Consolidation

- 2011: Taking away biggest obstacles internal market
- 2016: Internal market and countering tax avoidance

Content of the consolidated tax return

- Identification
  - Principle taxpayer
  - All group members
  - Associated enterprises
  - Tax year

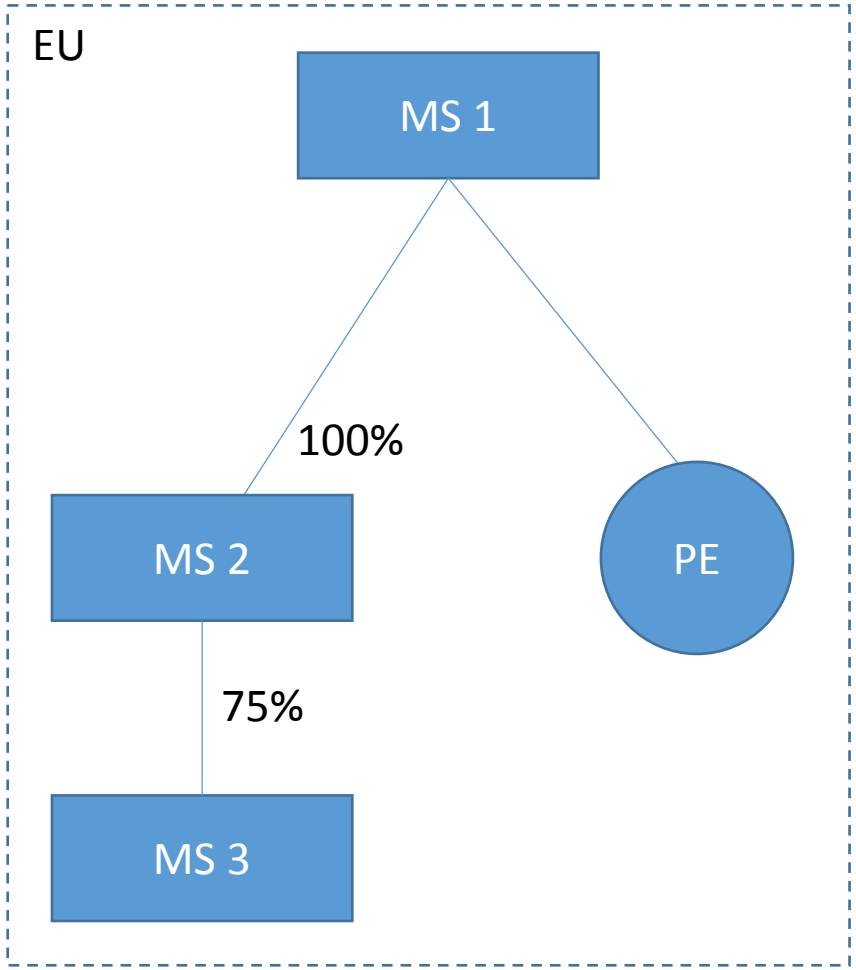
- Calculation
  - Tax base each group member (CCTB)
  - Consolidated tax base
  - The apportioned share
  - Tax liability

