

# LLM Programme International and European Legal Studies

## International and European Tax Law

### 2. Double Taxation

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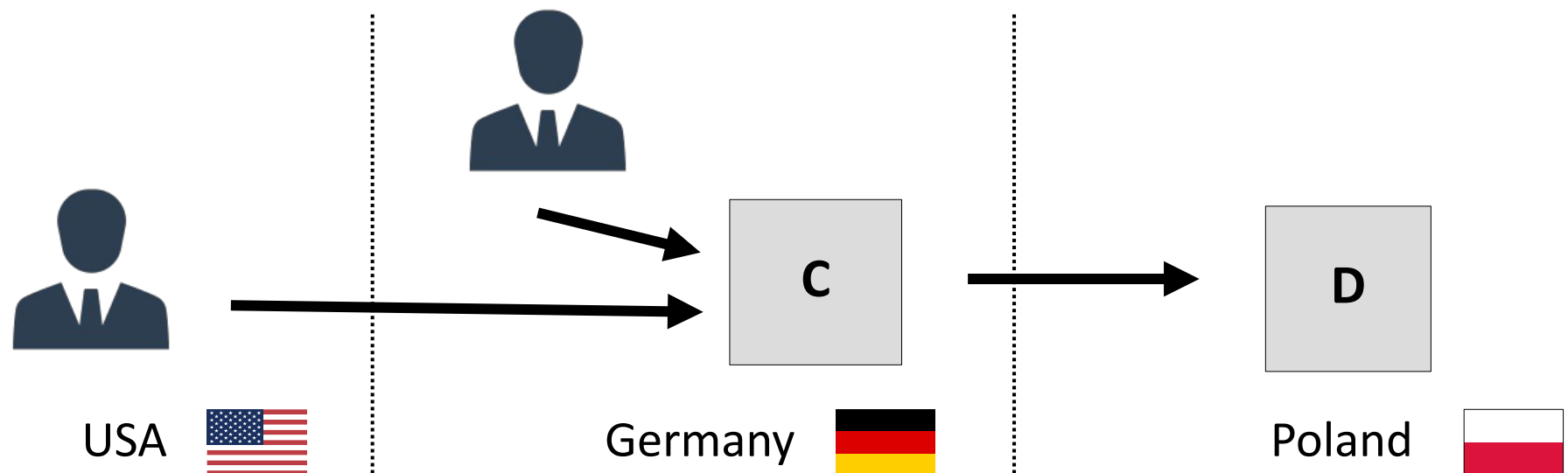
16 October 2025

