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Application of Pillar Two to International Tax Planning Structures and Substance Requirements

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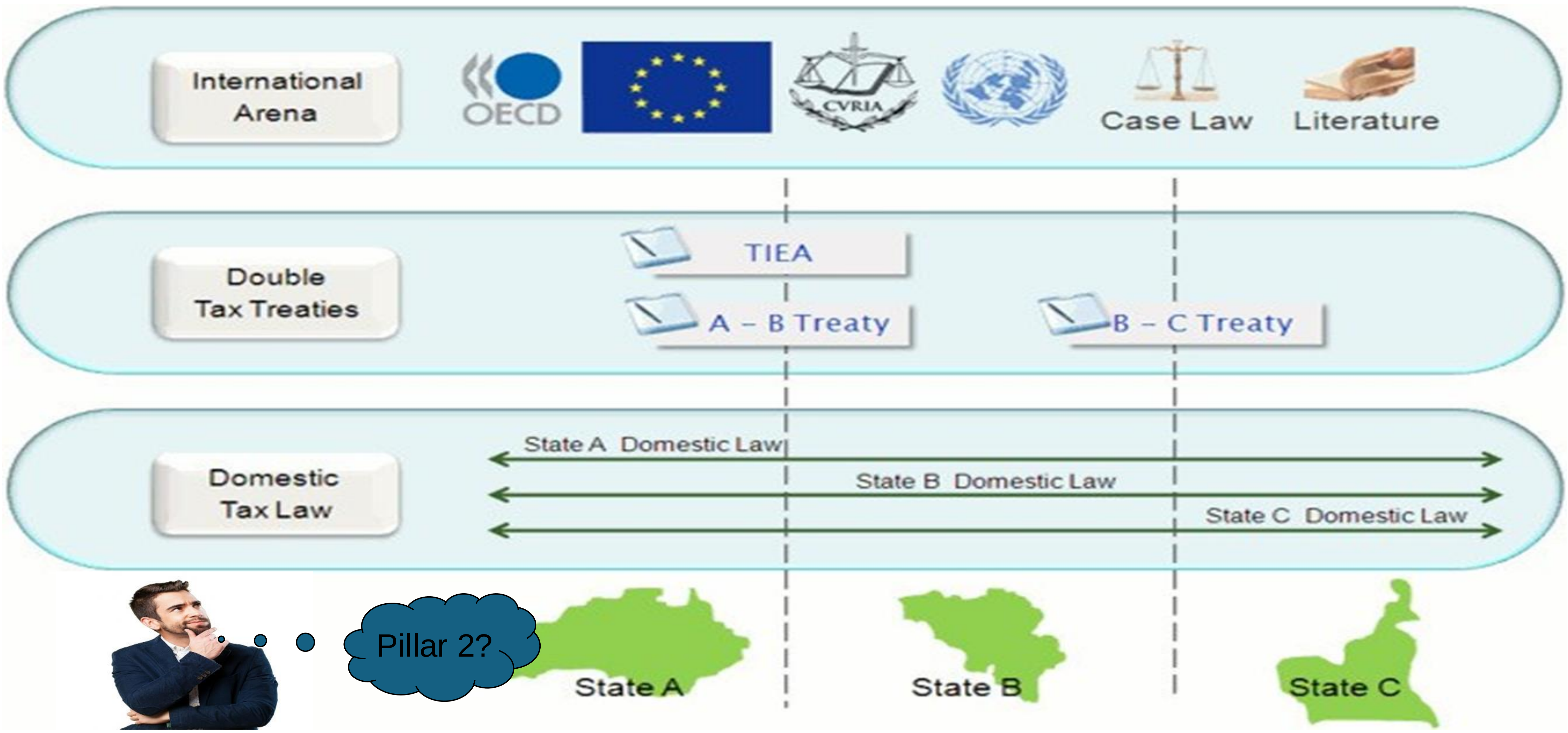
INTERNATIONAL TAX ENVIRONMENT: OVERLAP WITH PILLAR 2*