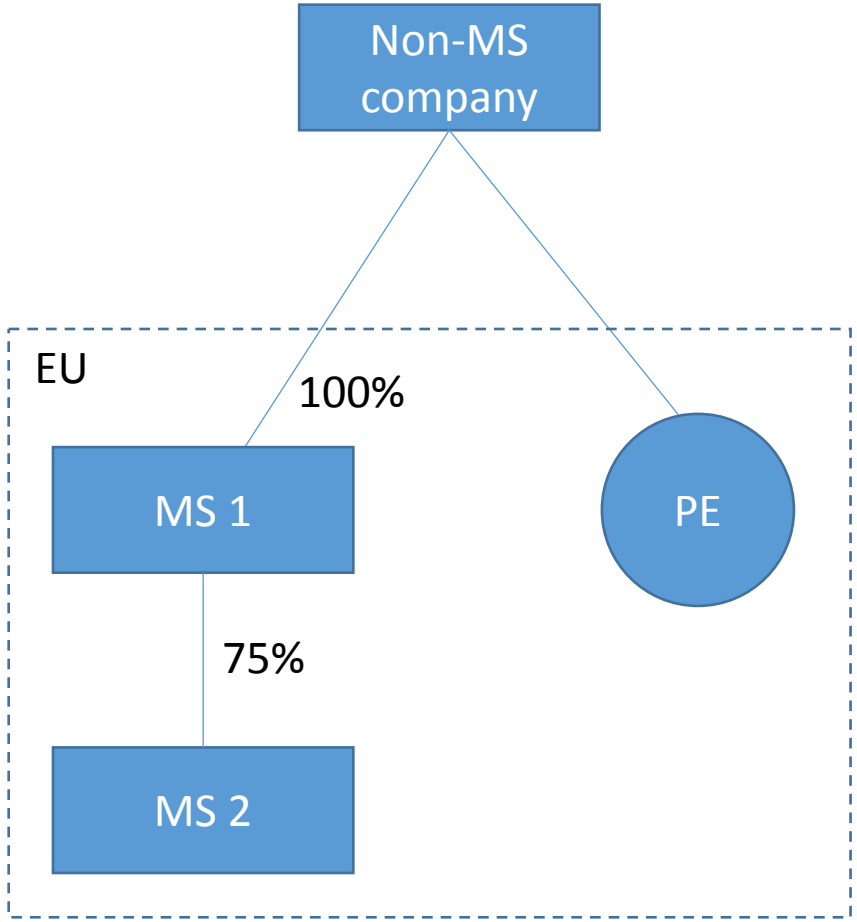
Eligibility for consolidation

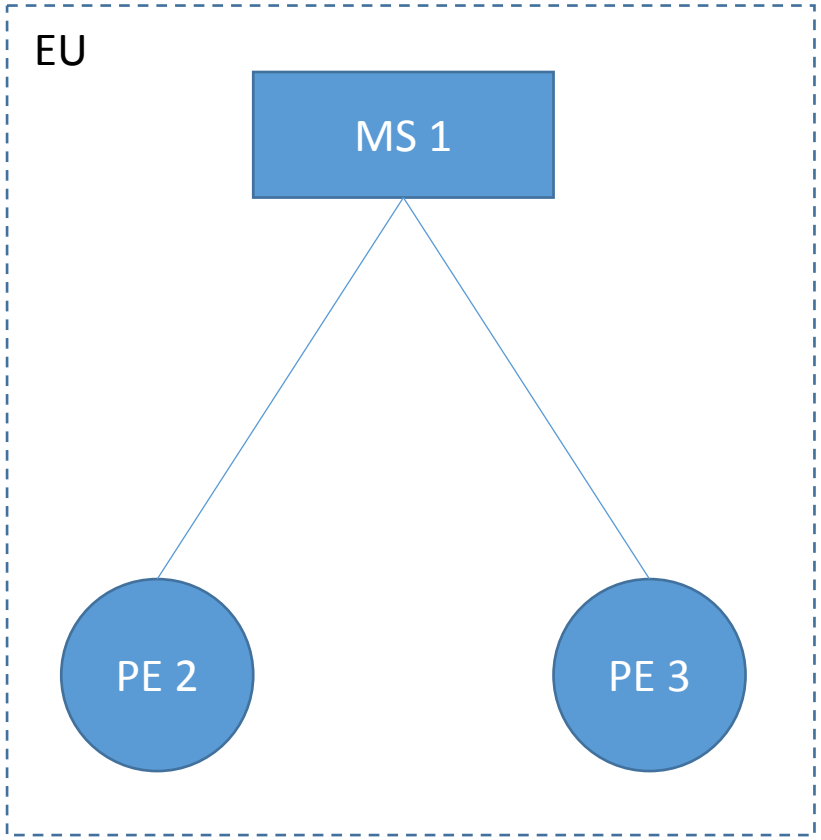
Artikel 5 (1): Qualifying subsidiaries shall be all immediate and lower-tier subsidiaries in which the parent company holds the following rights:

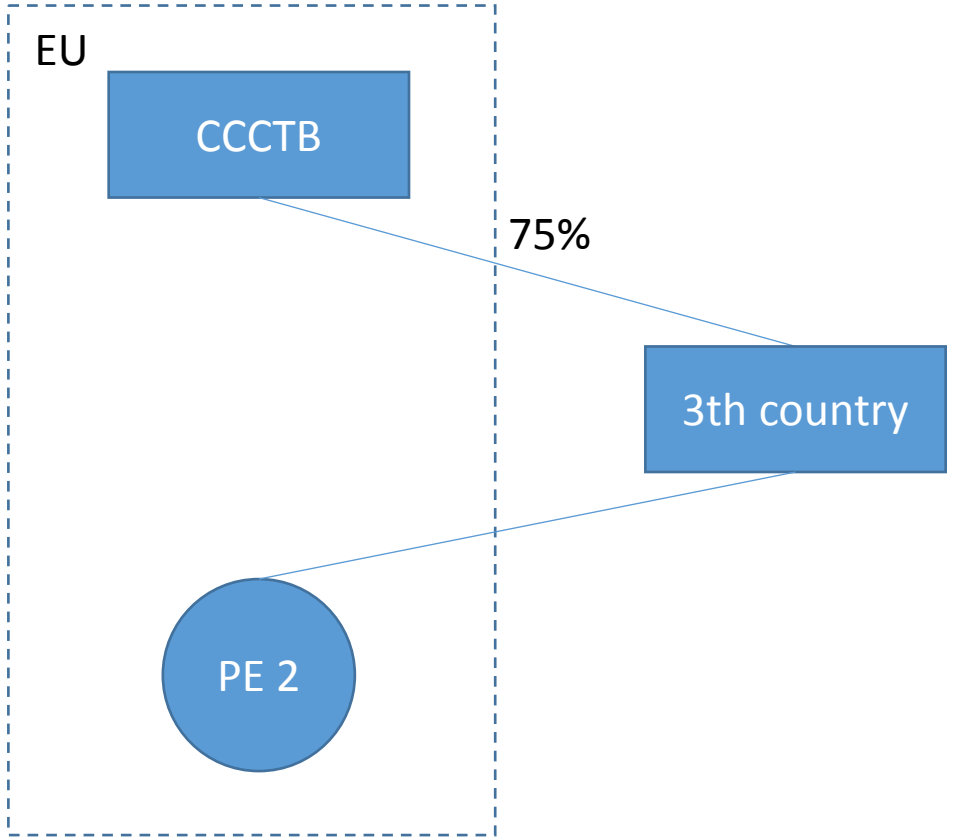
(a) a right to exercise more than 50% of the voting rights;

