaking” which includes a reference to “engaged in an economic activity”. This reference entails a risk of creating confusion, especially if read together with the requirement for proving substantial economic activity.

Noting that the reference to “engagement in an economic activity” is only meant as a formal requirement of presumed (and not yet actual) engagement in such activity, the Commission Services would not have particular concerns in relation to a potential removal of this reference.

*Could Member States agree to remove the reference to “engaged in an economic activity” from the definition of “undertaking”?*

*“Funds of funds”*: expand the carve-out for regulated financial undertakings

Some Member States suggested the extension of scope of the specific carve-out for regulated financial undertakings.

In particular, it was discussed that this carve-out, which is relevant to investment funds, should be more closely aligned with a similar rule in Pillar 2, to include “funds of funds”.

The Commission Services would not oppose to such modification of the text of the proposal, given in particular the need for coherence of EU legislation and for minimising administrative burdens for already regulated sectors.

## **2. Simplification of the overall architecture**

*Revise Articles 6 – 8 towards a “tick-the-box” approach*

Several Member States have expressed a preference for a simplified approach to reporting by undertakings in scope of UNSHELL. It has specifically been suggested that using a tick-the-box method, entities be required to explicitly state whether:

- a) They benefit from a carve-out and if yes, which one;
- b) They cross the gateway for a tax year, provided that they do not benefit from a carve-out);
- c) They fail any of the three substance indicators (after they have crossed the gateway).

In the same context, some Member States raised doubts on whether they could accommodate the reporting requirements under the proposal in their annual tax declaration. They would instead favour some discretion allowing Member States to decide the practicalities of their annual reporting process and form.

In addition, several Member States expressed concerns on the requirement to submit documentation supporting the content of reporting to the tax authority. In fact, some pointed out that this may not be compatible with their annual tax declaration system.

*Could Member States agree on streamlining Articles 6-8 of the UNSHELL proposal, so as to provide for the following:*

- *Tick-the-box approach to reporting, including the carve-outs, gateway criteria and substance indicators.*
- *Removal of the requirement that reporting should be made in the specific context of the annual tax declaration.*
- *Replace the requirement for undertakings to submit the supporting documentation to the authorities by a requirement for maintaining the relevant documents available.*

*“Preceding two tax years” (Article 6)*

In the article-by-article discussion, several Member States pointed out that the reference to “the preceding two tax years” throughout Article 6(1), as the relevant time to determine if an undertaking crossed the gateway criteria, is not clear.

The Commission Services have explained that this reference is to the 2 years preceding the reporting year. Thus, if an entity reports in 2022 for 2021, the two preceding years for the assessment of the gateway are 2021 and 2020.

*Could Member States agree that Article 6(1) should be clarified to reflect the above in an unambiguous manner?*

#### *“Outsourcing” (Article 6)*

Several Member States requested clarifications on the meaning of the term “outsourcing” and a definition thereof.

The Commission explained that this term is used here as under Criterion 2.2 of the EU list and the guidance for BEPS Action 5 by the Forum on Harmful Tax Practices.

*To ensure maximum clarity of the legislative text, could Member States agree on alternative wording, which could potentially not include the term “outsourcing”?*

For example, Member States can agree to modify the relevant part of Article 6(1), to refer to “uses the services of another enterprise that is resident for tax purposes outside the Member State of the undertaking to perform its management and/or administration of day-to-day operations”

#### *Exemption (Article 10)*

Some Member States questioned the need for allowing undertakings to request an exemption from UNSHELL, especially given that undertakings have a right to rebut negative conclusions in accordance with Article 9. In addition, Member States expressed concerns on the burden that such an option could imply for tax administrations and on the divergent approaches that could be used by different administrations.

The Commission Services understand these concerns and would not object to deleting this rule.

*Could Member States agree to fully remove Article 10 from the text?*

### 3. Towards more precise tax consequences

#### *Tax Consequences (Article 11)*

Member States have asked for clarifications on the practical application of Article 11, including on the timing of the tax consequences.

The UNSHELL proposal currently provides that in a purely EU scenario, relevant income received by a shell entity should be taxed in the hands of the EU shareholder after deduction of any taxes paid at the level of the shell. Member States have expressed concerns that this rule could prejudice or create confusion on the taxing rights of the Member State of the payer of the income.

*Could Member States agree to explicitly clarify in the relevant provision that any taxes applied at the Member State of the payer shall also be deductible (in addition to taxes paid at the level of the shell)?*

#### *Tax Residence Certificate (Article 12)*

Member States raised the point that the available options for depriving an undertaking of its tax residence certificate on the argument that it lacks minimum substance can lead to confusion. In this respect, some Member States have clearly advocated in favour of limiting the options to a single one, which would be common to all Member States.

