



International tax policy

Tashkent state university of economics

Lecture 10



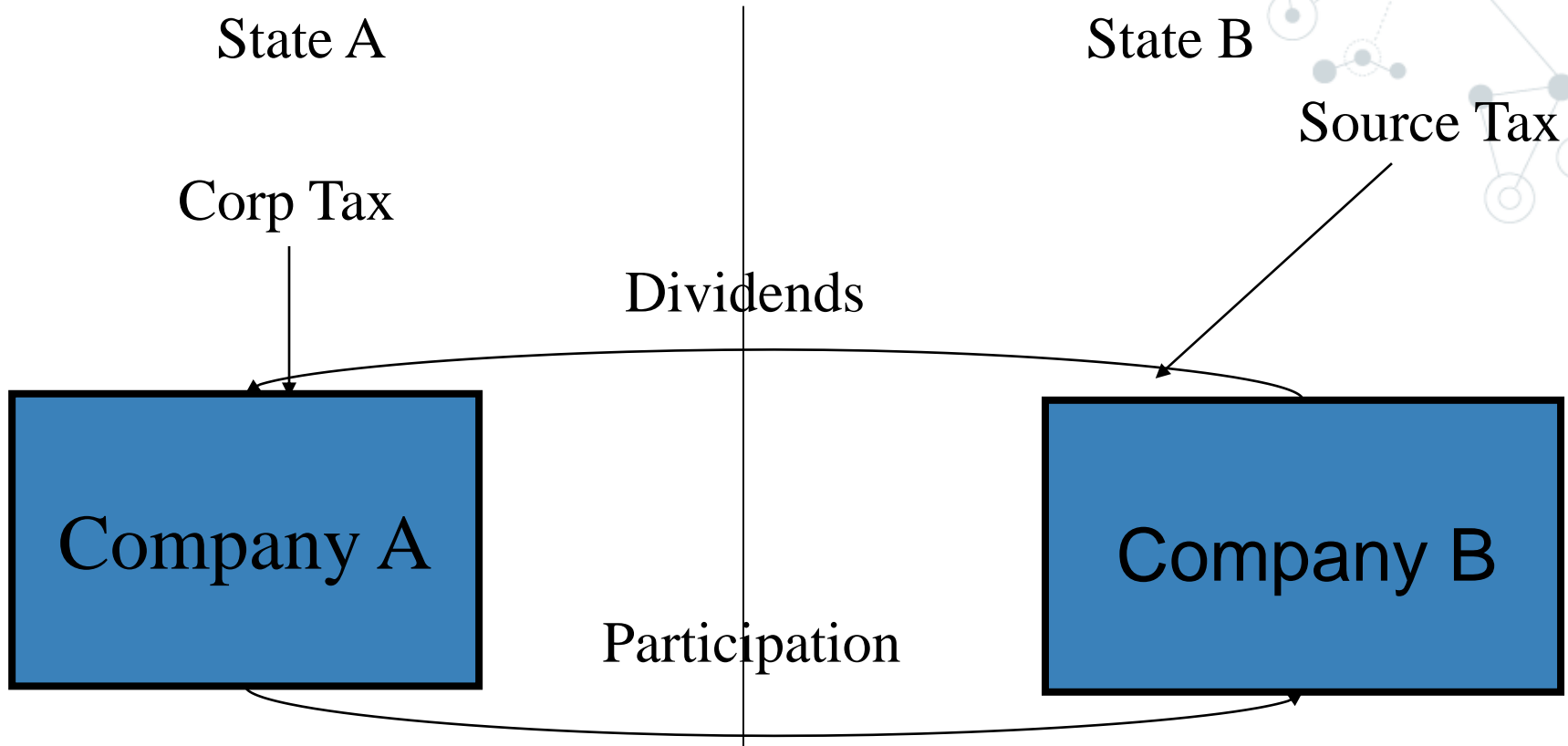
International tax law

- ◎ International tax law rules come into play in a **cross-border situation** where the state of source of **an income item** (the source state) is one state and the state of residence of the income recipient (the residence state) is another state.
- ◎ International tax law rules must also be applied if **property** is situated in one state and the state of residence of the owner of the property is another state.