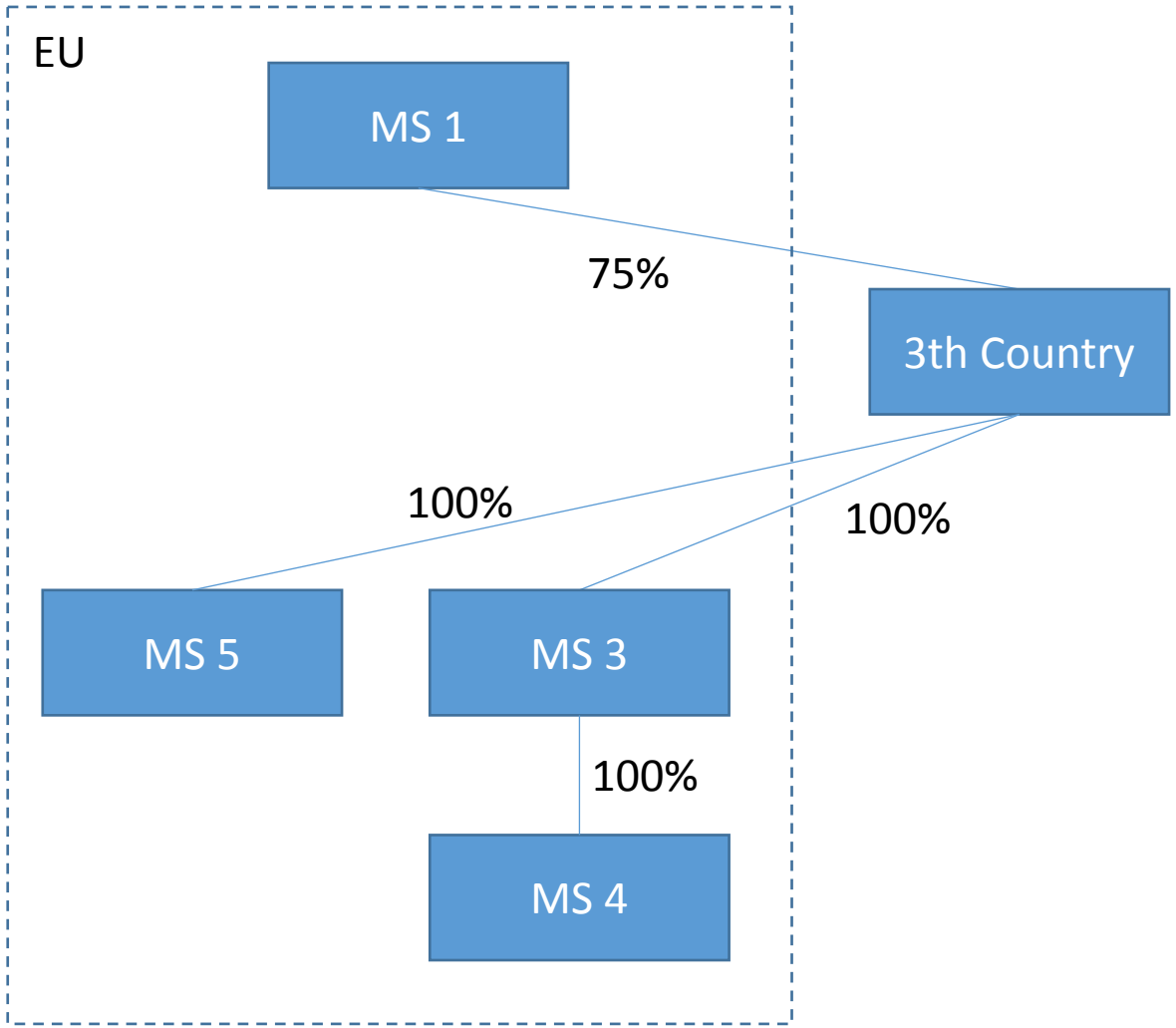
(b) an ownership right amounting to more than 75% of the company's capital or more than 75% of the rights giving entitlement to profit.

