

LLM Programme International and European Legal Studies
International and European Tax Law

2. Double Taxation

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Case study

- A, a US individual, wants to make business in Poland. However, he is not familiar with the Polish market, therefore he cooperates with his German friend B and they establish a German company C, which invests in Poland by acquiring shares in the Polish company D.

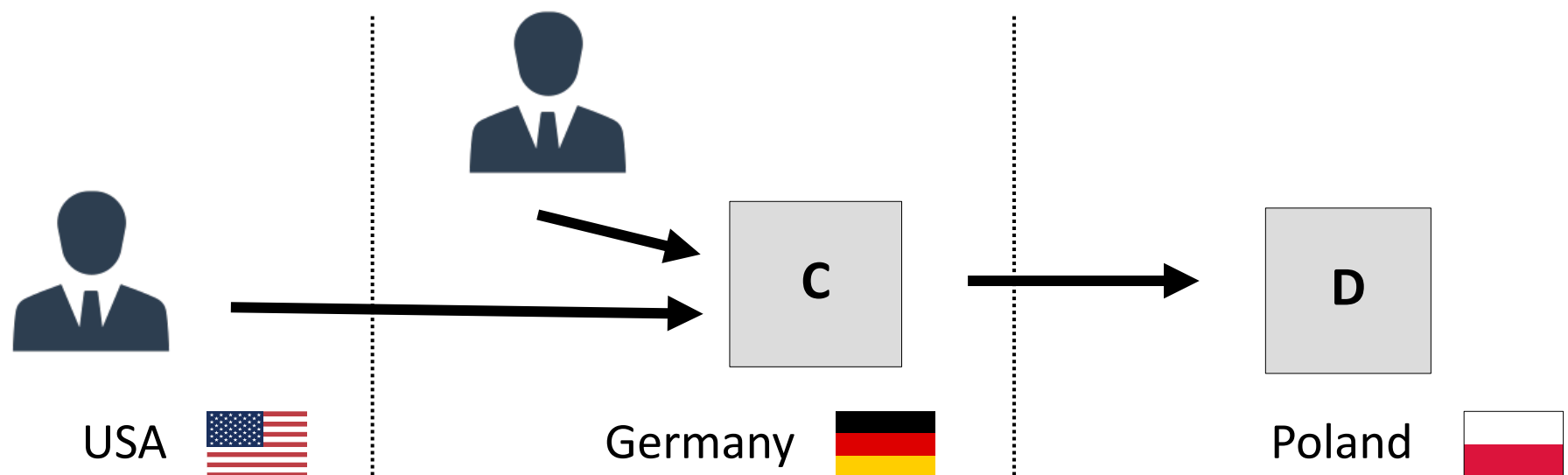
A is concerned about minimizing the tax burden and asks you whether there is a risk of double taxation.

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Case study

- A, a US individual, wants to make business in Poland. However, he is not familiar with the Polish market, therefore he cooperates with his German friend B and they establish a German company C, which invests in Poland by acquiring shares in the Polish company D.

A is concerned about minimizing the tax burden and asks you whether there is a risk of double taxation.



Fiscal jurisdiction

- National tax claims
- Justification: "Connecting factors"
 - ◆ Subjective: taxable person
 - Residence
 - Nationality
 - ◆ Objective: taxable event
 - Source of income
 - Location of real property
- Personal link: residence taxation
- Territorial link: source taxation

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Fiscal jurisdiction

Residence link



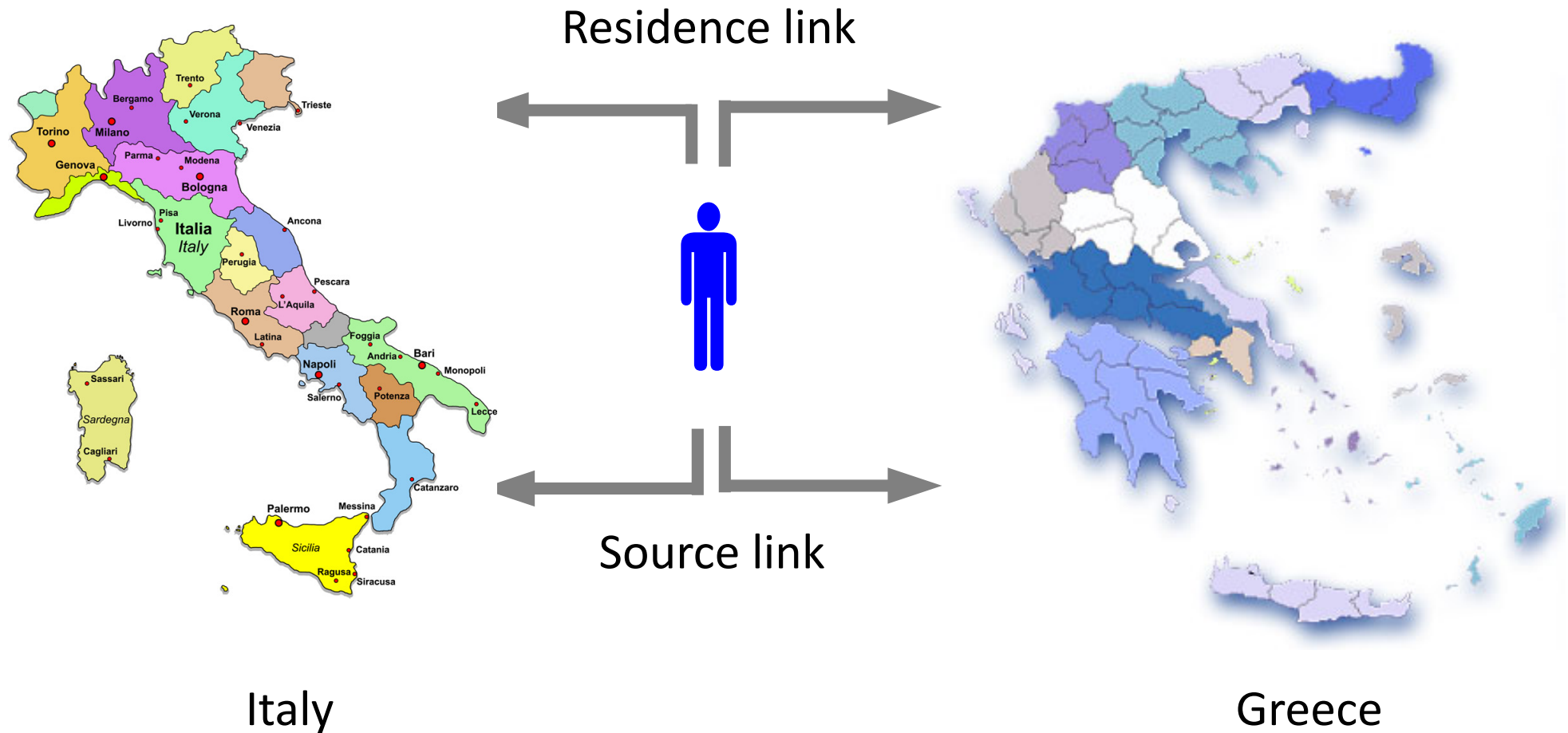
Source link



Greece

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Fiscal jurisdiction



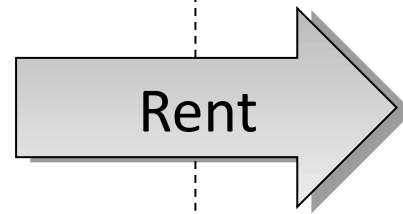
Double Taxation

- Personal and territorial links apply simultaneously
- Conflict → Double taxation
- Double taxation
 - ◆ From a legal point of view
 - Not forbidden
 - Except when excessive/confiscatory
 - ◆ From an economic point of view
 - Harmful
 - To be eliminated or mitigated