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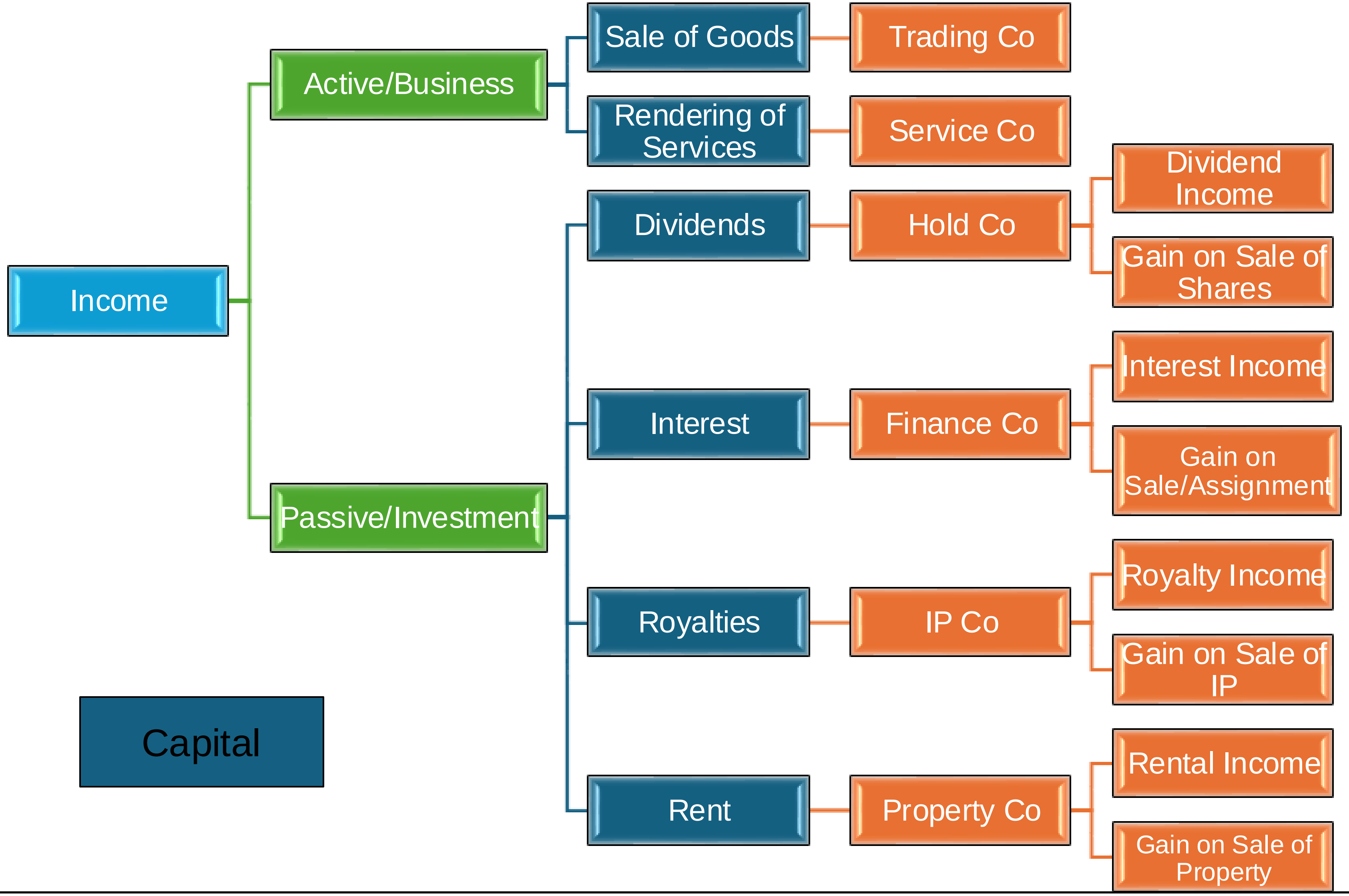
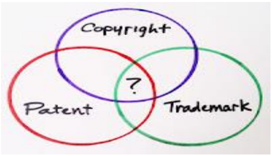
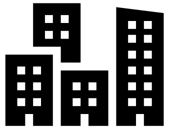
*Source IBFD

INTERNATIONAL TAX PLANNING: TAXABLE INCOME AND STRUCTURES







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ADJUSTMENTS UNDER ARTICLES 3.2 AND 3.3[1]

Category 1: REQUIRED Adjustments				*Category 2:* ELECTIVE/OPTIONAL Adjustments		
Type 1 *Common book-to-tax differences*	Type 2 *Other relevant adjustments*	Type 3 *Industry-specific*	Type 4 *Necessary to reflect provisions of other Chapters*	Type 1 *Five-year election*	Type 2 *Annual election*	Type 3 *Applies by default each year*
1. Net Taxes Expense (Art. 3.2.1(a)) 2. Excluded Dividends (Art. 3.2.1(b)) 3. Excluded Equity Gain or Loss (Art. 3.2.1(c)) 4. Included Revaluation Method Gain or Loss (Art 3.2.1(d)) 5. Gain or loss from disposition of assets and liabilities excluded under Article 6.3 (Art. 3.2.1(e)) 6. Asymmetric Foreign Currency Gains or Losses (Art. 3.2.1(f)) 7. Policy Disallowed Expenses (Art. 3.2.1(g)) 8. Stock-based compensation (Art. 3.2.2)	1. Arm's length requirement (Art. 3.2.3) 2. Qualified Refundable Tax Credits (Art. 3.2.4) 3. Intra-group financing (Art. 3.2.7) 4. Variations of Additional Tier One Capital (Art. 3.2.10)	1. Exclusion for insurance company income (Art. 3.2.9) 2. International Shipping Income 3. Ancillary International Shipping Income (Art. 3.3)</p:nl1_table>	1. Reflect the requirements of Chapter 6 2. Reflect the requirements of Chapter 7 (Art. 3.2.11)	1. Short-term Portfolio Shareholding (Art. 3.2.1(b)) 2. Excluded Equity Gain or Loss and hedges of investments in foreign operations (Art. 3.2.1(c)) 3. Equity Gain or Loss Inclusion Election (Art. 3.2.1(c)) 4. Stock-based compensation (Art. 3.2.2) 5. Election of realization method (Art. 3.2.5) 6. Election for domestic consolidation (Art. 3.2.8)	1. Election to spread gains and losses (Art. 3.2.6)	1. Debt Release (Administrative Guidance § 2.4)