Additionally, denying a tax residence certificate to an otherwise resident undertaking could affect the functioning of double tax treaties between the Member State of the undertaking and third countries.

It could be agreed that such certificate should only indicate that the relevant undertaking does not fulfil the substance requirements under the directive.

*Could Member States agree to eliminate the option of denial of the tax residence certificate and consider a simplified version of the language for inclusion therein? This would restrict any potential spill-over to double tax treaties with third countries.*

#### *Interaction of UNSHELL with other anti-tax abuse rules*

Some Member States expressed concerns that the UNSHELL proposal could create a safe harbour for undertakings which are cleared pursuant to its test of substance indicators.

Article 2 could be supplemented with an explicit provision that UNSHELL does not preclude Member States from applying other national anti-tax avoidance measures.

*Could Member States agree to explicitly clarify this matter in the provisions of the directive?*

#### **4. Improving provisions on exchange of information, enforcement and implementation**

##### *Automatic Exchange of Information - AEOI (Article 13)*

Several Member States expressed concerns that the scope of automatic exchange of information (AEOI) is too broad. Extending to all undertakings in scope of the UNSHELL proposal, such scope could create a disproportionate burden on tax administrations and a difficult-to-handle amount of information for the recipient administrations.

In addition, concerns were raised that the timeframe for the exchanges was too short and challenging.

Finally, some Member States pointed out to mismatches of the relevant provision in UNSHELL, as compared to the corresponding articles in the Directive on Administrative Cooperation. On this basis, Member States suggested modifications to align the text.

*Could Member States agree that the AEOI under UNSHELL be:*

- a) Limited to information concerning shells;*
- b) Modified as regards the timeline for the exchanges, which should be made on a quarterly basis and within a month from the end of the quarter; and*
- c) Revised, specifically by removing the redundant rules.*

##### *Penalties (Article 14)*

Several Member States took a view in favour of aligning this provision with what was agreed in the context of the discussions on penalties in the Pillar 2 proposal.

The Commission Services note that the discussions of Pillar 2 proposal brought elements to the fore which could not have been taken into account at the time of drafting of the UNSHELL proposal. With a view to ensuring coherence of secondary EU law, the Commission can accept a modification in Article 14 to eliminate the reference to the pecuniary penalty of 5%.

*Could Member States agree to adjust this article in line with the relevant text of the Pillar 2 proposal?*

##### *Request for tax audits (Article 15)*

Several Member States asked for clarifications of the meaning of “audit” under this article, including on whether a desk-based (not field) audit could be sufficient to address a request. The Commission Services explained that a request under this article is envisaged to trigger only a control of compliance with the reporting obligations under UNSHELL and that this objective could be met through a desk-based audit.

In addition, Member States expressed concern that there is no specific timeline for the completion of the audit. Reference to national law of each Member State could lead to divergent application across the EU.

Equally, the Member State requested to perform the audit should be able to deny such request under certain conditions, in line with the DAC provisions.

*Could Member States agree to modify Article 15, in order to specify that it refers to “desk-based” audits limited to compliance with the reporting obligations under UNSHELL? Could Member States agree that these audits be completed within 6 months from receipt of the request and that they can be refused on the same grounds as under the DAC?*

## UNSHELL tax consequences in practice

UNSHELL is meant to introduce specific tax consequences for shell entities. In a nutshell, the approach taken in UNSHELL is to “look through” the shell entity. While such approach is already followed by tax administrations in some cases, for instance following tax audits, UNSHELL is meant to make this approach the “standard” approach to international taxation in case EU shell entities are involved, as described in Article 11 of the proposal. Due to the innovative approach taken, it is useful to provide concrete and clear examples of how tax consequences would work in practice.

The examples are structured as follows. There is a brief overview of parties involved, the facts and circumstances and finally, the tax consequences before and after UNSHELL.

Article 11 is copied in Annex for ease of reference.

### Parties involved

Three entities, A, B and C corporations, with characteristics specified below. Income considered: royalties.

#### Case 1 (MS Payer – MS Shell – Third State Shareholder)

This case involves a third state. The payer of income is tax resident in a MS. Also the shell entity is tax resident in the EU, in a different MS than the one of the payer. However, the shareholder(s) are tax resident in a third state.

In brief, the case illustrates an example of: MS Payer – MS Shell – Third State Shareholder.

### Facts and circumstances

#### A Corp.

- is a tax resident in a third state and eligible to receive a tax residency certificate;
- is the only shareholder of B Corp;

The third state does not levy any tax on the royalty payment received.