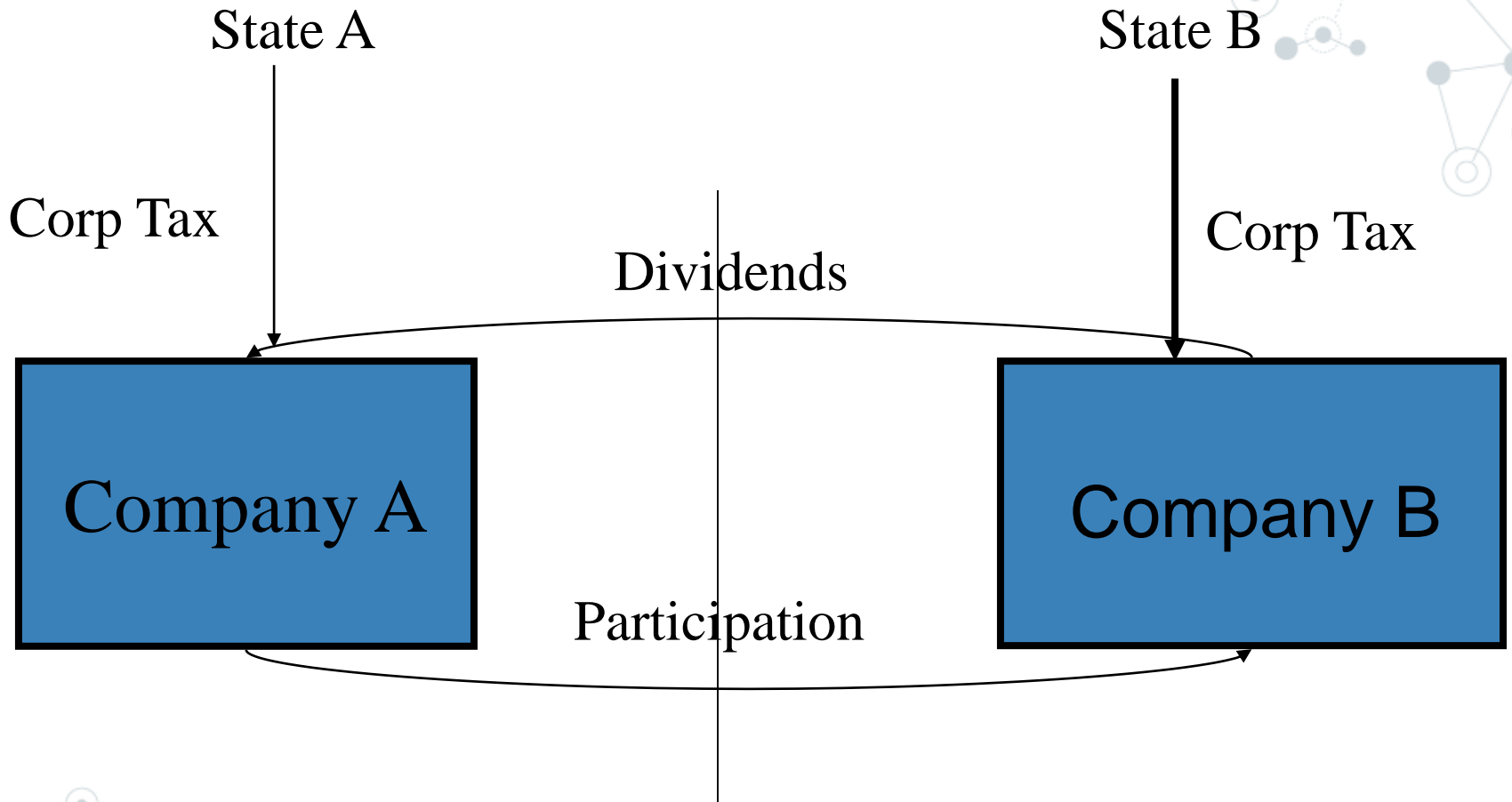
International **double taxation**

- ◎ The imposition of income tax by 2 or more countries on the same income for the same taxable period.
- ◎ **Economical**: 2 or more taxpayers are taxed on the same income
- ◎ **Juridical**: same taxpayer taxed more than once on the same income in different countries.

Example: Juridical Double Taxation



Example: Economical Double Taxation



International double non-taxation

- ◎ Disagreements (“classification conflicts”) or differences in tax treatment (“disparities”) between contracting states may lead to **double non-taxation**.
 - Source state may believe that the treaty precludes it from applying its taxing rights under domestic law
 - Residence state believes that the income should be taxed by the source state

Double non-taxation

◎ Double non-taxation

- Income is not taxed in the source or residence state
- The same deduction is made twice (“double dip”) in source and residence state, or deducted in source state and not taxed in residence state
- E.g. hybrid instruments, hybrid entities

◎ Low taxation

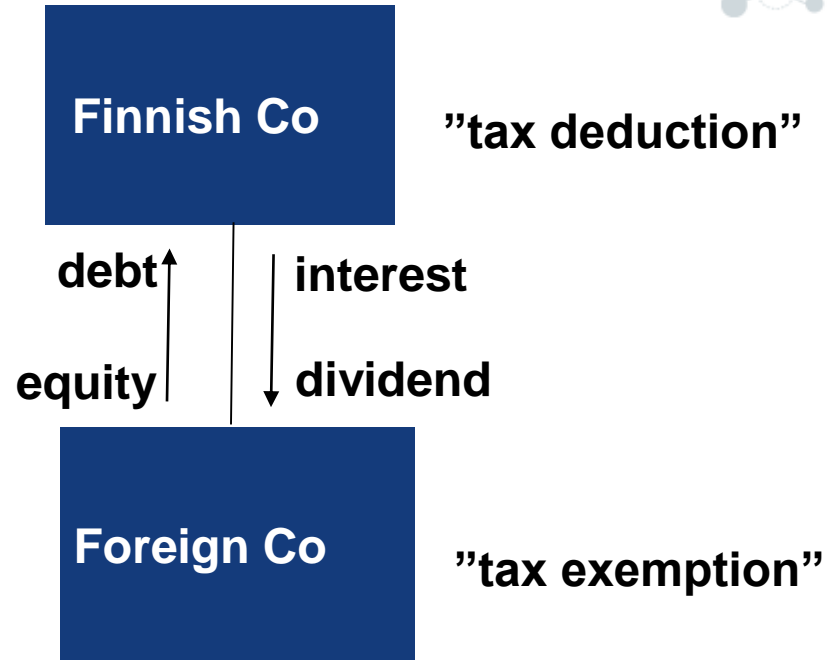
- Income is taxed only in a country whose tax burden is significantly lower than in company’s residence state
- E.g. Income sheltering

