

# GRAHAM, SMITH & PARTNERS

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International Tax Counsel

## EUROPE'S GENERAL ANTI-ABUSE RULE (GAAR)

TTN

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# ATAD

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- ANTI TAX AVOIDANCE DIRECTIVE (“ATAD”);
- ATAD PROPOSES A SET OF LEGALLY BINDING ANTI-AVOIDANCE MEASURES WHICH ALL MEMBER STATES SHOULD IMPLEMENT:
  1. LIMITATION DEDUCTIBILITY OF INTEREST;
  2. EXIT TAXATION;
  3. **GENERAL ANTI-ABUSE RULE (GAAR);**
  4. CONTROLLED FOREIGN COMPANY (CFC) RULES
  5. HYBRID MISMATCHES

# ATAD

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**MAIN GOAL** IS TO ENSURE A COORDINATED AND COHERENT IMPLEMENTATION AT EU LEVEL OF SOME OF THE OECD'S RECOMMENDATIONS REGARDING BEPS AND TO ADD CERTAIN ANTI TAX AVOIDANCE MEASURES WHICH ARE NOT PART OF THE OECD BEPS PROJECT

ALL MEASURES TO BE IMPLEMENTED AS OF **1 JANUARY 2019**, EXCEPT FOR THE EXIT TAXATION PROVISION (1 JANUARY 2020) AND THE INTEREST DEDUCTION LIMITATION PROVISION (1 JANUARY 2024).

# GAAR - DEFINITION

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“FOR THE PURPOSES OF CALCULATING THE CORPORATE TAX LIABILITY, A MEMBER STATE SHALL IGNORE AN ARRANGEMENT OR A SERIE OF ARRANGEMENTS WHICH, HAVE BEEN PUT INTO PLACE FOR THE MAIN PURPOSE OR ONE OF THE MAIN PURPOSES OF OBTAINING A TAX ADVANTAGE THAT DEFEATS THE OBJECTS OR PURPOSE OF THE APPLICABLE TAX LAW, ARE NOT GENUINE HAING REGARD TO ALL RELEVANT FACTS AND CIRCUMSTANCES. AN ARRANGEMENT MAY COMPRISE MORE THAN ONE STEP OR PART”

TWO TESTS:

MAIN PURPOSES OF ONE OF THE MAIN PURPOSES (“SUBJECTIVE TEST”)  
ARRANGEMENT OR A SERIE OF ARRANGEMENTS (“OBJECTIVE TEST”)

# GAAR - HOW

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- EU MEMBER STATES ARE FREE IN CHOOSING FORM AND METHOD FOR IMPLEMENTING THE DIRECTIVE
- LEGISLATION OR JURISPRUDENCE (“ABUSE OF LAW”)

# GAAR - WHY

- DIRECTIVE HAS A ‘DIRECT EFFECT’;
- TACKLES ABUSIVE TAX PRACTICES THAT HAVE NOT YET BEEN DEALT WITH BY SPECIFIC ANTI ABUSE RULES.

## THE SAFETY NET: A General Anti-Abuse Rule (GAAR)

**BEFORE**



EXPERT'S  
GUIDE TO  
AGGRESSIVE  
TAX  
PLANNING

Companies engaged in aggressive tax planning continue to try and find ways of bypassing rules and finding loopholes in tax laws.

**AFTER**



TAX  
LAW  
101

A GAAR gives EU countries the power to tackle artificial tax arrangements if other specific rules don't cover it.