# International and European Tax Law

## 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

# International and European Tax Law

## Fiscal jurisdiction

Residence link



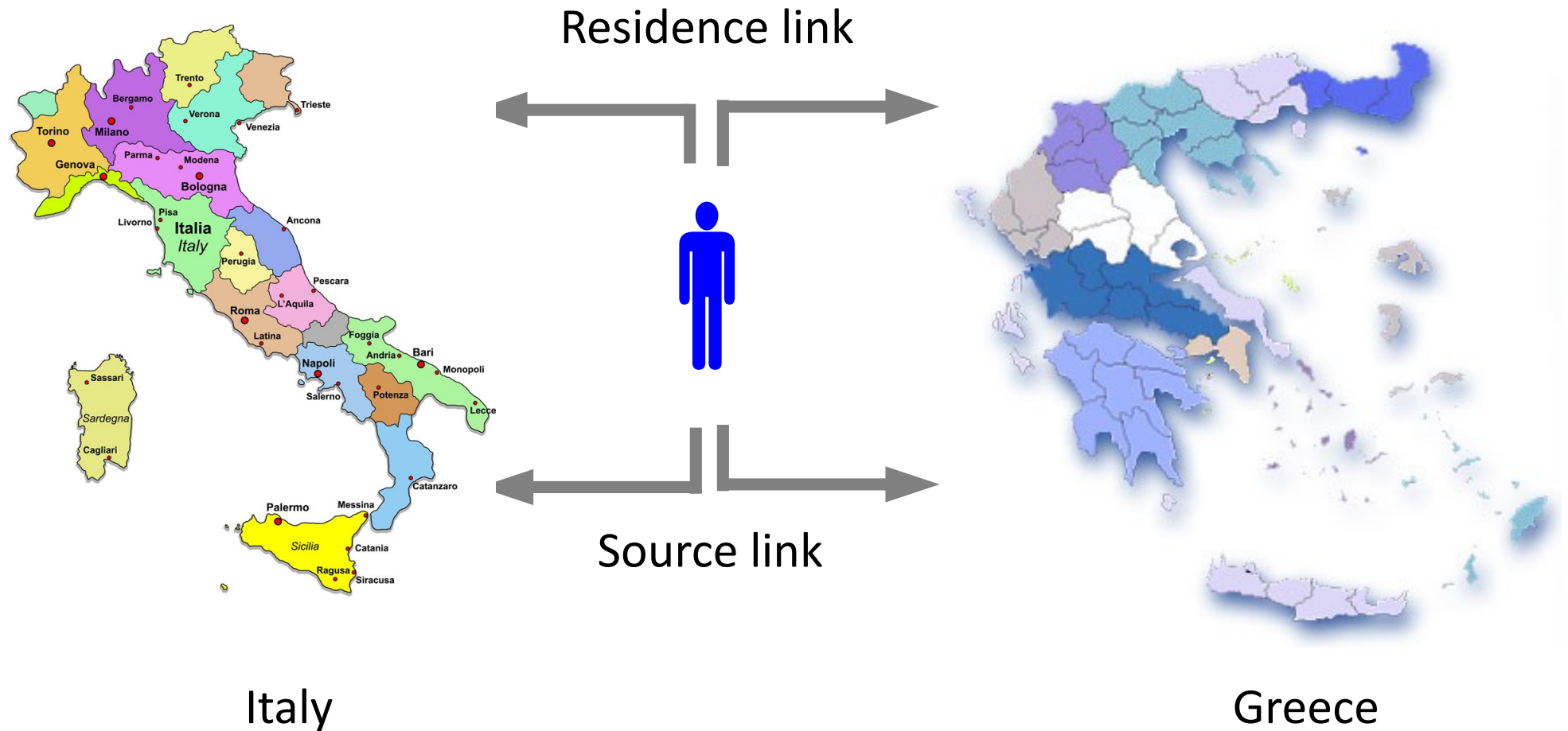
Source link



Greece

# International and European Tax Law

## Fiscal jurisdiction



## Double Taxation

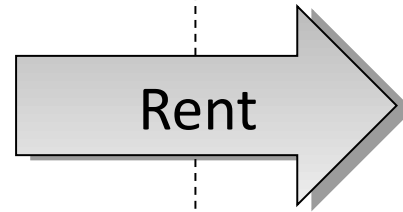
- Personal and territorial links apply simultaneously
- Conflict → Double taxation
- Double taxation
  - From a legal point of view
    - Not forbidden
    - Except when excessive/confiscatory
  - From an economic point of view
    - Harmful
    - To be eliminated or mitigated