◎ Tax minimization

- Any legal attempts to minimize tax burden otherwise resulting from applicable tax laws within a given country
- E.g. use of debt (setting off interest and taxable income)

Example. Hybrid Instrument: Profit Participation Loan (PPL)

Foreign company gives a loan/hybrid instrument e.g. PPL which is treated as equity in foreign country and as debt in Finland.



Sources of European and international tax law

◎ Domestic (international) laws

- specific rules on treatment of foreign income or transactions of residents (e.g. participation exemption, international reorganizations, exit taxation)
- non-resident taxation (e.g. definition of source of income, permanent establishment)
- avoidance of double taxation (e.g. tax credit)
- anti-avoidance rules (e.g. CFC rules, thin capitalization rules)

Sources of European and international tax law

◎ Tax treaties

- In particular, income tax treaties
- Concluded between contracting states to eliminate double taxation and prevent tax avoidance
- Only binding between the signing states (usually two states = bilateral, Nordic Tax Treaty → multilateral)
- OECD Model Convention as basis for common understanding
- OECD Model Commentaries
- OECD Transfer Pricing Guidelines

Sources of European and international tax law

◎ **European Union (EU) law**

- Treaty on the Functioning of the European Union (TFEU)
 - ◎ Fundamental freedoms of movement: workers, establishment, services and capital
- EC Conventions (Arbitration convention)
- Secondary law (directives, regulations)
 - ◎ Parent-Subsidiary-Directive
 - ◎ Merger Directive
 - ◎ Interest/Royalties-Directive
 - ◎ Savings Directive
 - ◎ Tax co-operation directives (Exchange of information, Administrative co-operation)
- Case law of the Court of Justice of the EU (CJEU)

European tax law = interaction between different sources of law

◎ **Domestic international tax law** defines the taxing powers of a state

- Unlimited (worldwide) tax liability in the state of residence
- Limited tax liability in the source state
- Permanent establishment (PE)
- Anti-avoidance provisions

European tax law = interaction between different sources of law

- ◎ **Tax treaties** concluded between contracting states to eliminate double taxation and prevent tax avoidance. Only binding between the signing states
- ◎ **EU tax law**: a true transnational legal order = supremacy over domestic tax law and tax treaties

Domestic international tax law

- ◎ Defines the taxing powers of a state
- ◎ Unlimited (= worldwide income) tax liability in the state of residence (TVL 9 § (1))
 - ◎ Finnish resident individual
 - ◎ Finnish corporate entity
 - A corporate entity is Finnish if it is incorporated or otherwise established under domestic law
 - Finnish corporate entities include i.e. limited liability company (osakeyhtiö) and co-operative society (osuuskunta)

Domestic international tax law

- ◎ Limited (= income from the source state) tax liability in the source state (TVL 9 § (2))
 - Individual who is resident in another state than Finland ("non-resident individual")
 - Corporate entity which is incorporated in another state than Finland ("foreign corporation")
- ◎ Limited tax liability covers only income received from Finnish-sources (TVL 10 §)

Domestic international tax law

- ◎ Individual is Finnish resident (TVL 11 §) if
 - His or her permanent home is in Finland
 - Even if his or her home is not in Finland, if he or she stays in Finland for a continuous period exceeding six months
 - Finnish national is resident the year of departure and the following three calendar years (“3-year rule”), unless he or she can prove that he or she does not have substantial ties to Finland

Domestic international tax law

- ◎ If a foreign corporation has a permanent establishment (PE) in Finland, all income connected to the PE are subject to tax in Finland (TVL 9.3 §)
- ◎ A PE of a foreign corporation in Finland is taxed in the same way as a domestic corporation on the income connected to a PE
- ◎ Existence of a PE typically also leads to VAT and employer obligations in Finland

Domestic international tax law

- ◎ Definition of a PE (TVL 13a § and OECD MC Art. 5)
 - ◎ A fixed place of business through which the business of an enterprise is wholly or partly carried on...
 - ◎ incl. especially: a place of management; a branch, an office; a factory; a workshop; and a mine, an oil or gas well...