Residence vs Source State



Real estate



Owner

State A

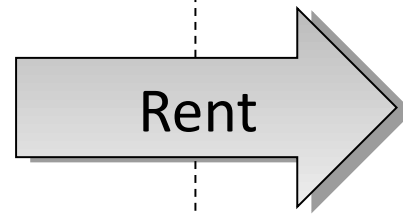
State B

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Residence vs Source State



Real estate



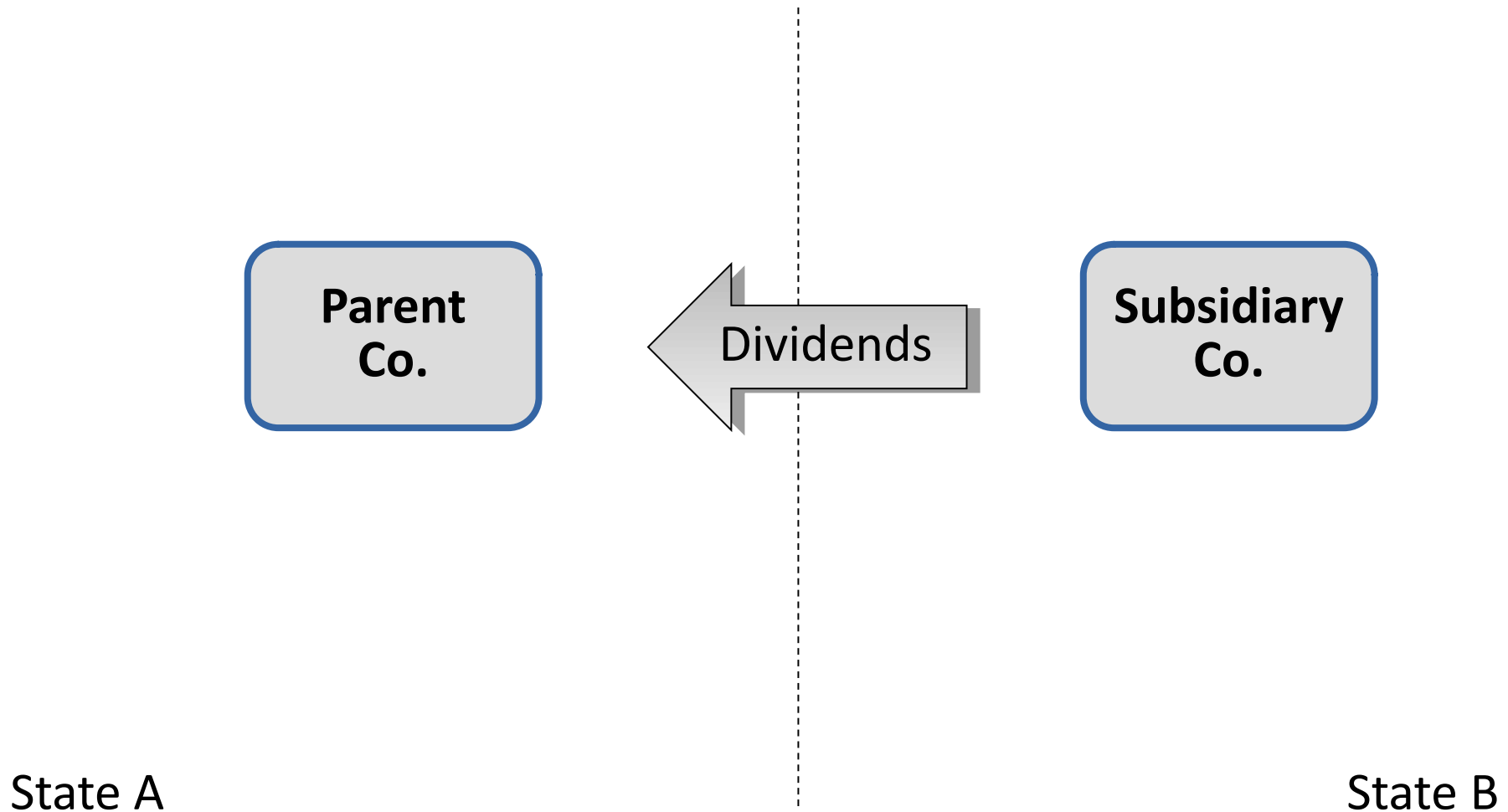
Owner

Source State

Residence State

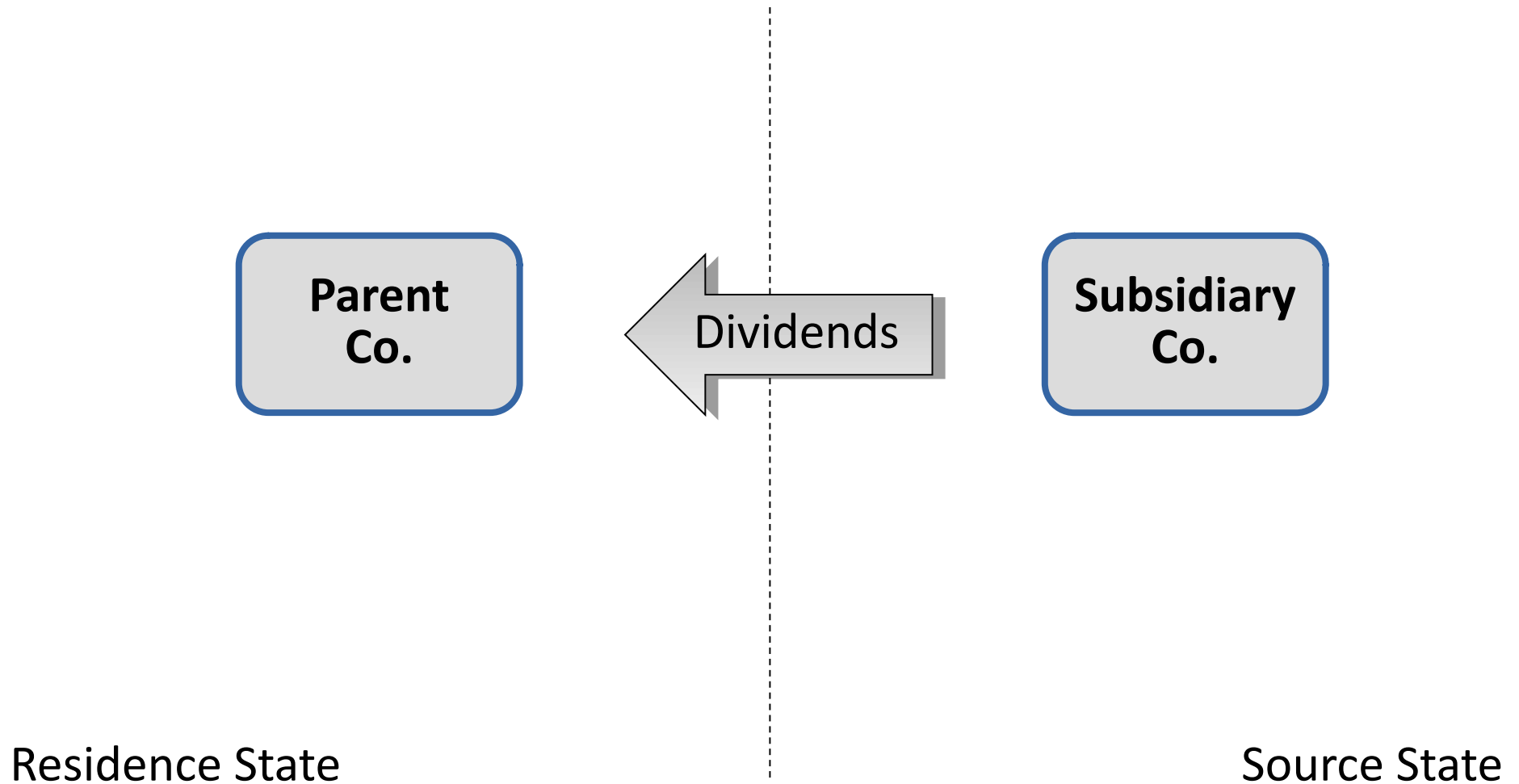
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Residence vs Source State



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Residence vs Source State



Double Taxation Types

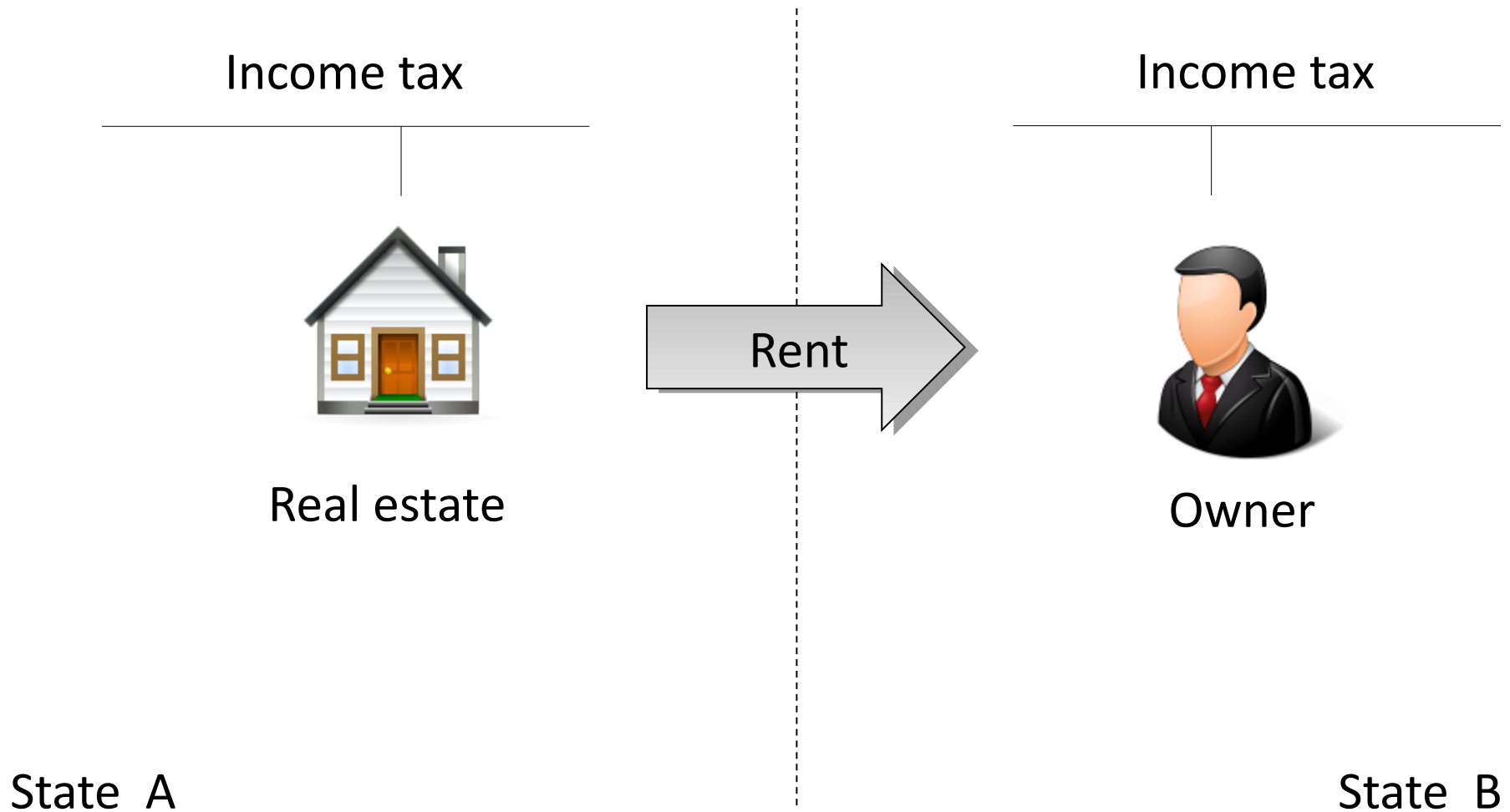
- Juridical double taxation
 - ◆ imposition of comparable taxes by two (or more) tax jurisdictions on the same taxpayer in respect of the same taxable income or capital
- Economic double taxation
 - ◆ imposition of comparable taxes by two (or more) tax jurisdictions on different taxpayers in respect of the same taxable income.
- Double taxation may be
 - ◆ Domestic or
 - ◆ International