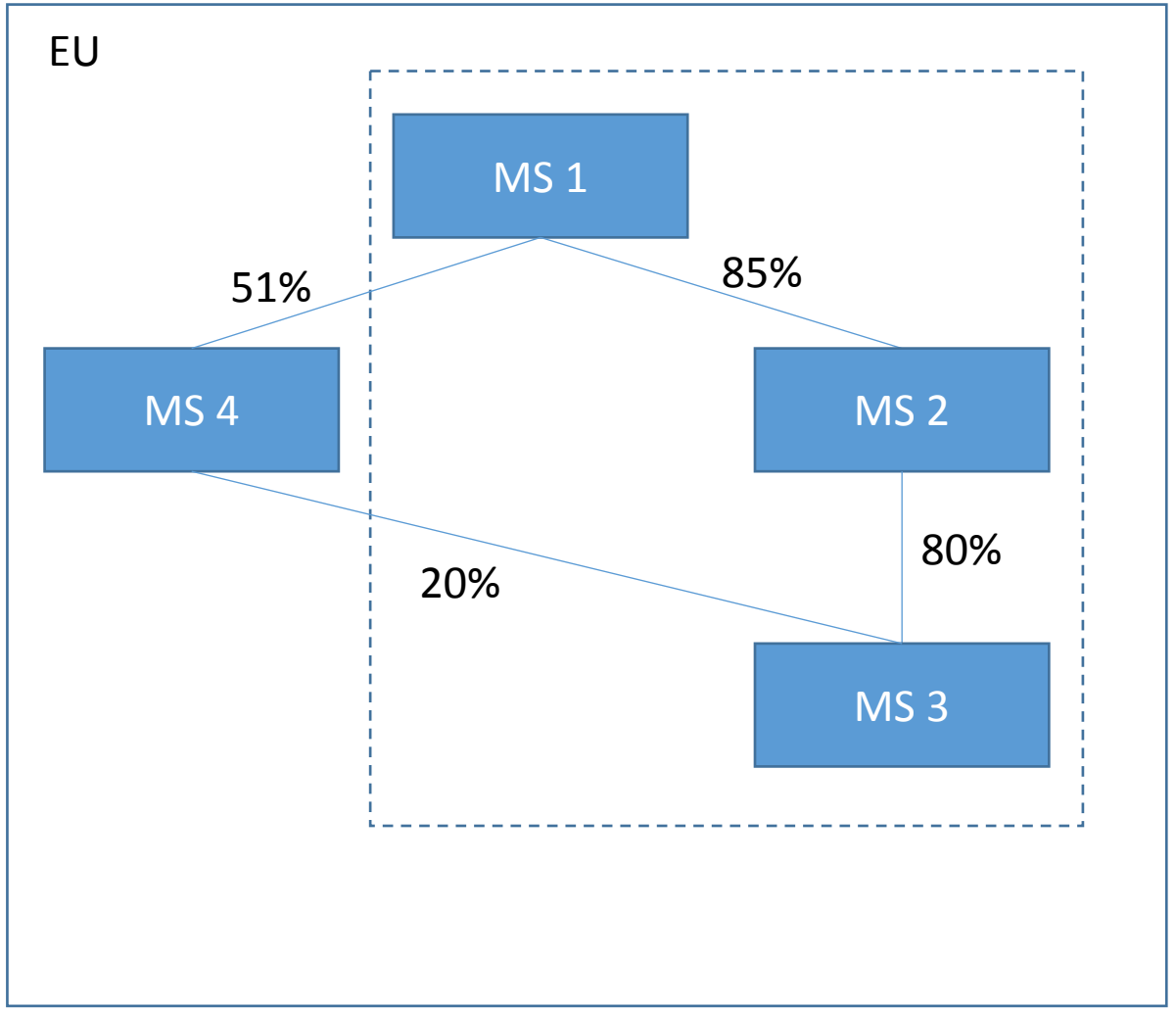

EU
MS 1
100%
MS 2
PE
75%
MS 3

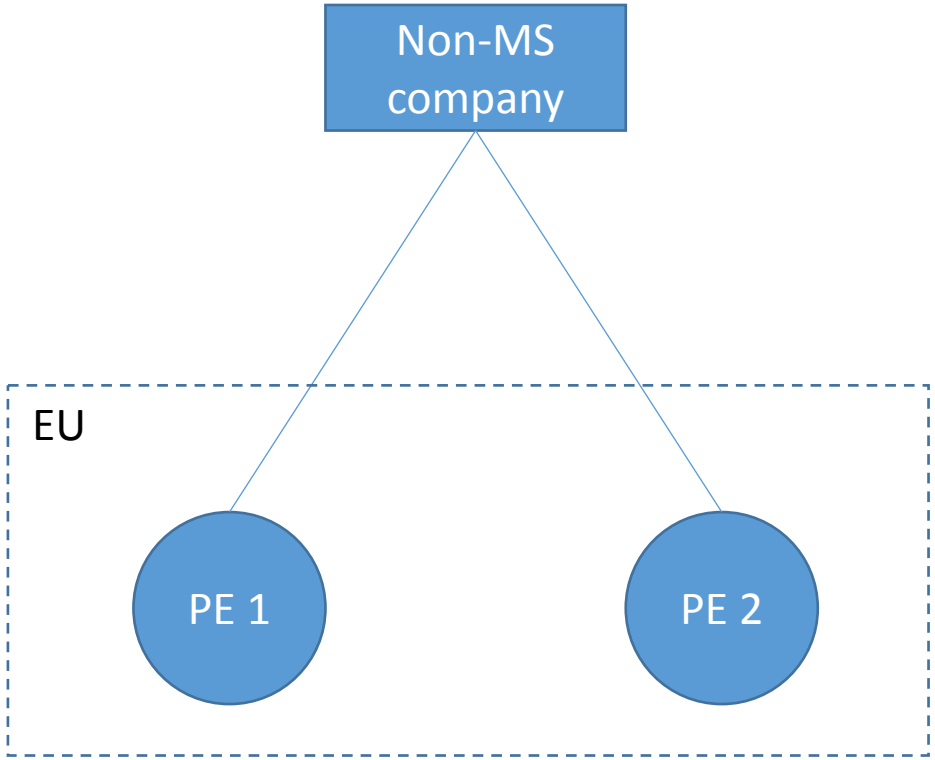

Non-MS company
EU
100%
MS 1
PE
75%
MS 2

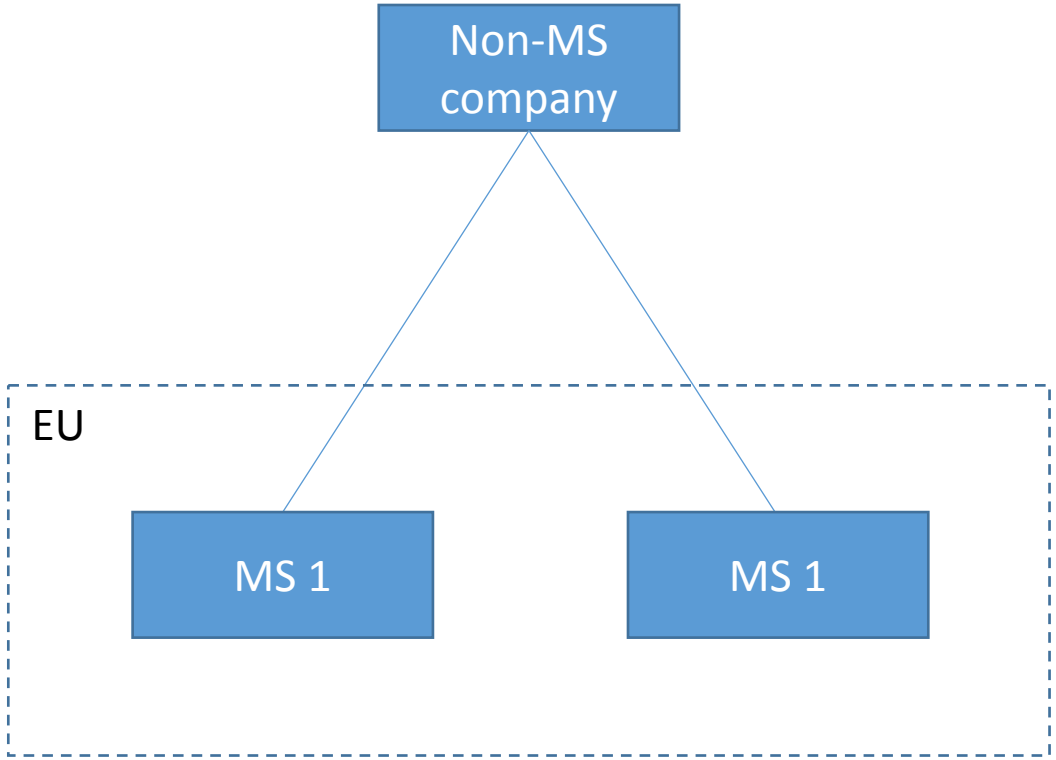

EU
MS 1
PE 2
PE 3


EU
CCCTB
75%
3th country
PE 2


EU
MS 1
75%
3th Country
100%
100%
MS 5
MS 3
100%
MS 4


EU
MS 1
51%
85%
MS 4
MS 2
80%
20%
MS 3

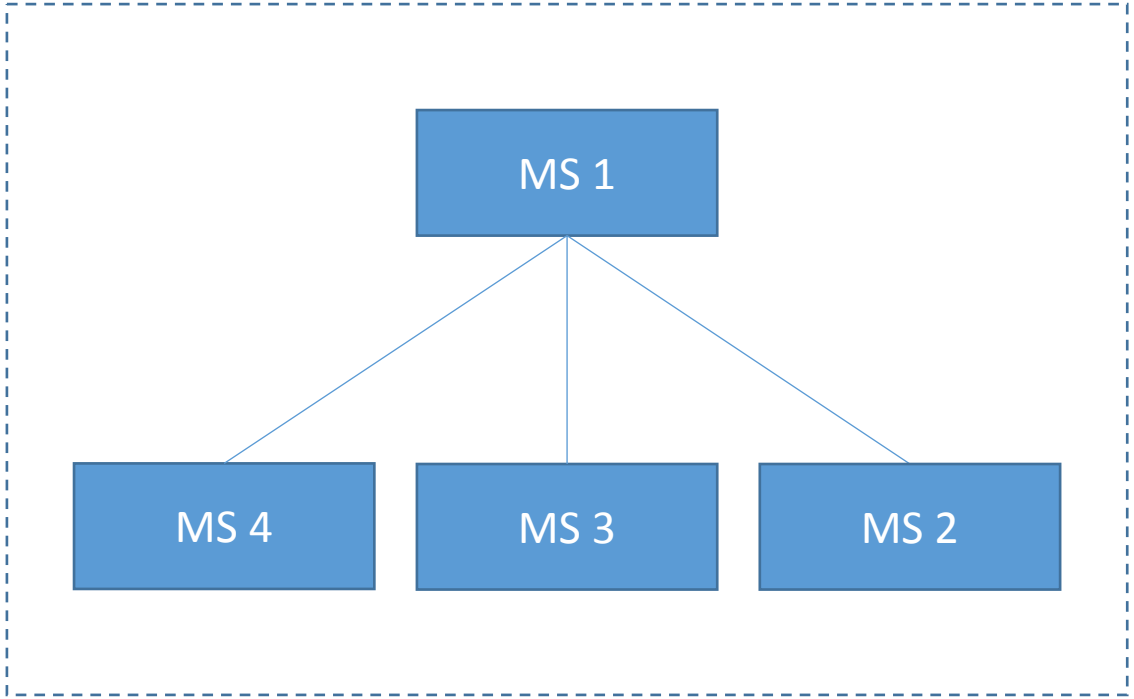

Non-MS company
EU
PE 1
PE 2


Non-MS company
EU
MS 1
MS 1

Full Consolidation

- Elimination of intra-group transactions
- No intra- group withholding and source taxation
- Offsetting losses against profits group members

Consolidation concept is more then only offsetting losses against other profits