#### B Corp:

- is tax resident in MS 1 and eligible to receive a tax residency certificate;
- is the only shareholder of C Corp;
- is considered a shell for the purposes of UNSHELL;
- receives a royalty payment of 100 from C Corp;
- makes a royalty payment of 95 to A Corp.

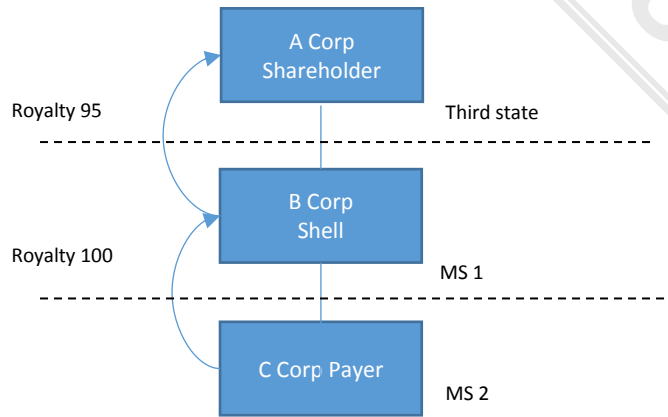
Based on domestic law MS 1 does not levy withholding tax on the outbound payment of 95. Furthermore, based on domestic law, MS 1 levies CIT at a rate of 25%.

#### C Corp:

- tax resident in MS 2 and eligible to receive a tax residency certificate;
- is an operational entity which provides services and goods to third parties;

- makes a royalty payment of 100 to B Corp;

Based on national law, MS 2 levies a withholding tax of 20% on outbound payments. However, based on the Interest and Royalties Directive (IRD) MS 2 cannot levy any taxes on intra-EU royalty payments if certain requirements are met.



### Tax consequences: before and after UNSHELL

In EU and international tax law, the following framework needs to be used applied to assess if a state can tax a taxpayer:

- I. Can the state tax the taxpayer in accordance with domestic law?
- II. Can the state tax the taxpayer in accordance with the Double Taxation Convention (DTC)?
- III. Can the state tax the taxpayer in accordance with EU law (i.e. IRD or PSD)<sup>1</sup>?

If the answer on these three questions is YES then the state can tax its taxpayer.

#### Before UNSHELL

##### A Corp.

Based on domestic law Bermuda does not tax the royalty payment received by A Corp.

##### B Corp.

- I. B Corp is a tax resident in MS 1. Based on domestic law tax, MS 1 will charge B Corp CIT on the difference between the inbound and outbound royalty payment, which is 5 (100-95).
- II. In its national law, MS 1 does not levy a withholding tax on the outbound payment of 95 to A Corp. Given the treatment of the royalty payment under national law, i.e. zero withholding tax, there is no need to check whether there is a DTC between MS 1 and the third state.

##### C Corp.

- I. C Corp is a tax resident in MS 2. Based on MS 2's domestic tax law, C Corp is obliged to apply a withholding tax of 20% on the outbound royalty payment of 100 to B Corp.
- II. However, based on article 12 of the DTC MS 1- MS 2 only MS 1 is entitled to levy taxes on the royalty received by B Corp from C Corp.

<sup>1</sup> This question only applies in intra-EU situations between MS.

- III. In addition, based on the IRD no withholding taxes may be levied by a source state in an intra-EU situation if certain conditions are met. Therefore, MS 2 is not entitled to levy any withholding taxes in this case.

However, the authorities of MS 2 may still try to apply anti-tax avoidance rules, such as the Principal Purpose Test (PPT), the GAAR or use the jurisprudential precedent of the Danish cases to levy withholding taxes if there is abuse in place.

#### After UNSHELL

##### A Corp (same as before).

Based on domestic law the third state does not tax the royalty payment received by A Corp.

##### B Corp

- I. B Corp is tax resident in MS 1. Based on domestic law, MS 1 will charge B Corp CIT on the difference between the inbound and outbound royalty payment, which is 5 (100-95). MS 1 does not levy a withholding tax on the outbound payment of 95 to A Corp. Given the treatment of the royalty payment under national law, i.e. zero withholding tax, there is no need to check whether there is a DTC between MS 1 and the third state.
- II. However, UNSHELL could change the situation in the case at hand. The tax consequences of Article 12 prescribe that MS 1 will grant a certificate of tax residence which states that the undertaking does not meet the minimum substance requirements, as laid down in UNSHELL.. This will have **impact on the transaction between B Corp and C Corp as MS 2 will now know that B Corp is a shell.**