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Double Taxation Types

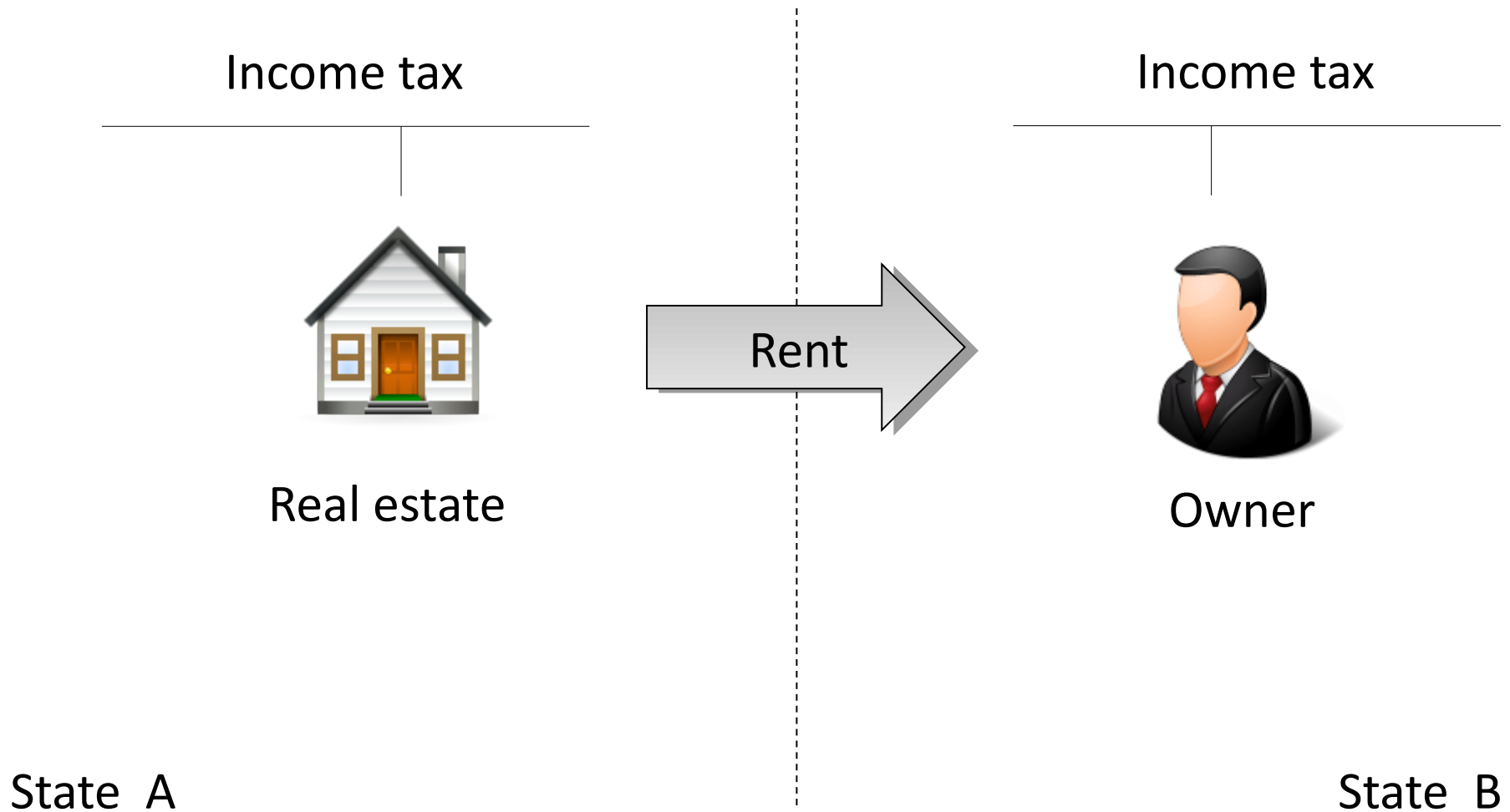
Characteristics	Juridical	Economic
Same taxpayer	✓	✗
Same taxable income or capital	✓	✓
Same period	✓	✓
Comparable taxes	✓	✓

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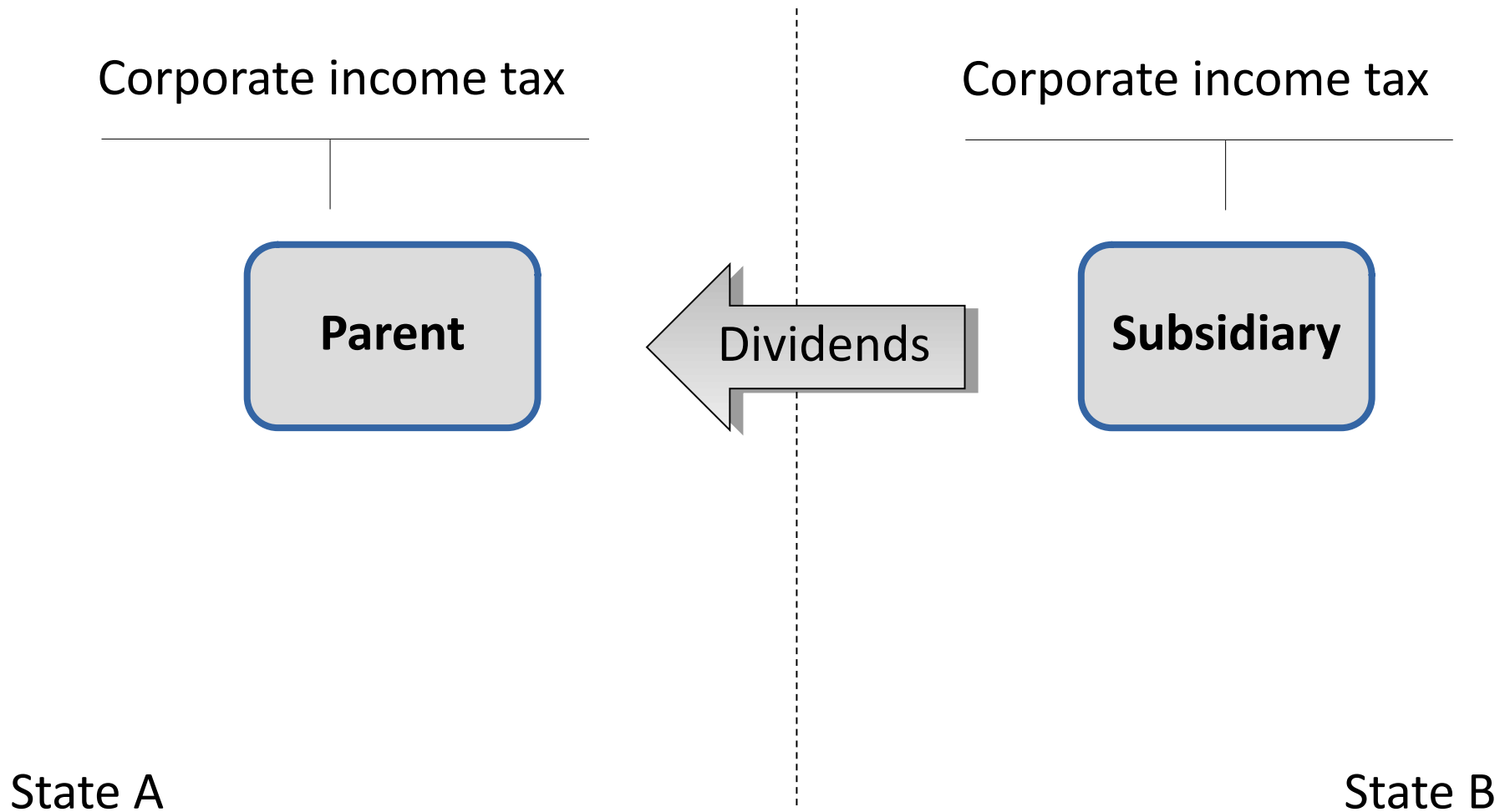