# International and European Tax Law

## Residence vs Source State



Real estate



Owner

State A

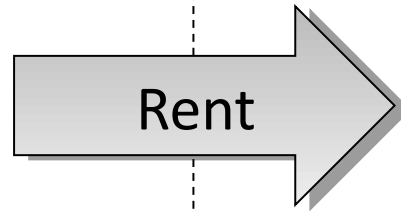
State B

# International and European Tax Law

## Residence vs Source State



Real estate



Owner

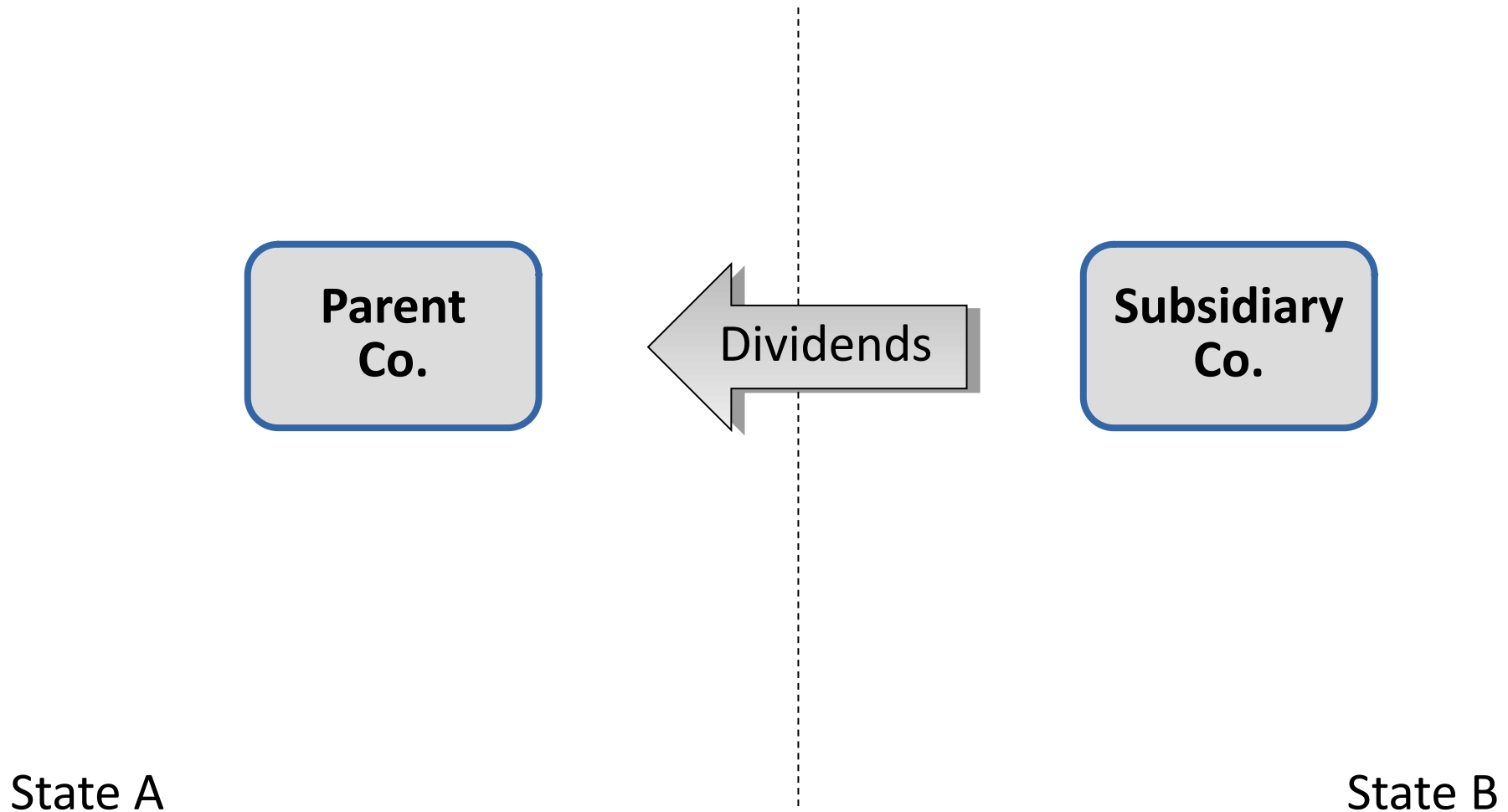
Source State