# GAAR - CONSEQUENCES

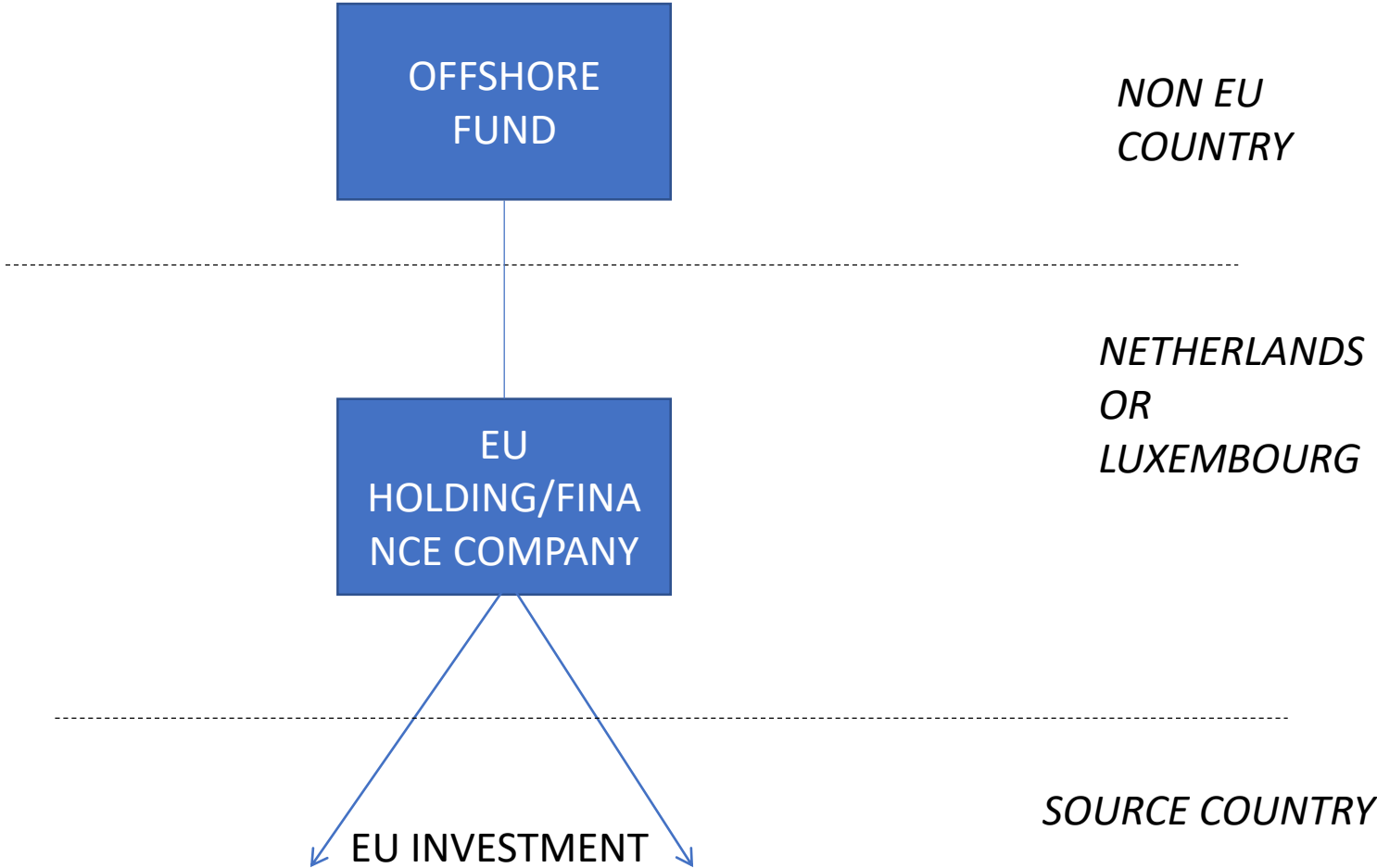
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GAAR APPLIES TO ENTITIES WHICH ARE SUBJECT TO CIT IN A MEMBER STATE;

WHAT IF THE GAAR APPLIES?

- TAX LIABILITY DETERMINED IN ACCORDANCE WITH DOMESTIC LAW
- PENALTIES

# GAAR - CONSEQUENCES





# GAAR - CONCERNS

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- USE IT MORE EXTENSIVELY THAN IT WAS ORIGINALLY TO BE USED FOR;
- BROAD TERMS;
- DIFFERENT INTERPRETATIONS OF DIFFERENT MEMBER STATES;
- OTHER COUNTRY?

# Q & A

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THANK YOU FOR YOUR ATTENTION!!