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Juridical double taxation

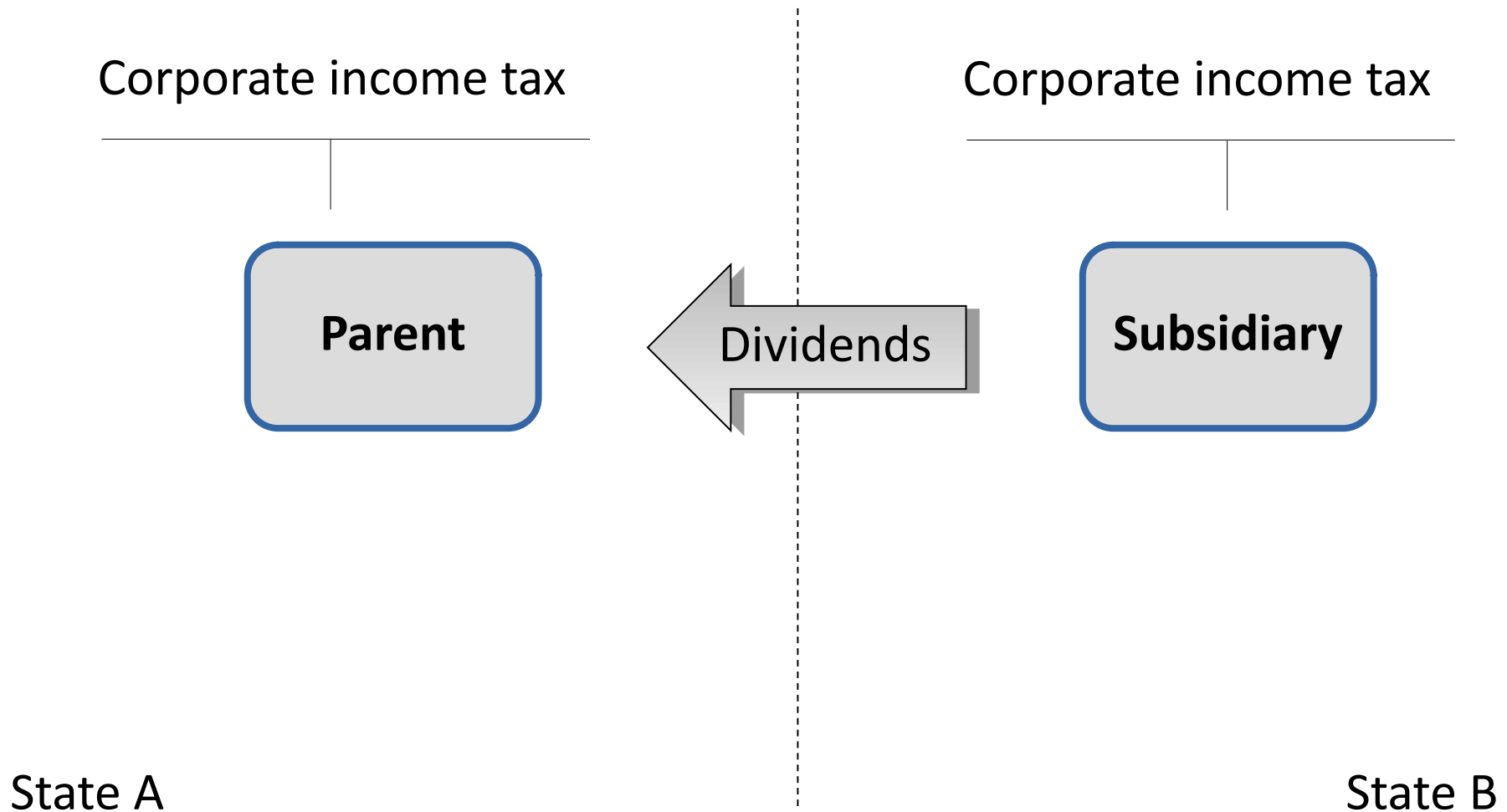


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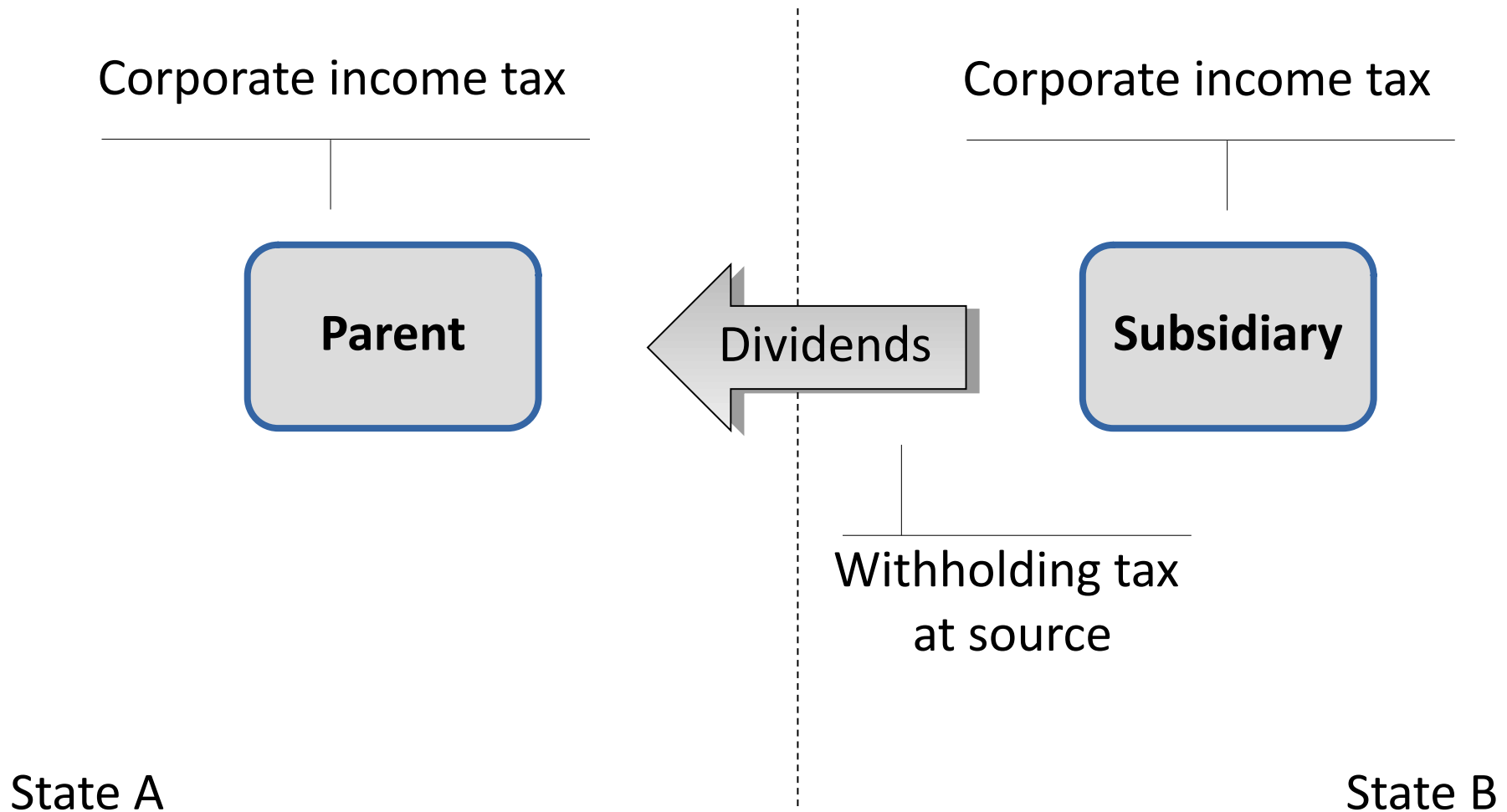


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Economic double taxation

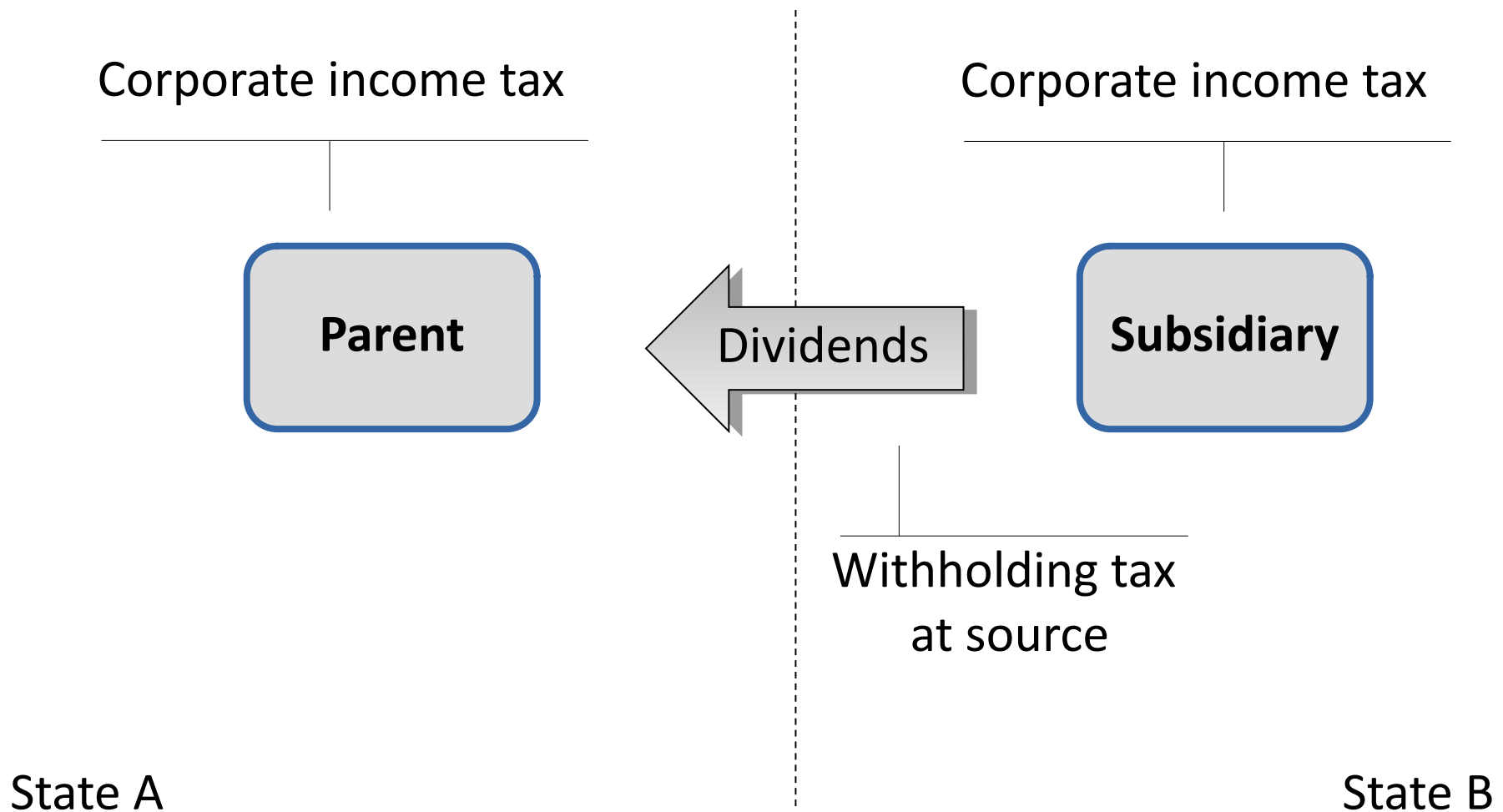


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Juridical and economic double (triple) taxation