##### C Corp.

- I. C Corp is a tax resident in MS 2. Based on MS 2's domestic law tax C Corp is obliged to apply a withholding tax of 20% on the outbound royalty payment of 100 to B Corp.
- II. However, based on article 12 of the DTC MS 1-MS 2 only MS 1 is entitled to levy taxes on the royalty received by B Corp from C Corp. In addition, based on the IRD no withholding taxes may be levied by a source state in an intra-EU situation if certain conditions are met. Therefore, MS 2 is not entitled to levy any withholding taxes in this case.
- III. However, the tax consequences of UNSHELL could help the authorities of MS 2 to still levy withholding taxes in the case at hand. As above discussed, B Corp is a shell for the purposes of UNSHELL. The tax consequences of Article 11 then prescribe that MS 2 must disregard any agreements and conventions that provide for the elimination of double taxation of income (i.e. the DTC MS 1- MS 2 and the IRD). Therefore, MS 2 can now levy withholding tax.

#### Summary

Before UNSHELL no taxes were levied on the above scheme<sup>2</sup>. UNSHELL, however, makes it possible for MS 2 to levy their national withholding tax rate on the transaction between B Corp and C Corp.

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<sup>2</sup> Without taking into account MS 2's CIT on the difference between the incoming and outgoing royalties ((100-95)\*25%=1.25).

## Case 2 (Third State Payer – MS Shell – MS Shareholder)

In this case, it is the Payer of income, which is tax resident in a third state. On the other hand, the shell entity and the shareholders are tax residents in the EU, in two different MS.

This case involves the following scenario: Third State Payer – MS Shell – MS Shareholder.

### Facts and circumstances

#### A Corp.

- is a tax resident in MS 1 and eligible to receive a tax residency certificate;
- is the only shareholder of B Corp;
- receives a royalty of 95 from B Corp;

MS 1 levies CIT on the royalty payment received.

#### B Corp:

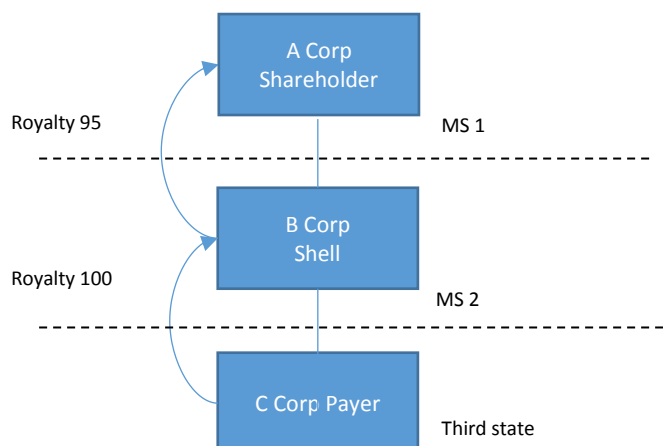
- is tax resident in MS 2 and eligible to receive a tax residency certificate;
- is the only shareholder of C Corp;
- is the beneficial owner of the royalty received and thus has no obligation to make a corresponding payment to A Corp.
- is considered a shell for the purposes of UNSHELL.
- receives a royalty payment of 100 from C Corp;
- makes a royalty payment of 95 to A Corp;

Based on domestic law MS 2 does not levy withholding tax on the outbound payment of 95. Furthermore, based on domestic law, MS 2 levies CIT on the net income (100-95) at a rate of 25%.

#### C Corp:

- tax resident in a and eligible to receive a tax residency certificate;
- is an operational entity which provides services and goods to third parties;
- makes a royalty payment of 100 to B Corp.

Based on national law, the third state levies a withholding tax of 30% on outbound payments.



## Before UNSHELL

### A Corp.

- I. Based on domestic law MS 1 taxes the royalty earned by A Corp in accordance with its national CIT at a rate of 20%.

### B Corp.

- I. B Corp is a tax resident in MS 2. Based on domestic tax law, MS 2 will charge B Corp CIT on the difference between the inbound and outbound royalty payment, which is 5 (100-95).
- II. MS 2 does not levy a withholding tax on the outbound payment of 95 to A Corp. Therefore, analyzing the DTC between MS 1 and MS 2 is unnecessary.

### C Corp.

- I. C Corp is a tax resident in a third state. Based on the third state's tax law, C Corp is obliged to apply a withholding tax of 30% on the outbound royalty payment of 100 to B Corp.
- II. However, based on article 12 of the DTC MS 2-third state, MS 2 is entitled to tax the royalty received by B Corp from C Corp. The third state may also tax the royalty payment but only up to 10% of the gross amount paid.

Nevertheless, the authorities of the third state may still try to use the PPT of article 28 of the DTC to levy withholding taxes at their national rate if there is abuse.