[1] C. Theophilou and A. Loucaidou in C. Garbarino: Pillar Two of the Inclusive Framework on BEPS, Edward Elgar , Chapter 3 Individual Globe income or loss

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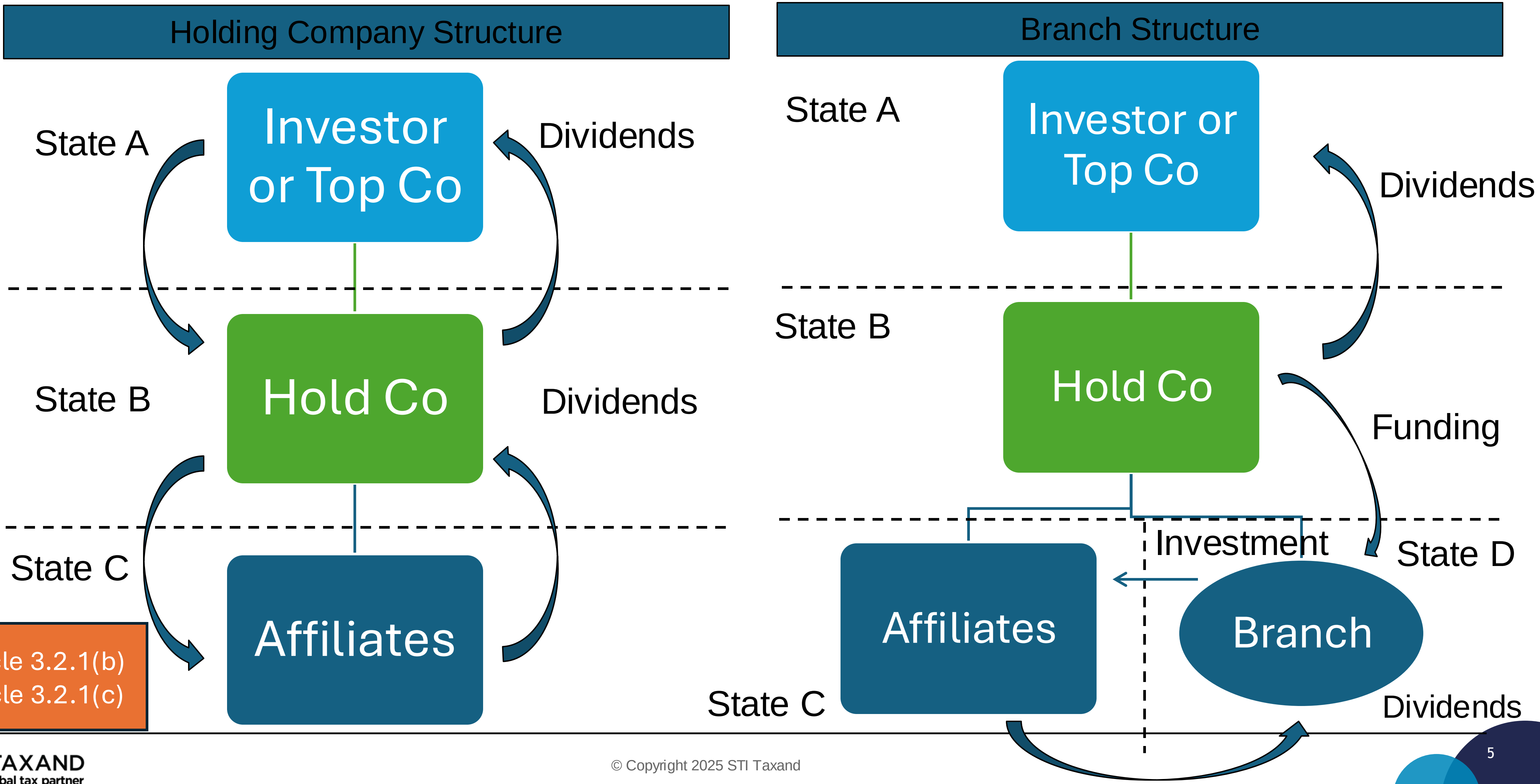
HOLDING COMPANIES GENERAL STRUCTURES



Article 3.2.1(b)
Article 3.2.1(c)