Methods for the relief of double taxation

- Exemption method
 - ◆ Residents are taxed only on income earned from domestic sources, while foreign-source income is not subject to tax.
- Credit method
 - ◆ The residence state taxes its residents on their worldwide income but provides a credit for taxes paid in the source state
- The relief is provided by the residence state

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Source state

Residence state

Total tax



International and European Tax Law

Source state

Residence state

Total tax

**Double
taxation**

Tax 80

Tax 100

Tax 180



International and European Tax Law

	Source state	Residence state	Total tax
Double taxation	Tax 80	Tax 100	Tax 180
Exemption method	Tax 80	Tax 100	Tax 80

International and European Tax Law

	Source state	Residence state	Total tax
Double taxation	Tax 80	Tax 100	Tax 180
Exemption method	Tax 80	Tax 100	Tax 80
Credit method	Tax 80	Tax $100-80=20$	Tax 100

Measures for the relief of double taxation

- Unilateral: Domestic provisions
- Bilateral: Tax treaties
- Multilateral: Multilateral International Conventions

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Example: Source state – Rate 20%
Residence state – Rate 30%

		<i>Exemption</i>	<i>Credit</i>
Source state	Dividend	100	100
	Tax withholding	20	20
	Dividend received	80	80
Residence state	Taxable income	-	100
	Corporate income tax	0	(30-20=) 10
	Total	80	70

International and European Tax Law

Example: Source state – Rate 30%
Residence state – Rate 20%

		<i>Exemption</i>	<i>Credit</i>
Source state	Dividend	100	100
	Tax withholding	30	30
	Dividend received	70	70
Residence state	Taxable income	-	100
	Corporate income tax	0	(20-30=) 0
	Total	70	70

Tax treaties

- Terminology
 - ◆ English: Tax treaties, Double Taxation Conventions (DTC)
 - ◆ French: conventions fiscales, conventions bilaterales de double imposition (CDI),
 - ◆ German: Doppelbesteuerungsabkommen (DBA)

Tax treaties

- Legal nature: public international law conventions
- They are based on certain Models
 - ◆ OECD Model
 - ◆ UN Model
 - ◆ US Model
- Contracting states are free to negotiate the provisions according to their needs
- Legal nature of Models
 - ◆ They are not conventions
 - ◆ No binding force
 - ◆ May be treated as
 - Means of interpretation?
 - Customary law?
 - Soft law?

Tax treaties

- Objective
 - ◆ Elimination of double taxation
 - ◆ Prevention of tax evasion and avoidance
- Subject
 - ◆ Taxes on income
 - ◆ Taxes on capital
 - ◆ Taxes on estates and inheritances
 - ◆ Taxes on gifts

The system of tax treaties

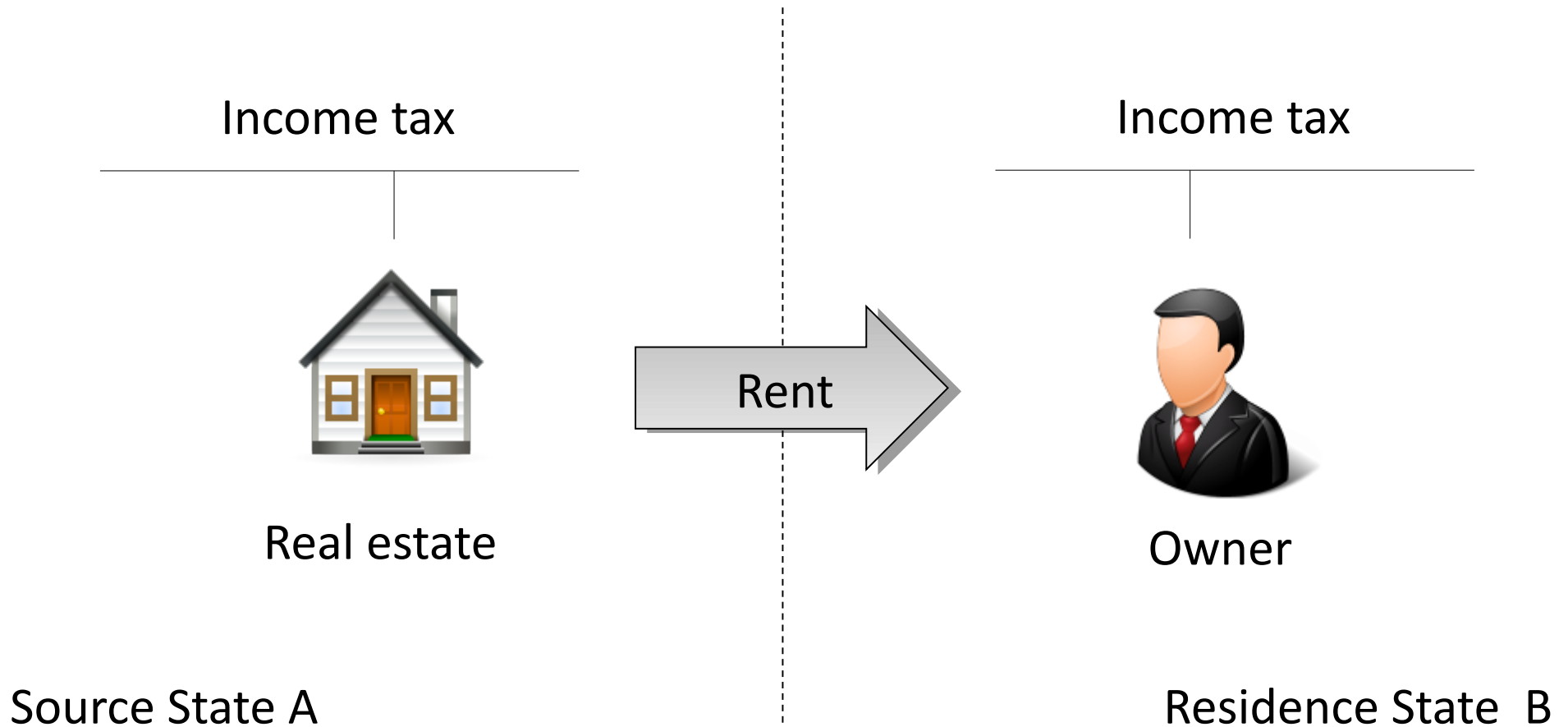
- The treaties
 - ◆ do not impose tax
 - ◆ do not split up the taxable base
- The treaties allocate the taxing rights
 - ◆ Only to the source state → no double taxation
 - ◆ Only to the residence state → no double taxation
 - ◆ To both states → double taxation

The system of tax treaties

- In case of allocation to both states
 - ◆ The source state may withhold tax
 - Source tax may, but is not obliged to withhold tax
 - The tax treaty provides for the maximum tax rate
 - If domestic rate is higher, then the treaty rate prevails
 - If domestic rate is lower, then the domestic rate is applicable
 - ◆ The residence state must take the tax withheld into account
 - Exemption method or
 - Credit method

International and European Tax Law

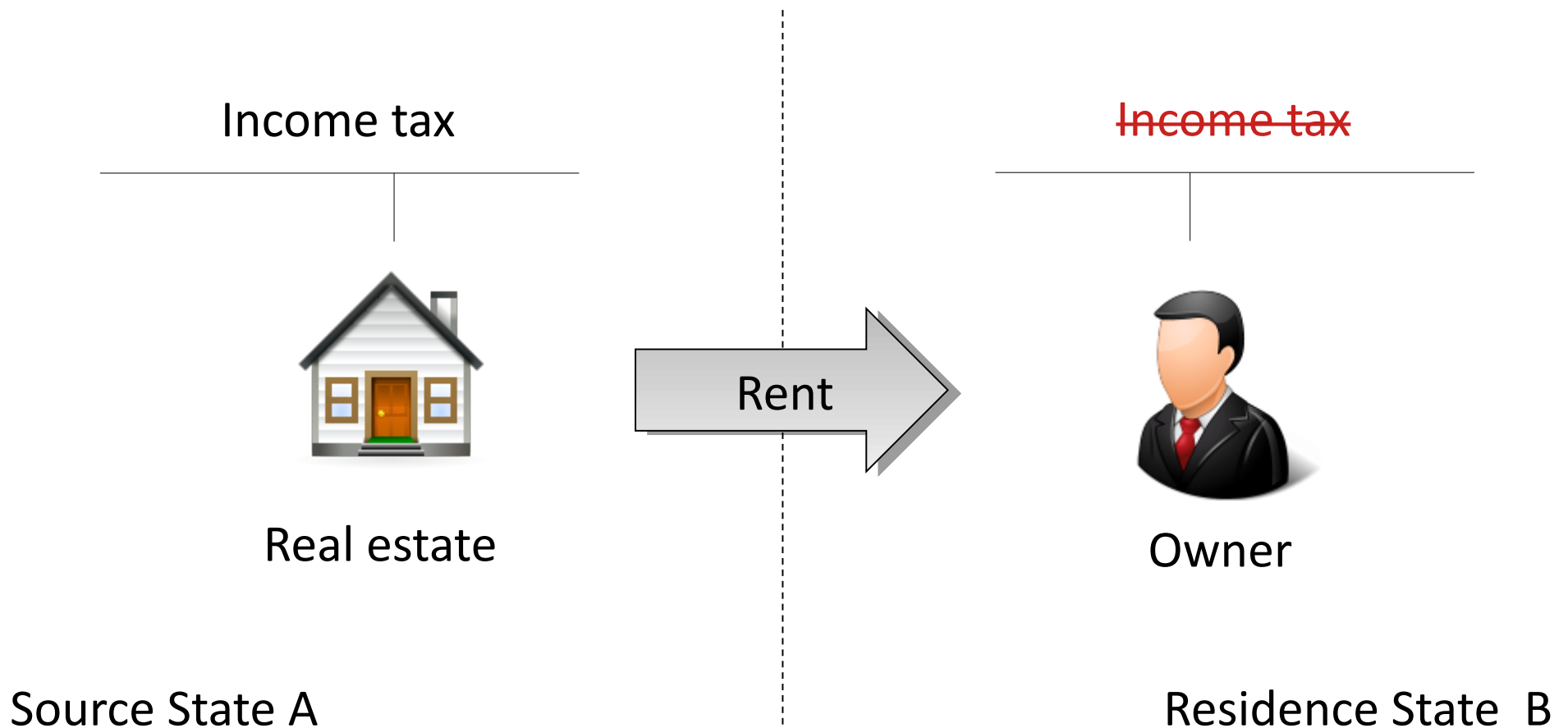
Juridical double taxation



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Elimination of juridical double taxation