It should be noted that if the royalties were paid directly to A Corp in MS 1, the third state would not be restricted in levying their withholding tax in accordance with their domestic law, as there is no DTC between MS 1 and the third state.

## After UNSHELL

### A Corp

Based on its domestic law, MS 1 would be expected to tax royalties of 95 received by A Corp from B Corp at a rate of 20%. Article 11(2) of UNSHELL prescribes that MS 1 shall tax these royalties in accordance with its national law as if the payment had directly been accrued to A Corp. This also means that MS 1 must tax the total income of 100 instead of 95. In addition, UNSHELL prescribes that this should take place without prejudice to any DTC in force between MS 1 and the third state. If such DTC were in force, MS 1 would need to take into account the taxes paid in the third state by providing a credit for the withholding tax in accordance with the DTC. However, as previously mentioned, there is no DTC in place between MS 1 and the third state. So, in this case, relief will depend exclusively on the domestic rules of MS 1.

### B Corp

- I. B Corp is a tax resident in MS 2. Based on domestic law, MS 2 will charge B Corp CIT on the difference between the inbound and outbound royalty payment, which is 5 (100-95). MS 2 does not levy a withholding tax on the outbound payment of 95 to A Corp. Therefore, analyzing the DTC between MS 1 and MS 2 is unnecessary.
- II. However, UNSHELL could change the situation in the case at hand because B Corp is a shell. The tax consequences of Article 12 prescribe that MS 2 will have to grant a certificate of tax residence which states which states that the undertaking does not meet the minimum substance requirements, as laid down in UNSHELL. . This may have impact on the transaction between B Corp and C Corp as the third state will now know that B Corp is a shell.

#### C Corp.

- I. C Corp is tax resident in a third state. Based on the third state's tax law, C Corp is obliged to apply a withholding tax of 30% on the outbound royalty payment of 100 to B Corp.
- II. However, based on Article 12 of the DTC MS2-third state, MS 2 is entitled to tax the royalty that B Corp receives from C Corp. The third state may also tax the royalty payment but only up to 10% of the gross amount paid. Nonetheless, the fact that B Corp would provide a tax resident certificate, stating that the undertaking does not meet minimum substance requirements of UNSHELL, could lead the third state to not apply the DTC between MS2 and themselves.

#### Summary

Before UNSHELL, A Corp could use the above scheme to lower withholding taxes. UNSHELL, however, makes it possible for the Irish to levy taxes on the income received by the shell. In addition, UNSHELL provides a mechanism to reduce double taxation by introducing a deduction for the taxes paid in the MS of the shell. The consequences of UNSHELL between the third state and MS 2 will depend on how the third state interprets the tax residency certificate which states that B Corp does not meet minimum substance requirements of UNSHELL.

#### Case 3 (MS Payer - MS Shell - MS Shareholder)

In this case all parties are tax residents within the EU, in three different MS.

This case involves the following scenario: MS Payer – MS Shell – MS Shareholder.

#### A Corp.

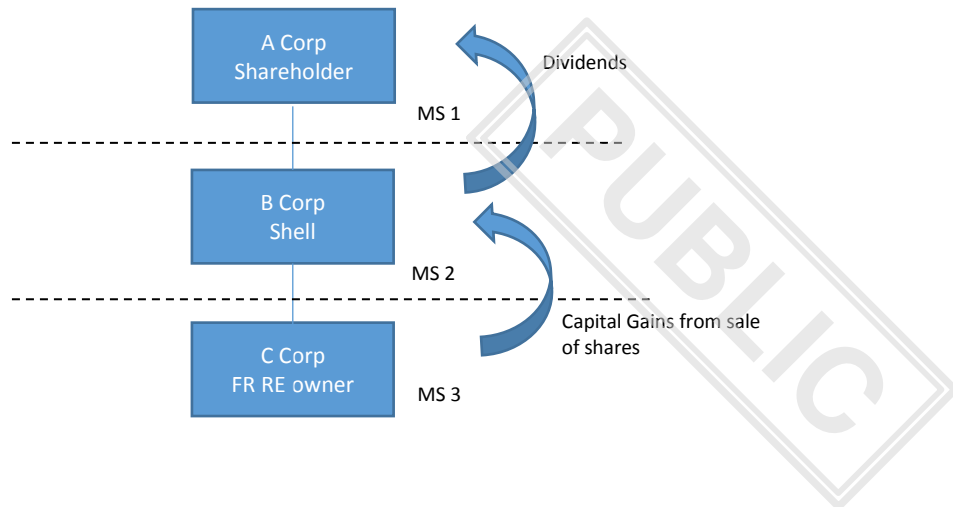
- is a tax resident in MS 1 and eligible to receive a tax residency certificate;
- is the only shareholder of B Corp;

#### B Corp:

- is tax resident in MS 2 and eligible to receive a tax residency certificate;
- is the only shareholder of C Corp;
- is considered a shell for the purposes of UNSHELL;

#### C Corp:

- tax resident in MS 3 and eligible to receive a tax residency certificate;
- is the owner of real estate located in MS 3.