MS 1	+20
MS 2	+20
MS 3	+20
MS 4	-15
Total	+45

MS 1	+15
MS 2	+15
MS 3	+15
MS 4	0
Total	+45

All member states receive a share of the total profit of 45

The consolidation method

- Art 7 (1) The tax bases of all members of a group shall be added together into a consolidated tax base.

- Elimination of intra-group transactions
  - Ignore but record method
    - Transfer of assets not subject to depreciation (lowest costs)
    - Transfer of assets subject to depreciation (value tax purposes)
  - Exceptions
    - Oil & gas
    - Shipping inland waterways transport and air transport

Commercial result

MS B

Revenue (Services to MS 2)	1750
Transport	600
Sales	500
Labour	400
Tax base	250

MS A

Revenue (sales to third parties)	6000
Cost-price	1000
Other Cost	1750
R&D	3000
Tax base	250

The consolidated tax base is 500

Consolidation CCCTB

MS B

Revenue (Services to MS 2)	1500
Transport	600
Sales	500
Labour	400
Tax base	0

MS A

Revenue (sales to third parties)	6000
Cost-price	1000
Other Cost	1500
R&D	3000
Tax base	500

The consolidated tax base is 500

CCCTB alternative

MS B

Revenue (Services to MS 2)	0
Transport	600
Sales	500
Labour	400
Tax base	-1500

MS A

Revenue (sales to third parties)	6000
Cost-price	1000
Other Cost	0
R&D	3000
Tax base	2000