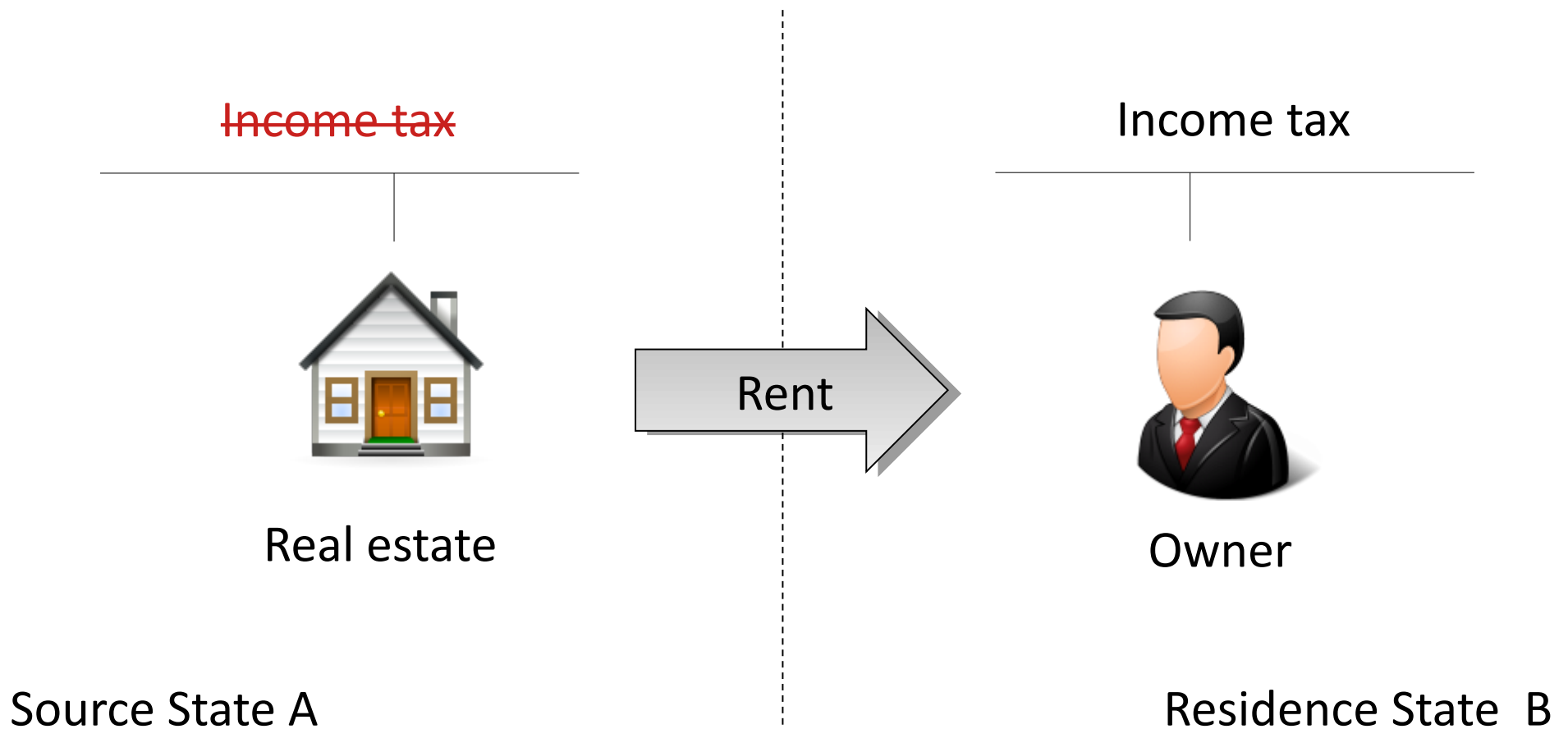
Only source taxation



International and European Tax Law

Elimination of juridical double taxation

Only residence taxation



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Elimination of juridical double taxation

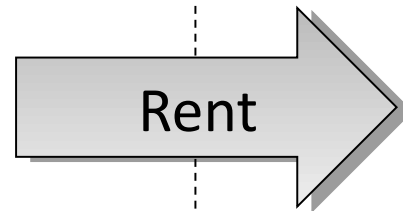
Allocation to both states

Income tax withholding



Real estate

Source State A



Exemption or credit



Owner

Residence State B

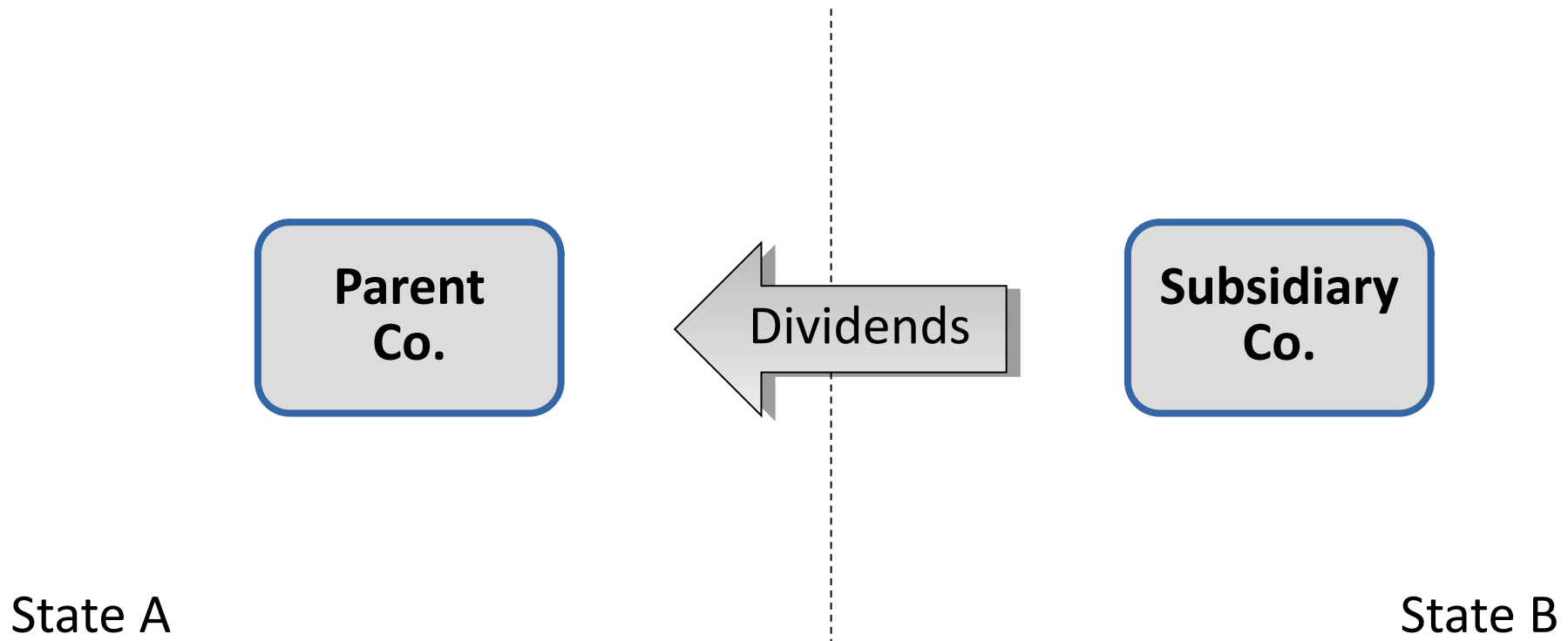
The system of tax treaties

- Note:
 - ◆ Relief from double taxation is the duty of the residence state
 - ◆ The state with the taxing rights is not obliged to tax