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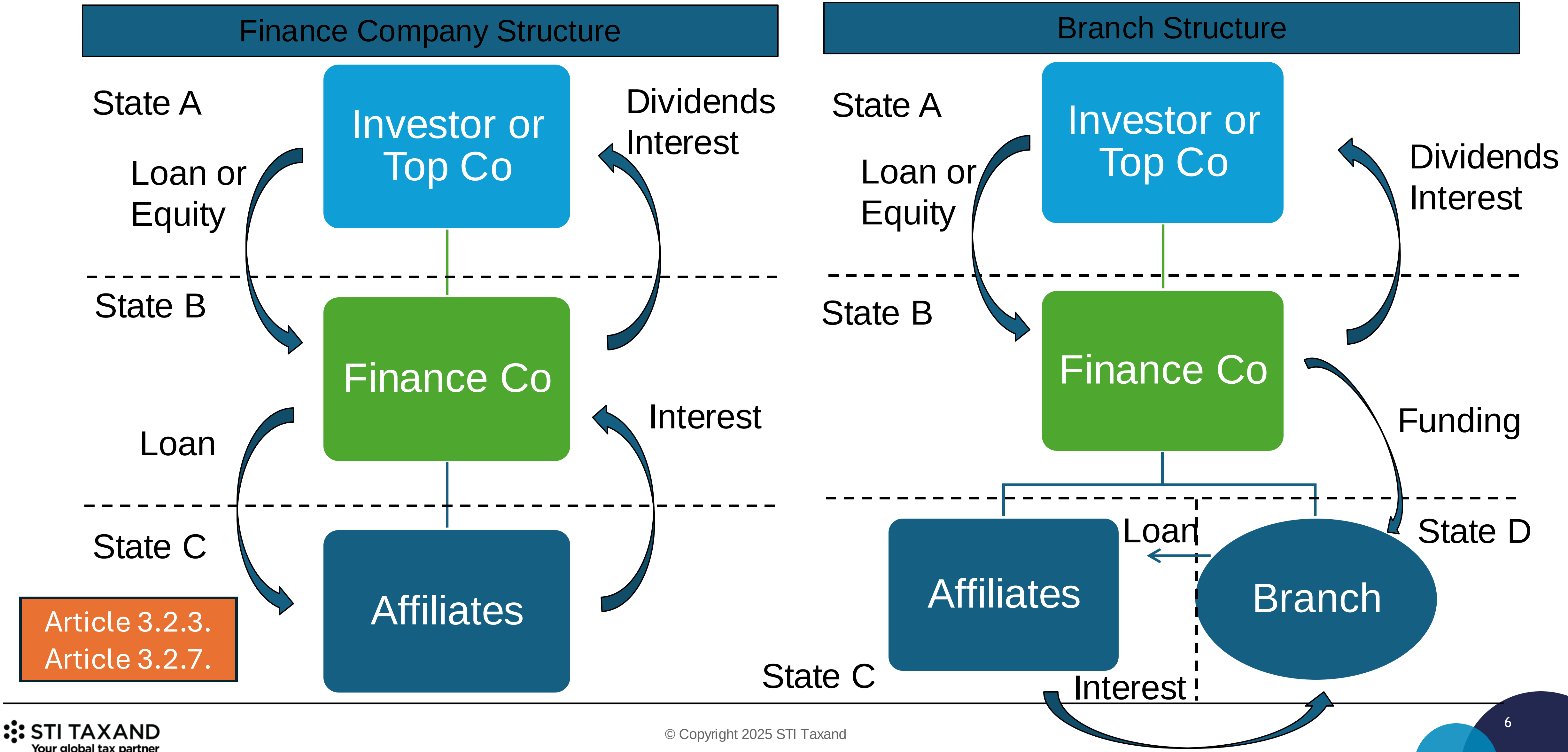
FINANCE COMPANIES GENERAL STRUCTURES