Residence State



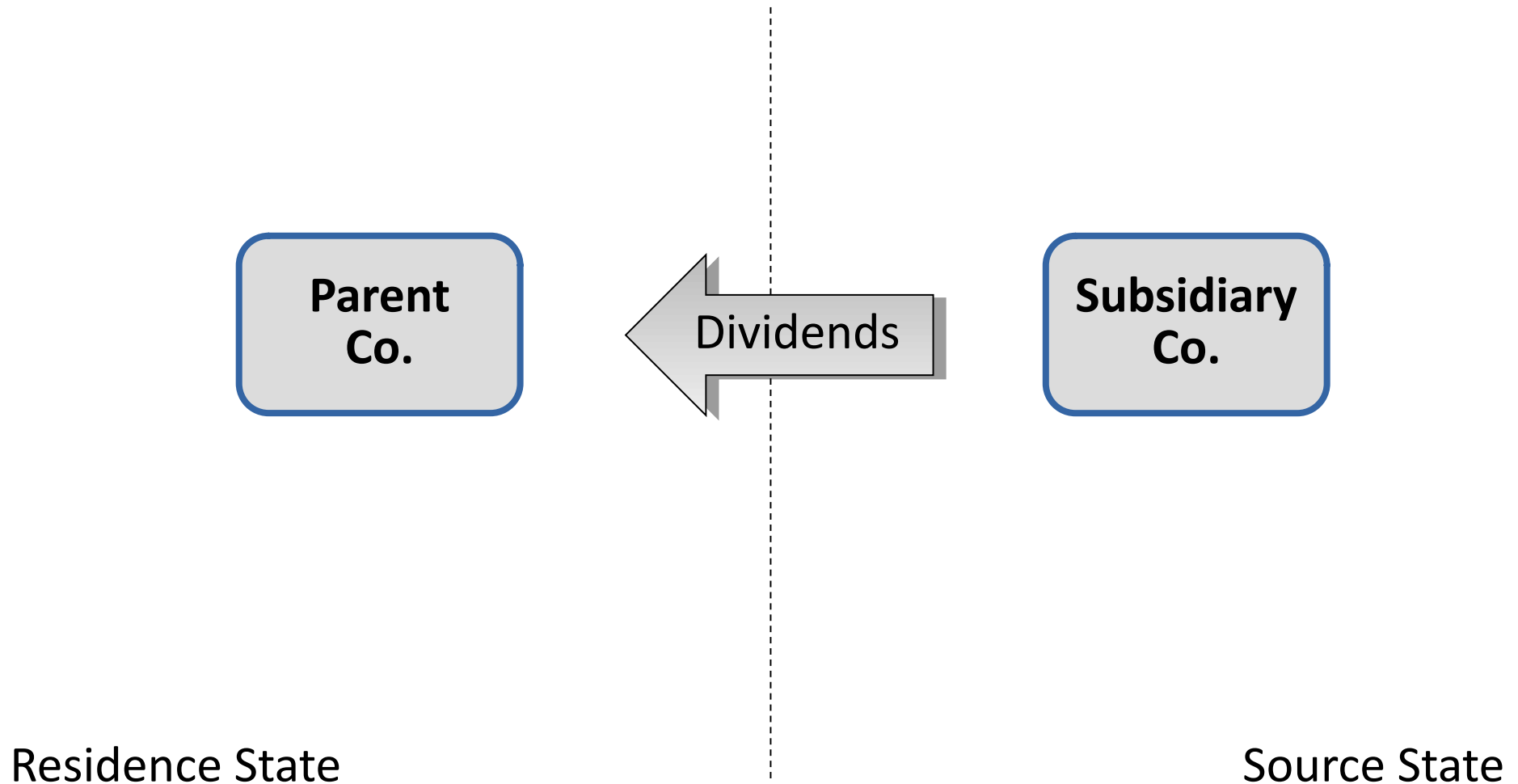
# International and European Tax Law

## Residence vs Source State



# International and European Tax Law

## Residence vs Source State



## Double Taxation Types

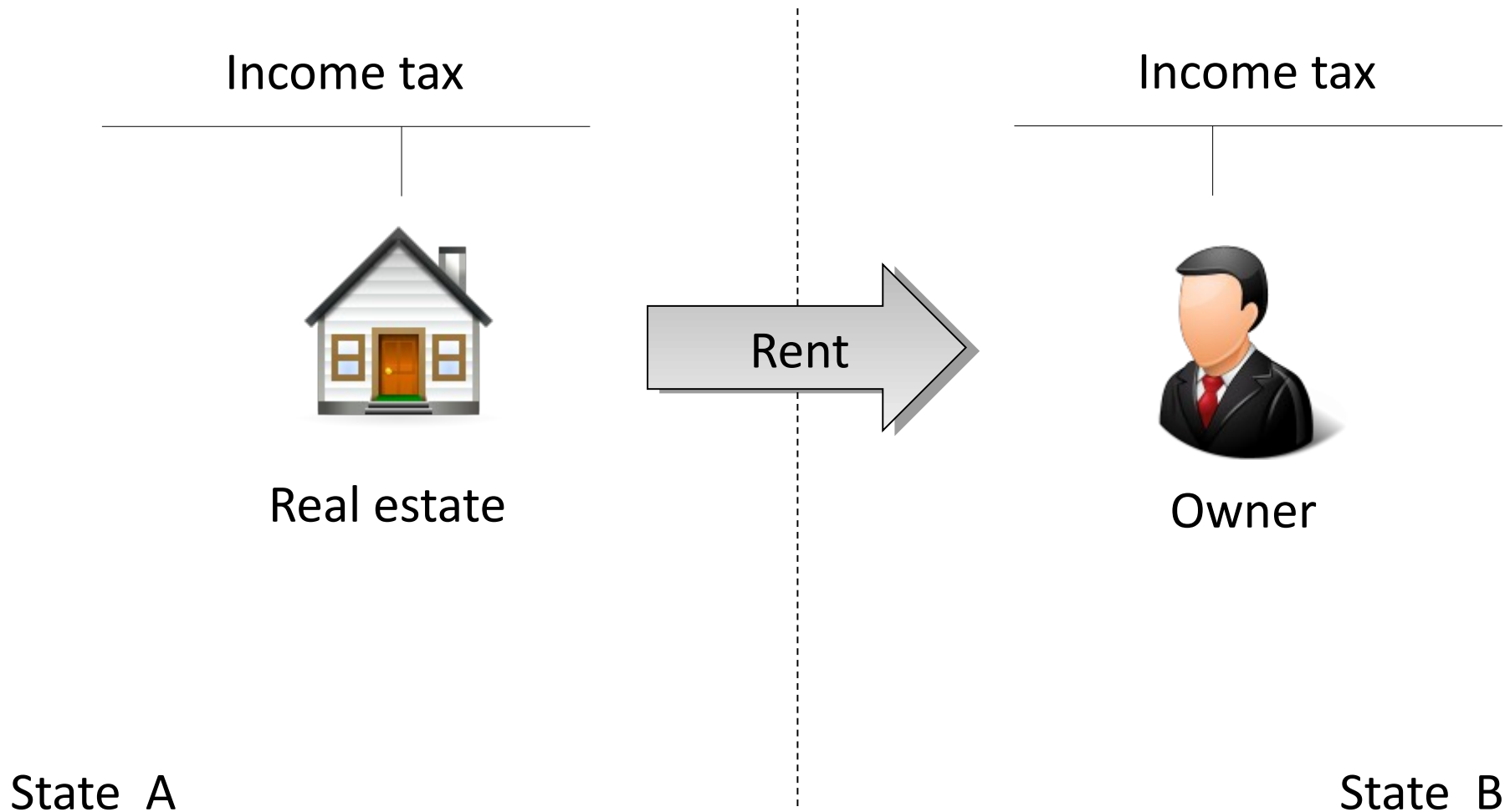
- Juridical double taxation
  - imposition of comparable taxes by two (or more) tax jurisdictions on the same taxpayer in respect of the same taxable income or capital
- Economic double taxation
  - imposition of comparable taxes by two (or more) tax jurisdictions on different taxpayers in respect of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