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The system of tax treaties

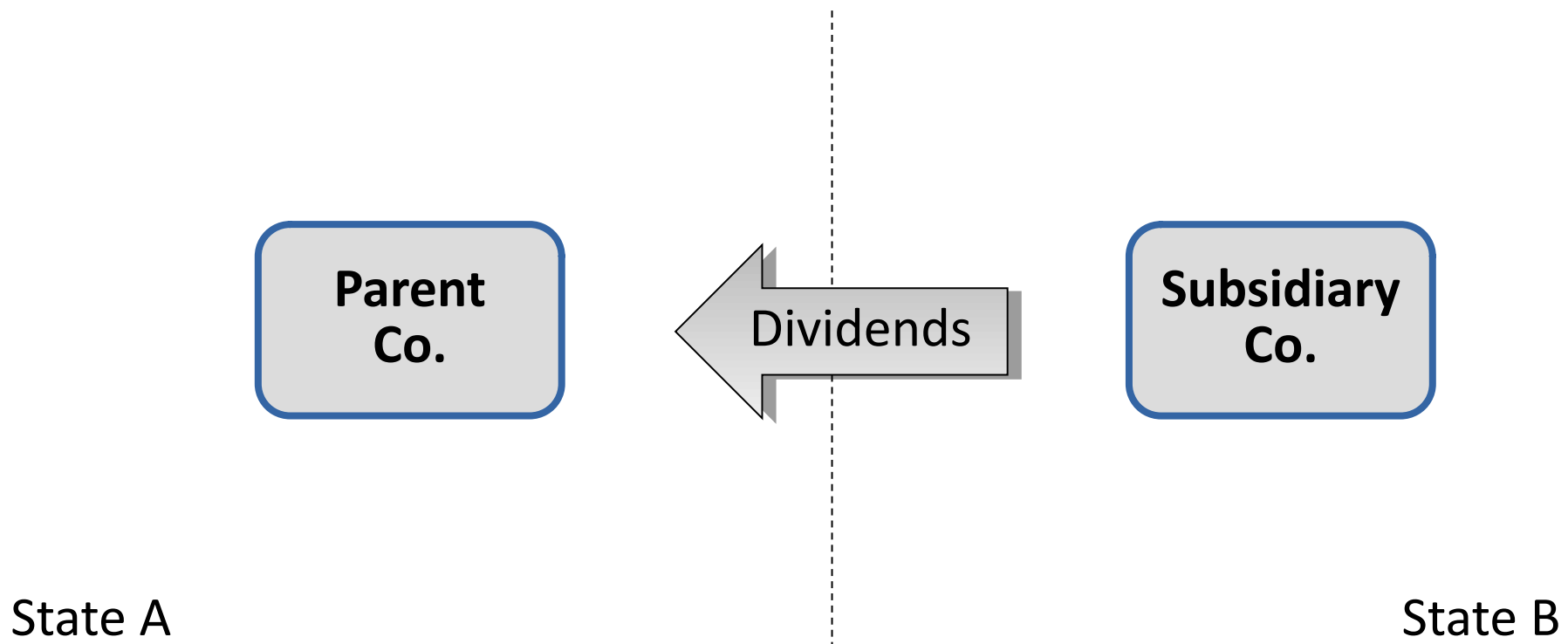
- Examples
 - ◆ Source state: Regular tax rate 10% - treaty rate 5% → ?



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The system of tax treaties

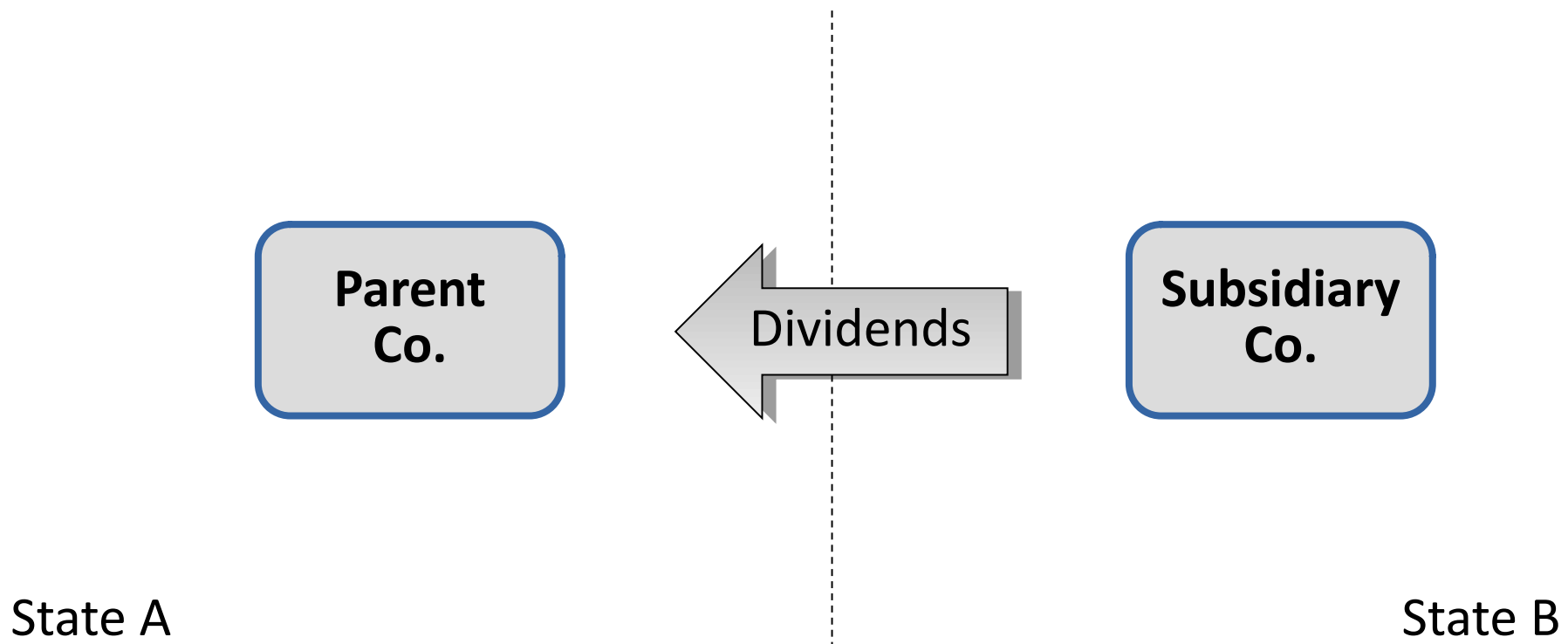
- Examples
 - ◆ Source state: Regular tax rate 10% - treaty rate 5% → **Applicable 5%**



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The system of tax treaties

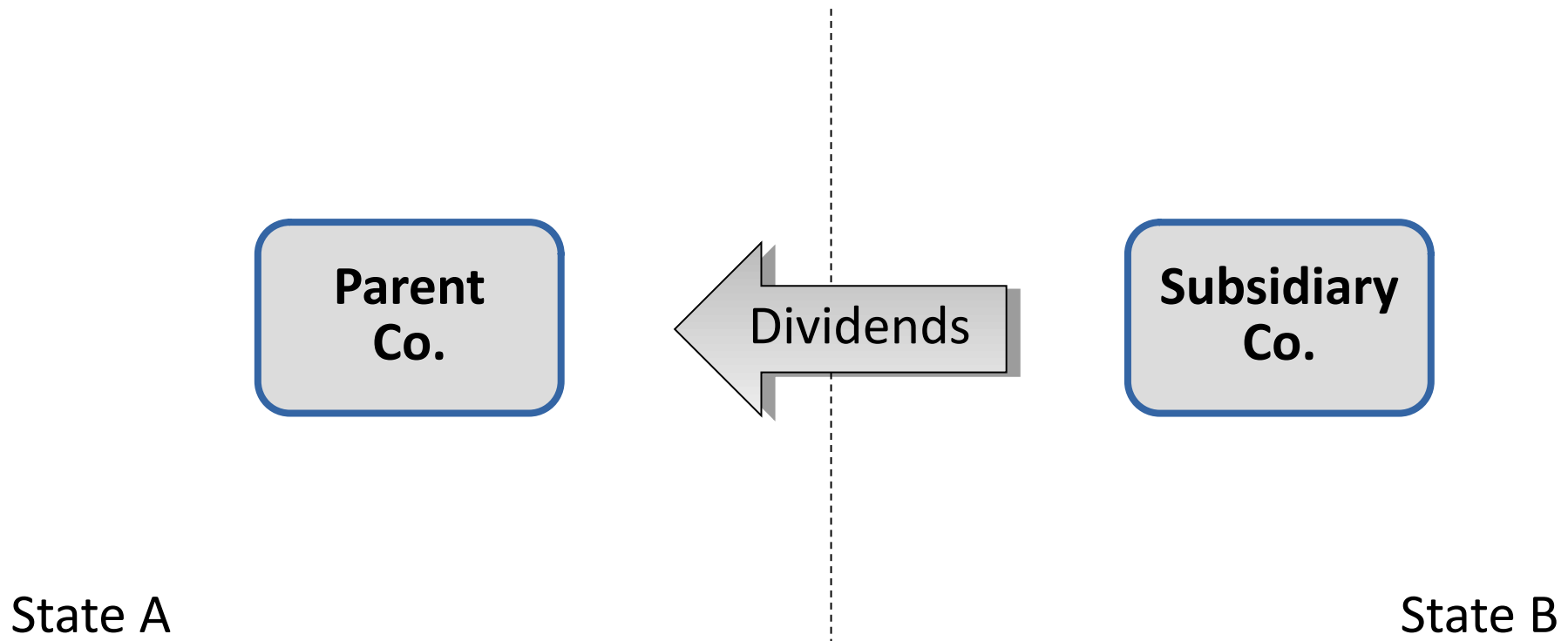
- Examples
 - ◆ Source state: Regular tax rate 10% - treaty rate 5% → **Applicable 5%**
 - ◆ Source state: Regular tax rate 10% - treaty rate 15% → ?