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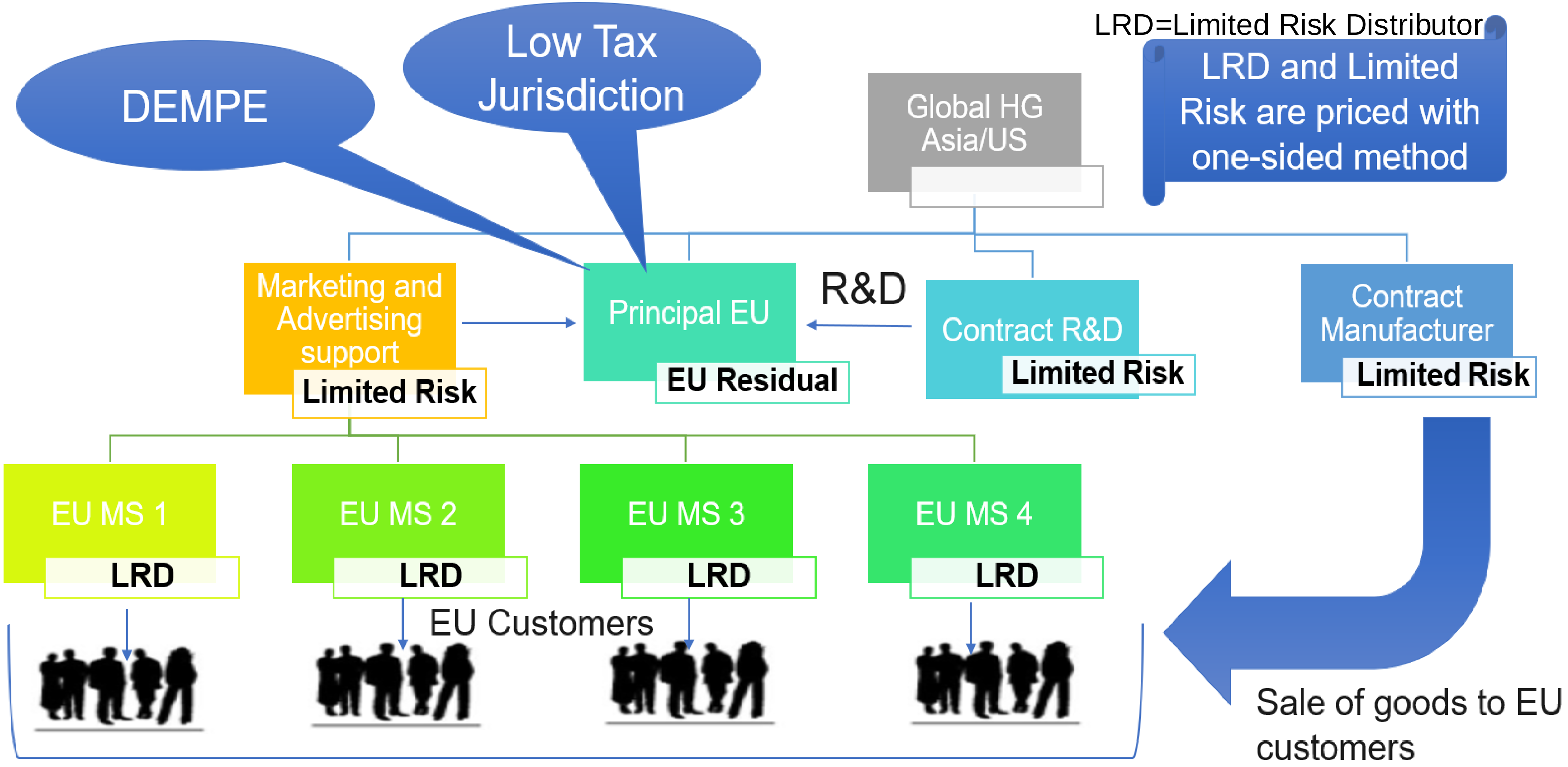
ENTREPRENEUR OR PRINCIPAL STRUCTURE



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TYPES OF IP TAX STRUCTURING AND TAX INCENTIVES

- Businesses often face two crucial considerations when organizing their intellectual property:
  - Determining the location for IP **development**; and
  - Deciding where to own the IP for **exploitation**.

- Tax incentives for IP development
  - Accelerated Depreciation
  - Super-deduction
  - R&D Tax credits

- Tax Incentives for IP exploitation
  - IP Box

IP Development
- Conventional Model
- Contract R&D Model
- Cost Contribution Model

IP Exploitation
- Conventional Royalty Model
- Principal Model
- Cost Contribution Model

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POTENTIAL IMPACT OF PILLAR 2 ON TAX INCENTIVES*

Table 1. Mapping the impact of tax incentive instrument design in the GloBE ETR calculation

The intensity of the colour reflects the likelihood with which the benefit of the tax incentives may be affected by the GloBE ETR calculation

Nature of relief	Type of instrument		Tax benefits affected by the GloBE ETR calculation (intensity of the colour indicates intensity of effect)	Effect on GloBE ETR	
				Numerator	Denominator
Income-based incentives		Full exemption	More likely	↓	
		Partial exemption	More likely	↓	
		Reduced rates	More likely	↓	
Expenditure-based incentives	Tax deductions[1]	Tax allowances[3]	More likely	↓	
		Immediate expensing and accelerated depreciation	Less likely	Adjusted for timing differences	
		For tangible assets: machinery, equipment, buildings	Unaffected	No recapturing applies	
		For short-lived intangibles	Less likely	Recapturing may apply	
		Other assets	More likely	Recapturing may apply	
	Tax credits	Qualifying refundable tax credits	Less likely	[2]	↑
		Other tax credits	More likely	↓	

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* Source: OECD (2022), Tax Incentives and the Global Minimum Corporate Tax

SIX DIFFERENT STRATEGIES (1)

- Do nothing and pay their taxes, even if this is not economically efficient.
  - However, such a strategy would typically be sensible in the jurisdictions where an MNE Group falls under the de minimis exclusion of the GloBE Rules under Article 5.5

- Taxpayers will still prefer to locate their activities in low-tax jurisdictions and pay a 15 per cent ETR, provided the alternative options are high-tax jurisdictions well above the 15 per cent ETR.