## Before UNSHELL

### A Corp.

Based on art. 4(1) of the Parent Subsidiary Directive, MS 1 has to exempt from CIT any dividends received or give credit for tax paid in MS 2.

### B Corp.

- I. B Corp is a tax resident in MS 2. Based on its domestic tax law, MS 2 will charge B Corp CIT (25%) on any capital gains received from the sale of shares in C Corp, which is 25 ( $100 \times 0,25$ ). Under certain conditions, tax on capital gains may be deferred or they can be exempt from tax in MS 2.
- II. According to art. 5 of the Parent Subsidiary Directive, MS 2 will not levy a withholding tax on any dividends paid to MS 1.

### C Corp.

C Corp is tax resident in MS 3 owning real estate property for private use in MS 3. Based on the DTC between MS 2 and MS 3, capital gains received on the sale of shares in C Corp are taxed in MS 2. As a result, MS 3 must not levy any tax on such capital gains, even if C Corp is only holding real estate in MS 3.

## After UNSHELL

### A Corp

Article 11(2) prescribes that MS 1 can tax Corp A on the capital gains received by Corp B as if they had been received directly by Corp A. MS 1 should deduct any tax paid on the capital gains in MS 2 in accordance with its national law.

### B Corp

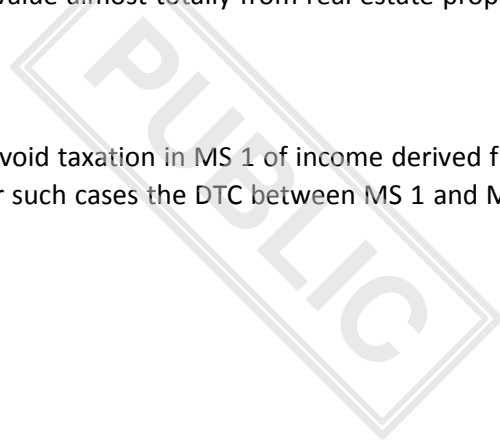
- I. B Corp is a tax resident in MS 2. Based on its domestic tax law, MS 2 will charge B Corp CIT (25%) on any capital gains received, which is 25 ( $100 \times 0,25$ ). Under certain conditions, tax on capital gains may be deferred or they can be exempt from tax in MS 2.
- II. Article 12 prescribes that MS 2 will grant a certificate of tax residence which states that the undertaking does not meet minimum substance requirements of UNSHELL.

### C Corp.

C Corp is a tax resident in MS 3. Based on the DTC between MS 1 and MS 3, MS 3 may tax capital gains from the sale of shares in a corporation that derive their value almost totally from real estate property situated there.

#### Summary

Before UNSHELL, A Corp could use the above scheme to avoid taxation in MS 1 of income derived from property situated in MS 3. UNSHELL renders applicable for such cases the DTC between MS 1 and MS 3 (looking through the entity in MS 2).



Annex: Article 11 of the UNSHELL proposal

Article 11 Tax consequences of not having minimum substance for tax purposes in Member States other than the Member State of the undertaking

1. Member States other than the Member State of the undertaking shall disregard any agreements and conventions that provide for the elimination of double taxation of income, and where applicable, capital, in force with the Member State of the undertaking as well as Articles 4, 5 and 6 of Directive 2011/96/EU and Article 1 of Directive 2003/49/EC, to the extent that those Directives apply due to the undertaking being deemed to be resident for tax purposes in a Member State, where the following conditions are met:

- (a) an undertaking is presumed not to have minimum substance;
- (b) an undertaking does not rebut the presumption referred to in point (a) for a tax year.

2. The Member State of the undertaking's shareholder(s) shall tax the relevant income of the undertaking in accordance with its national law as if it had directly accrued to the undertaking's shareholder(s) and deduct any tax paid on such income at the Member State of the undertaking, where the following conditions are met:

- (a) the relevant income accrues to an undertaking that is presumed not to have minimum substance;
- (b) the undertaking does not rebut the presumption referred to in point (a);
- (c) both the undertaking's shareholders and the payer are resident for tax purposes in a Member State.

The first subparagraph shall apply notwithstanding any agreement or convention that provides for the elimination of double taxation of income, and where applicable, capital, in force with another Member State.