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The system of tax treaties

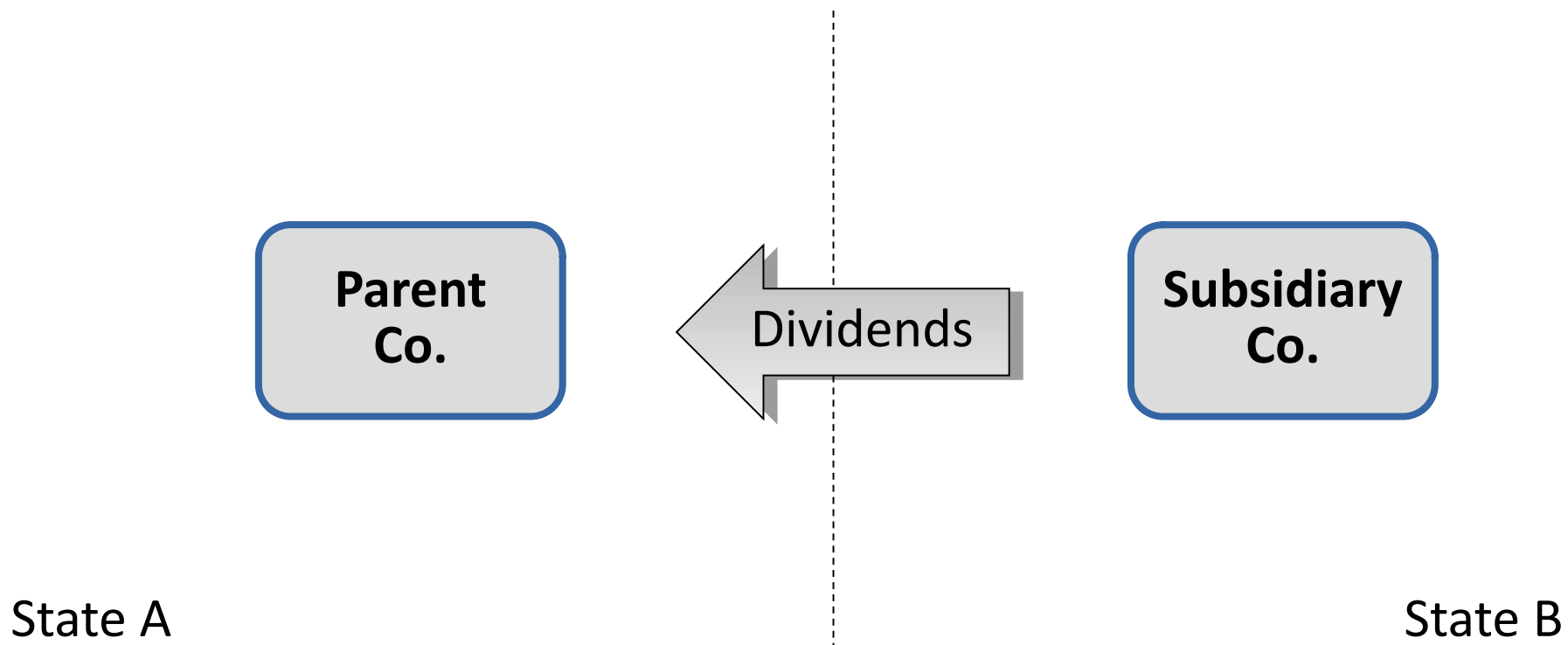
- Examples
 - ◆ Source state: Regular tax rate 10% - treaty rate 5% → **Applicable 5%**
 - ◆ Source state: Regular tax rate 10% - treaty rate 15% → **Applicable 10%**



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The system of tax treaties

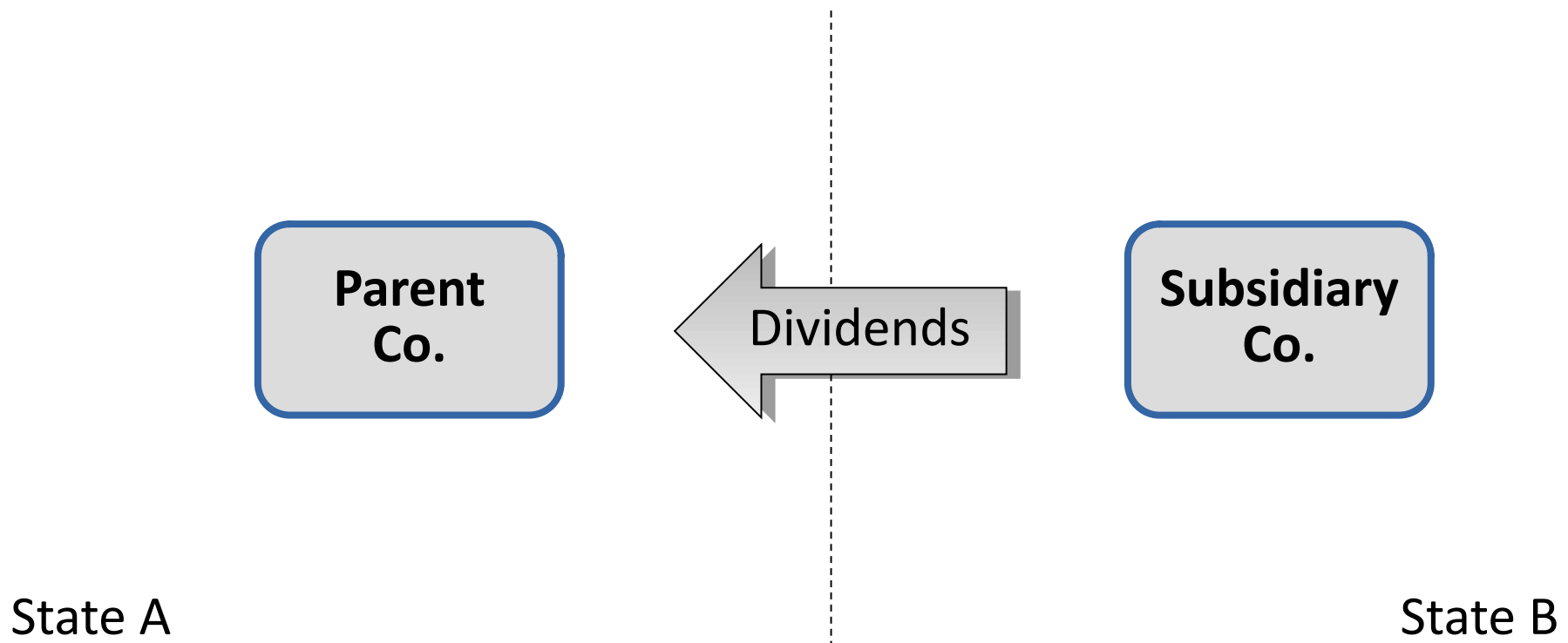
- Examples
 - ◆ Source state: Regular tax rate 10% - treaty rate 5% → **Applicable 5%**
 - ◆ Source state: Regular tax rate 10% - treaty rate 15% → **Applicable 10%**
 - ◆ Source state: Exemption - treaty rate 15% → ?



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The system of tax treaties

- Examples
 - ◆ Source state: Regular tax rate 10% - treaty rate 5% → **Applicable 5%**
 - ◆ Source state: Regular tax rate 10% - treaty rate 15% → **Applicable 10%**
 - ◆ Source state: Exemption - treaty rate 15% → **Applicable: Exemption**



The system of tax treaties

- Scope of the Convention: Art. 1-2
- Definitions: Art. 3-5
- Taxation of Income: Art. 6-21
- Taxation of Capital: Art. 22
- Methods for Elimination of Double Taxation: Art. 23A-23B
- Special provisions: Art. 24-29
- Final provisions: Art. 30-31

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Allocation of tax rights

Taxation	Source state	Residence state
Income of a permanent establishment	✓	✓
Business income		✓
Income from immovable property	✓	✓
International shipping and air transport		✓
Dividends	✓	✓
Interest	✓	✓
Royalties	✓	✓
Capital gains	✓	✓
Pensions		✓

European law

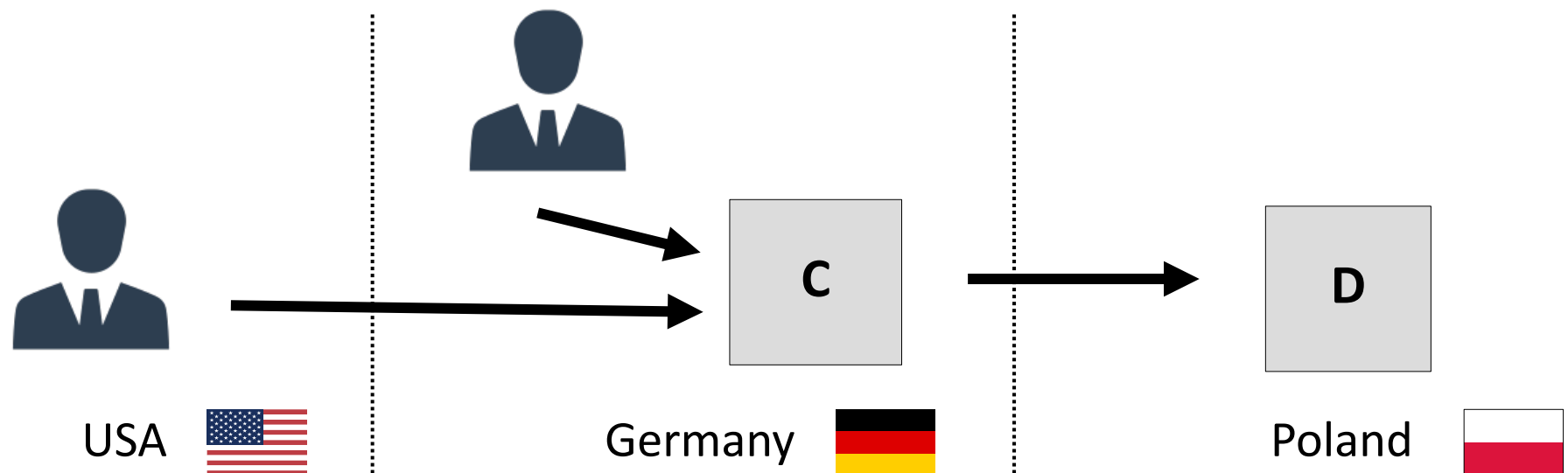
- Parent-Subsidiary Directive (1990/2011)
 - ◆ Elimination of double taxation of cross-border dividends
 - ◆ Scope of application: parent-subsidiaries
 - ◆ Elimination of withholding taxes
 - ◆ Residence state obliged to apply exemption or credit method

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