The consolidated tax base is 500

Calculating sales factor in formula apportionment

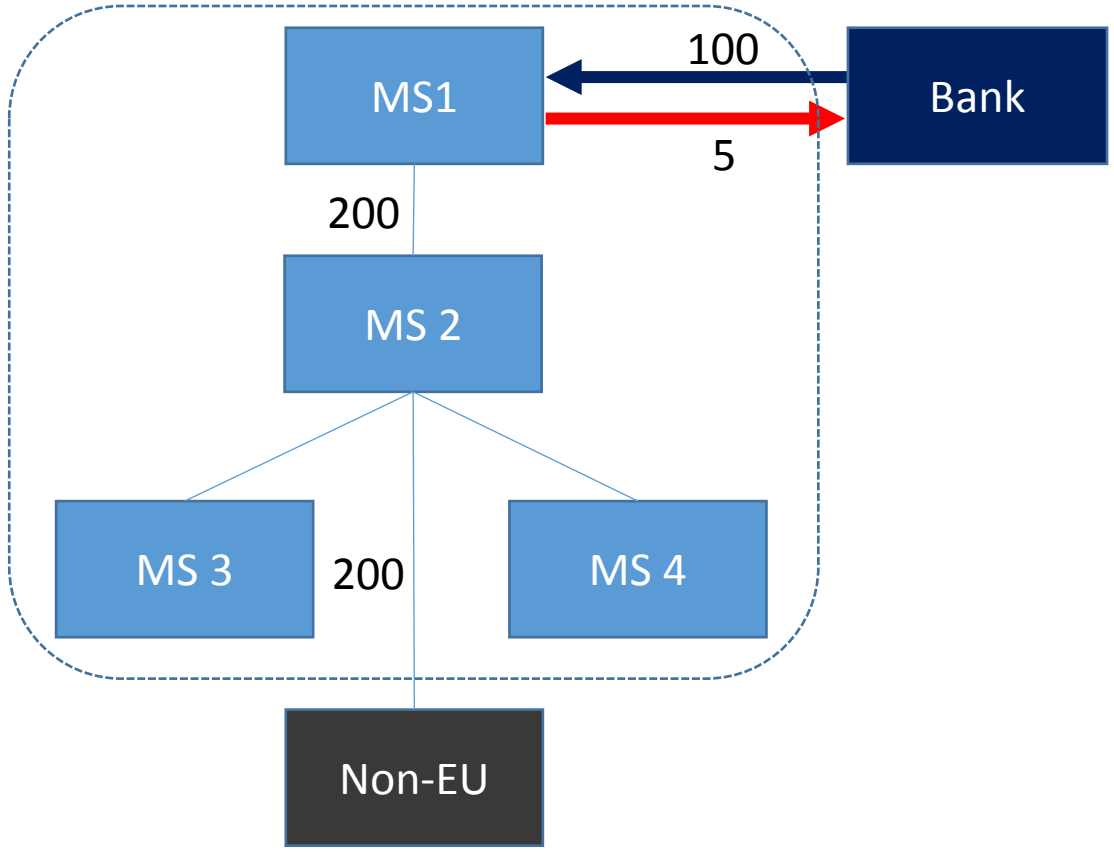
$$\text{Share A} = \left(\frac{1}{3} \frac{\text{Sales}^{A}}{\text{Sales}^{Group}} + \frac{1}{3} \left(\frac{1}{2} \frac{\text{Payroll}^{A}}{\text{Payroll}^{Group}} + \frac{1}{2} \frac{\text{No of employees}^{A}}{\text{No of employees}^{Group}} \right) + \frac{1}{3} \frac{\text{Assets}^{A}}{\text{Assets}^{Group}} \right) * \text{Con'd Tax Base}$$

CCCTB-Group as Single entity

- Full consolidation
- No withholding and source taxation.
- Full integration non-100% participations.
- Status of self-generated intangible assets.
- Application interest limitation rule of art 13 CCTB.

According to art 12g CCTB expenses incurred by a company for the purpose of deriving income that is exempt shall be non-deductible.

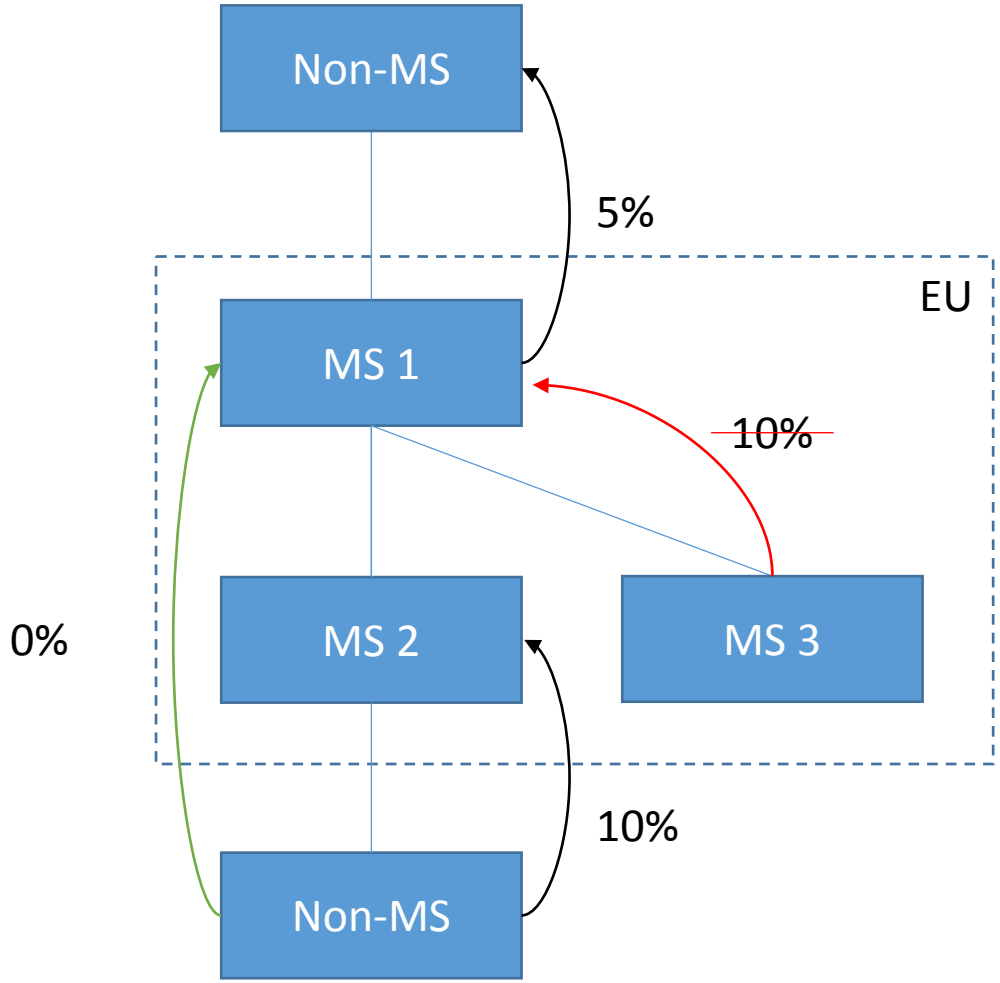
- Profit distributions
- Disposal of shares
- PE income