Where the payer is not resident for tax purposes in a Member State, the Member State of the undertaking's shareholder(s) shall tax the relevant income accruing to the undertaking in accordance with its national law as if it had directly accrued to the undertaking's shareholder(s), without prejudice to any agreement or convention that provides for the elimination of double taxation of income, and where applicable, capital, in force between the Member State of the undertaking's shareholders and the third country jurisdiction of the payer;

Where the undertaking's shareholder(s) is not resident for tax purposes in a Member

State, the Member State of the payer of this income shall apply withholding tax in accordance with its national law, without prejudice to any agreement or convention that provides for the elimination of double taxation of income, and where applicable, capital, in force with the third country jurisdiction of the undertaking's shareholder(s).

3. Where property referred to in Article 4 is owned by an undertaking that is presumed not to have minimum substance and does not rebut this presumption:

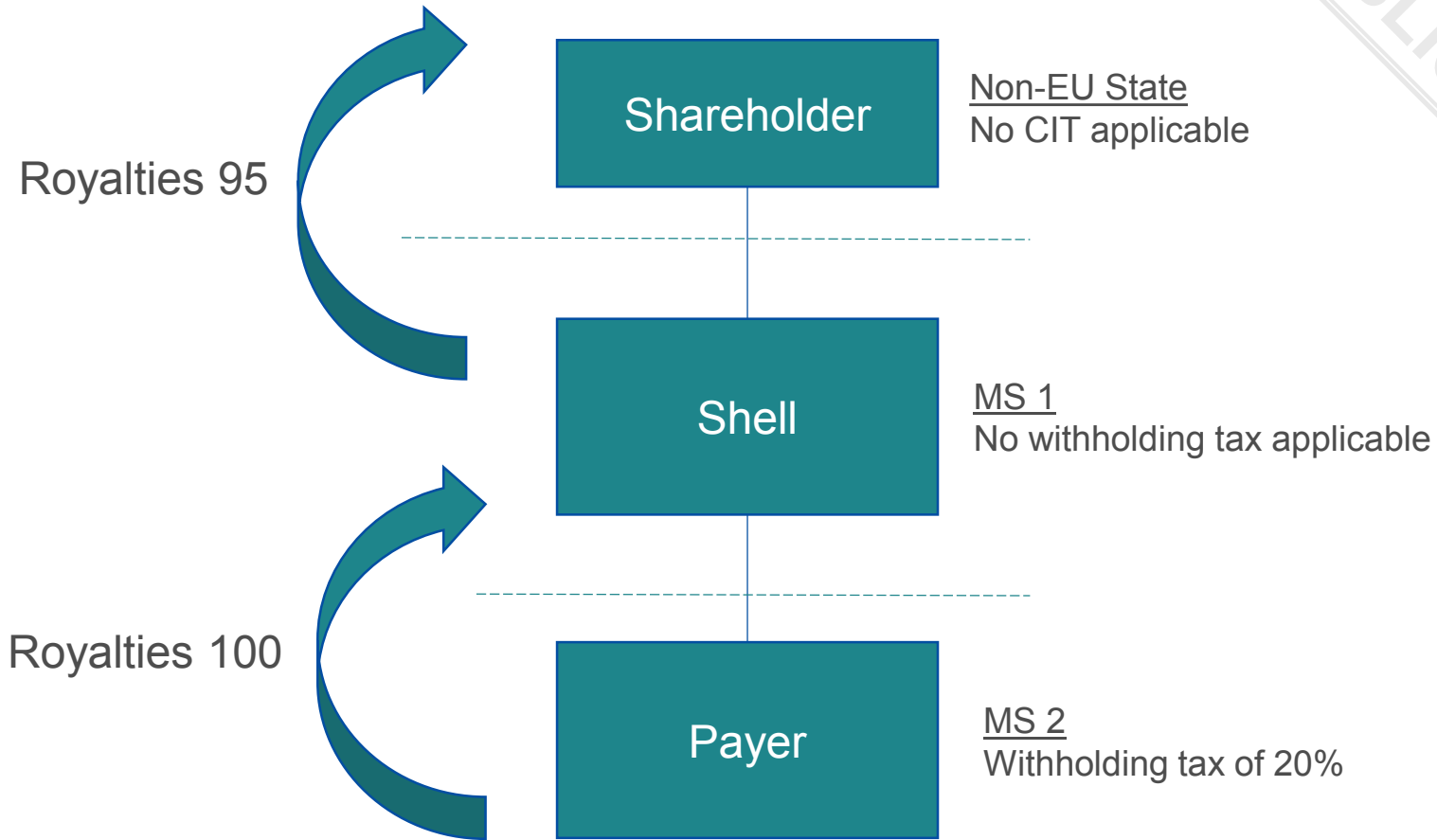
- (a) the Member State where property referred to in Article 4, point (e) is situated shall tax such property according to its national law, as if such property was owned directly by the undertaking's shareholder(s), without prejudice to any agreement or convention that provides for the elimination of double taxation

of income, and where applicable, capital, in force with the jurisdiction of the undertaking's shareholder(s);