# International and European Tax Law

## Double Taxation Types

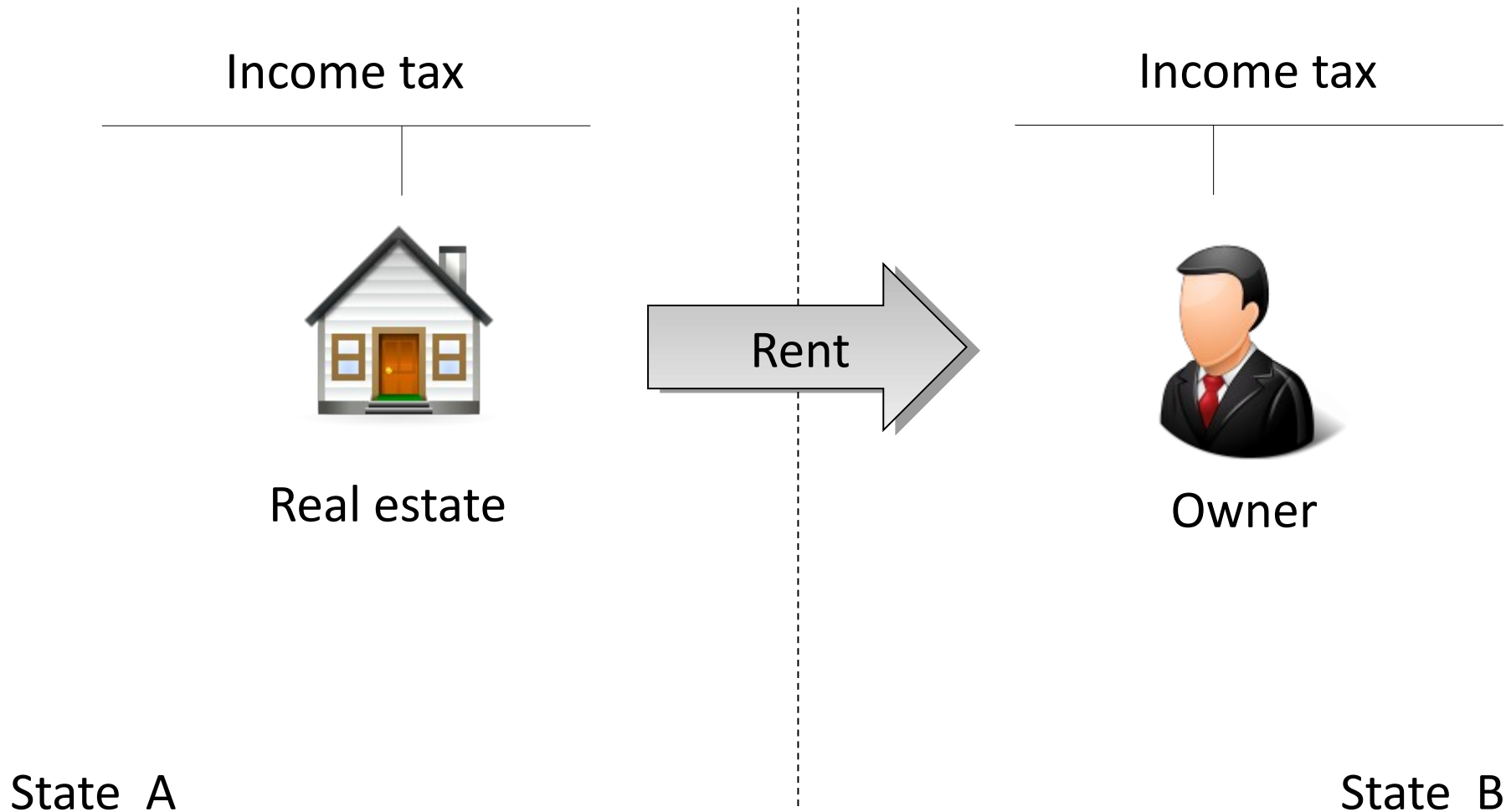
Characteristics	Juridical	Economic
Same taxpayer	✓	✗
Same taxable income or capital	✓	✓
Same period	✓	✓
Comparable taxes	✓	✓