Withholding Tax

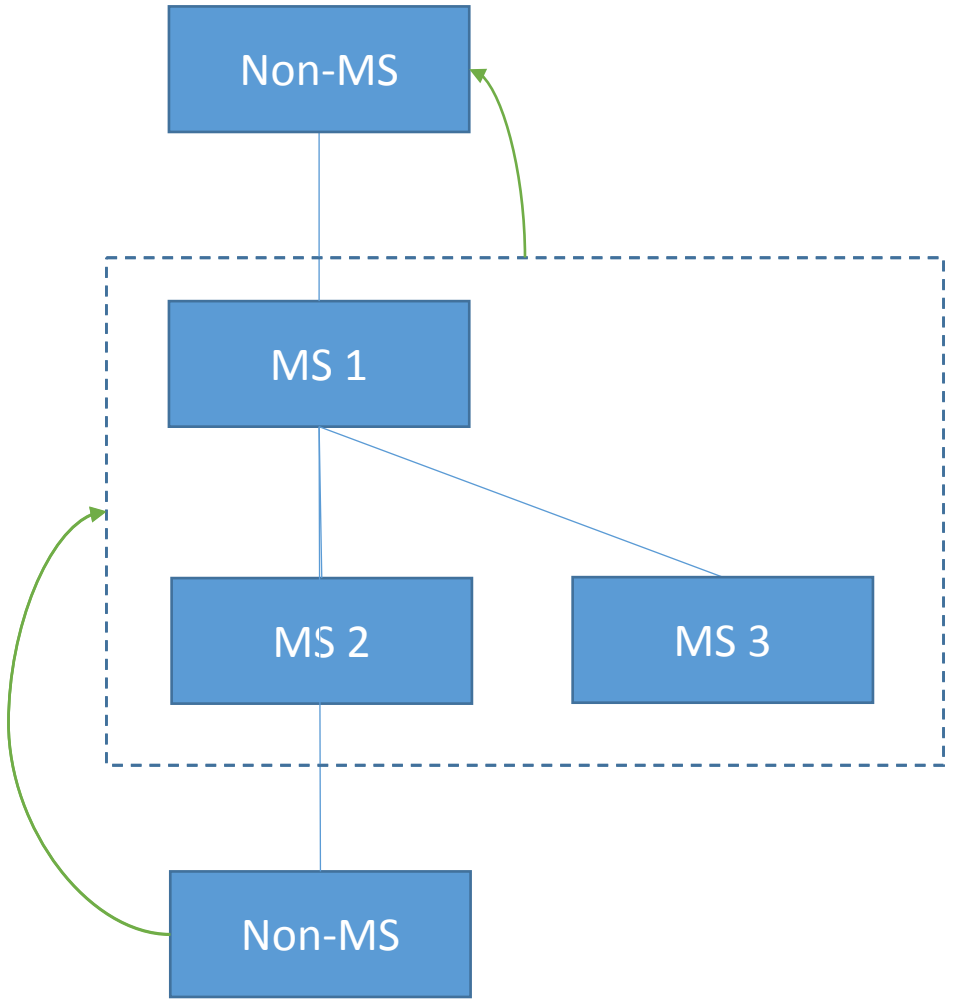
Corporate Income Tax rate	
MS 1	15%
MS 2	20%
MS 3	30%

Allocation tax base	
MS 1	60%
MS 2	15%
MS 3	25%



Single entity approach

One tax treaty for CCCTB-group



Treaty shopping

- General anti-abuse rule art 6. ATAD I and art. 58 CCTB

- Principal purpose test in tax treaties
  - Obtaining benefit is principle purpose
  - Unless it reflects a genuine economic activity