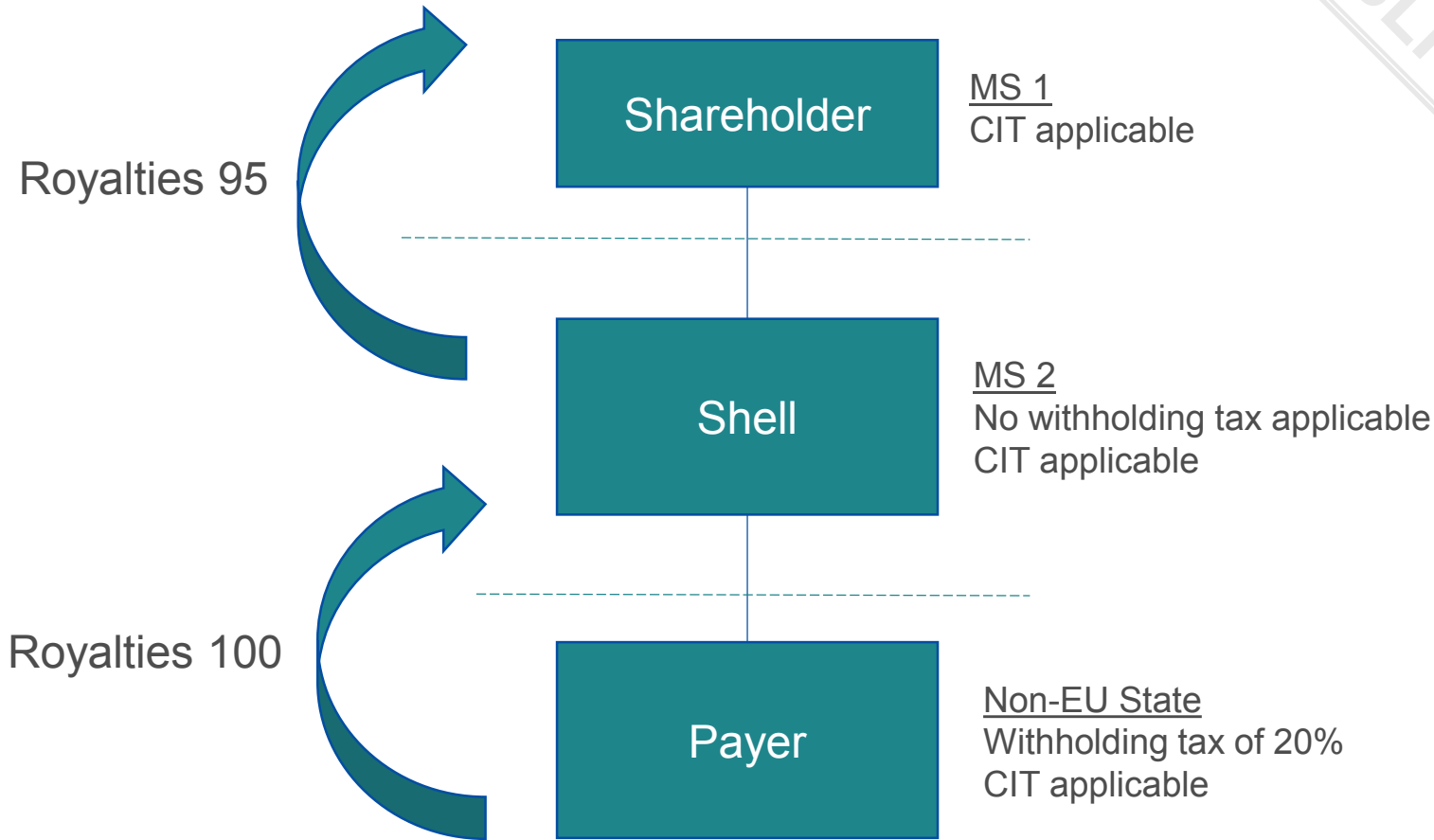
(b) the Member State of the undertaking's shareholder(s) shall tax such property in accordance with its national law as if the undertaking's shareholder(s) owned it directly, without prejudice to any agreement or convention that provides for the elimination of double taxation of income, and where applicable, capital, in force with the jurisdiction where the property is situated.

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



# Example 3: Non-EU Payer – MS Shell – MS Shareholder



# Example 3: MS Payer – MS Shell – MS Shareholder