- Combine high-taxed profits (that is, taxed above 15 per cent ETR) with low-taxed profits (that is, taxed below 15 per cent ETR). However, as the blending rules of Pillar Two are on a jurisdictional basis, such blending should be per jurisdiction.

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SIX DIFFERENT STRATEGIES (2)

- MNEs is to be located in a Low-taxed Jurisdiction with a generous Qualified Refundable Tax Credit or a Substance-based Income Exclusion or both.

- MNEs to transfer their activities to a Low-tax Jurisdiction with a generous Substance-based Income Exclusion and Qualified Refundable Tax Credit or a Substance-based Income Exclusion or both.

- MNEs to transfer their activities from a High-tax jurisdictions with an effective tax rate 20% to another High-tax Jurisdictions with a lower effective tax rate (e.g. 16%) as Pillar 2 rules do not apply.

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REFERENCES

- Pillar 2 Model GloBE Rules published on 14 December 2021 click here
- Commentary to the GloBE Rules published on 25 April 2024 click here
  - This Consolidated Commentary incorporates Agreed Administrative Guidance that has been released by the Inclusive Framework since March 2022 up until December 2023
- Illustrative examples published on 25 April 2024 click here
- 4th Administrative Guidance published 17 June 2024 click here
- OECD (2022), Tax Incentives and the Global Minimum Corporate Tax: Reconsidering Tax Incentives after the GloBE Rules published on 6 October 2022 click here
- OECD website for Pillar 2 updates click here

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THANK YOU!

Christos Theophilou is a distinguished tax expert, providing advisory services to both private and corporate clients on intricate international tax and transfer pricing issues. His expertise encompasses cross-border investments, private equity structuring, structured finance, intellectual property structuring, and international trade.

Christos holds an MSc in Tax Law from Oxford University, a Bachelor's degree in Economics, and an LLB Law degree from Frederick University. He is a Chartered Accountant in England & Wales and has obtained the Advanced Diploma in International Taxation (ADIT) from the UK Chartered Institute of Taxation.

Christos is a prolific contributor to various esteemed international tax publications, including IBFD, Tax Notes International, Bloomberg Tax, International Tax Review, Edward Elgar, and IFA. Furthermore, Christos is currently a member of the Tax Policy and Strategy committee of ICPAC.

Christos also serves as a freelance lecturer for Tolley's (LexisNexis) and IBFD, where he lectures on ADIT Paper 1 Principles of International Tax, Transfer Pricing, and Pillar 2. He is a frequent speaker at international tax conferences, sharing his extensive knowledge and insights with the global tax community.

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Taxand is a global organisation comprising top tier local independent tax advisory firms who together provide high quality, integrated tax advice to clients worldwide.

Overall, there are more than 700 tax partners and over 3,000 tax advisors across 51 countries, focussed on understanding you and your business needs; collaborating to deliver tailored, practical local and international tax advice, in consideration of your strategic goals.

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"Focused on understanding you and your business needs."

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TAXAND AT A GLANCE

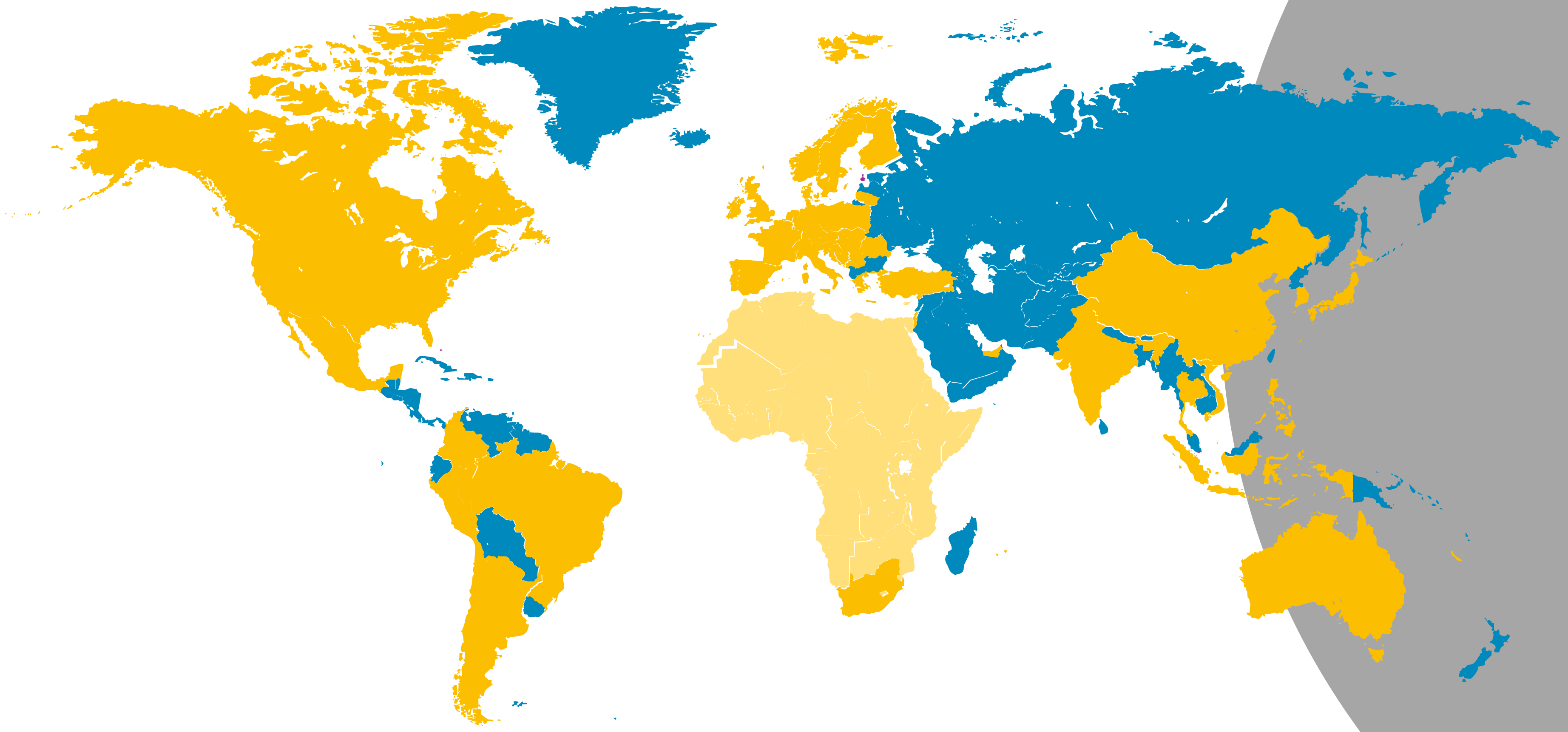
World's largest independent tax organization
We are a global collective of top-tier firms in key jurisdictions, with more than **700 tax partners** and **over 3,000 tax advisors** in **51 countries**

One organization of member firms
Established with an entrepreneurial mindset since 2005, Taxand has always sought to grow; adding handpicked firms delivering tax advice in each of the countries we serve, to provide easy access to first-class tax advice globally. **Our approach is personal; our focus is global**

Thinking strategically
Taxand has evolved into an integrated worldwide organization of **leading experts with complementary skills and experience**

Stronger in partnership
The pace of change in our industry is unprecedented. Taxand is committed to applying our **shared knowledge, experience and expertise** to anticipate the challenges, embrace the opportunities and work hand in hand to shape the path ahead for the benefit of our clients

GLOBAL COVERAGE : 51 COUNTRIES



- Argentina
- Australia
- Austria
- Belgium
- Brazil
- Canada
- Chile
- China
- Colombia
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Emirates
- Finland
- France
- Germany
- Greece
- Hungary
- India
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- Mexico
- Netherlands
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- Philippines
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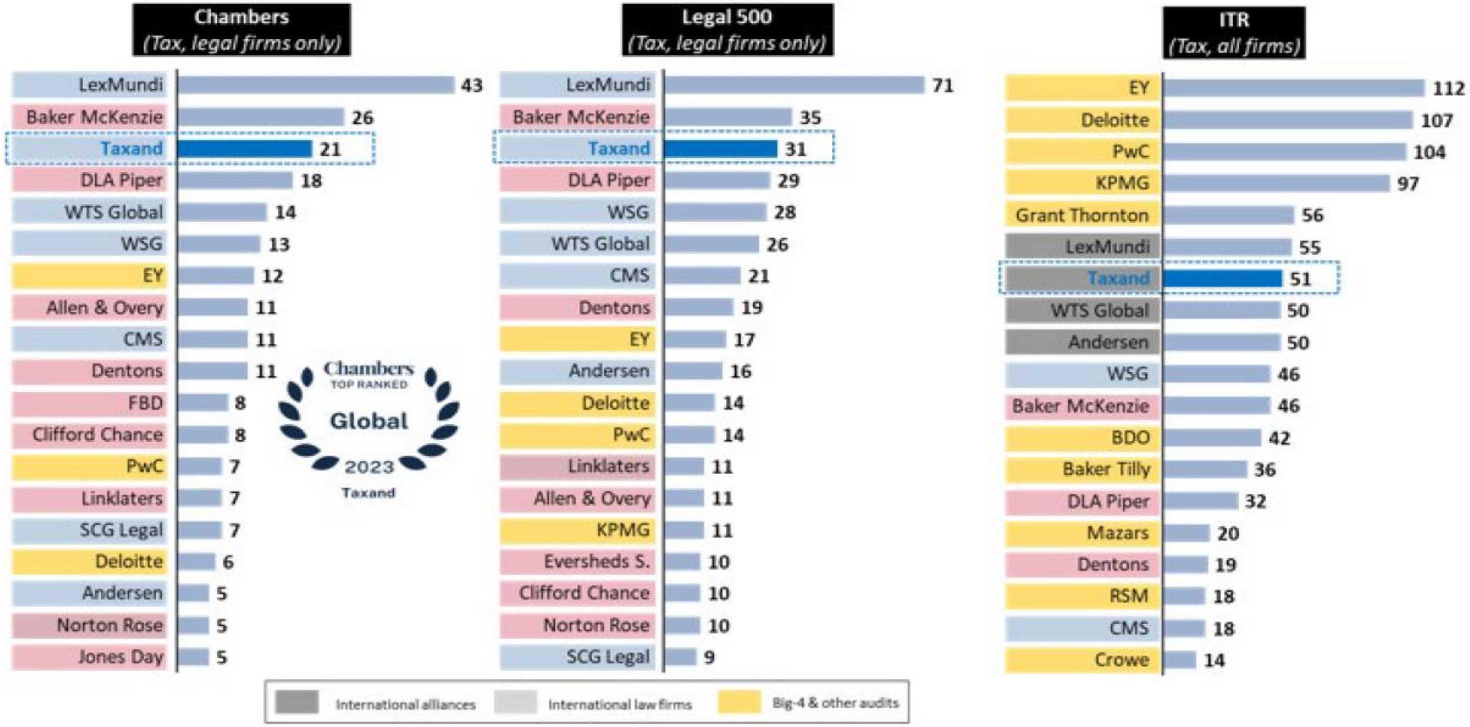
AWARDS

IN AGGREGATE TAXAND GLOBAL FIRMS ARE AMONG THE TOP RANKED



The figures provided above are sourced from our **Strategic Review 2022/23**, the latest 2024 Chambers rankings across Global, European, Asian and LatAm guides show further Taxand growth with member firms from **25 countries** ranked for Tax and **69 practitioners** recognised for their tax expertise.

Legal 500, 2024, rankings across 4 guides: APAC, EMEA, LATAM and Canada, with a total of 143 lawyers featured in Legal 500 firm profiles; member firms from 25 countries ranked for Tax by Legal 500 of which 18 are ranked Tier 1.

In 2023, ITR shortlisted Taxand member firms for over **80 awards** across the Americas, EMEA and APAC regions and at September's awards ceremony in London, **Taxand won 19 awards**.

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GLOBAL COVERAGE

TOP TIER GLOBAL COVERAGE

- Argentina
- Australia
- Austria
- Belgium
- Brazil*
- Canada
- Chile
- China
- Colombia
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Emirates*
- Finland
- France
- Germany
- Greece
- Hungary
- India
- Indonesia
- Ireland
- Israel
- Italy
- Japan
- Korea
- Luxembourg
- Malaysia
- Malta
- Mauritius
- Mexico
- Netherlands
- Norway
- Peru
- Philippines
- Poland
- Portugal
- Puerto Rico
- Romania
- Serbia
- Singapore
- Slovakia
- Slovenia
- South Africa
- Spain
- Sweden
- Switzerland
- Turkey*
- UK
- USA
- Vietnam*

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Pillar 2	Energy tax	Financial services tax	Indirect tax	M&A tax	Private client services	Real estate tax	Tax disputes resolution	TP & business restructuring

- Providing high quality advice that addresses your strategic concerns and improves your bottom line by:
- Understanding and managing the tax consequences of cross-border tax transactions
- Considering organisational (re)structuring options in full awareness of the tax implications
- Realising tax, supply chain and overall operational efficiencies
- Interpreting technical tax provisions
- Lowering effective tax rates
- Addressing and preventing tax leakages
- Ensuring tax compliance
- Managing relationships with tax authorities

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World Tax 2024

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EY
KPMG
PwC
Taxand Cyprus
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Baker Tilly South East Europe
Chrysses Demetriades & Co
Consulco
Dr K Chrysostomides & Co
Tier 3
C Savva & Associates
Grant Thornton
Michael Kyprianou & Co

Tax controversy
Tier 1
Chrysses Demetriades & Co
Elias Neocleous & Co
Tier 2
Taxand Cyprus

ITR WORLD TAX TOP TIER FIRM 2022

ITR WORLD TAX TOP TIER FIRM 2023

ITR WORLD TAX TOP TIER FIRM 2024

Dedicated tax firm Taxand Cyprus covers all tax practices such as compliance and contentious, with dedicated partners specialising in various tax areas. The team has partners leading each tax area and sectors such as real estate.

It is a member of the Taxand network with firms in more than 50 locations worldwide.

WORLD TAX