# International and European Tax Law

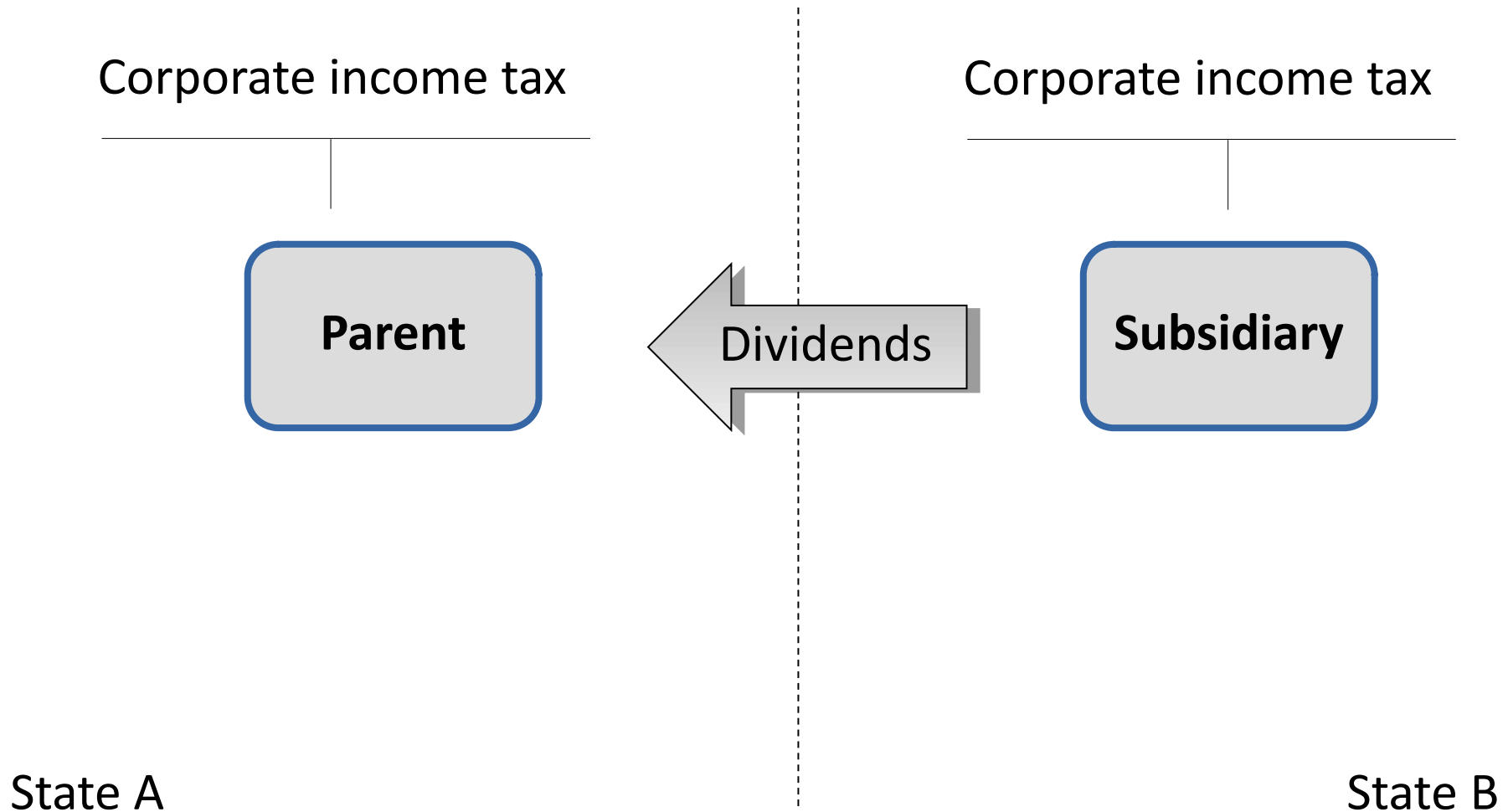


# International and European Tax Law

## Juridical double taxation

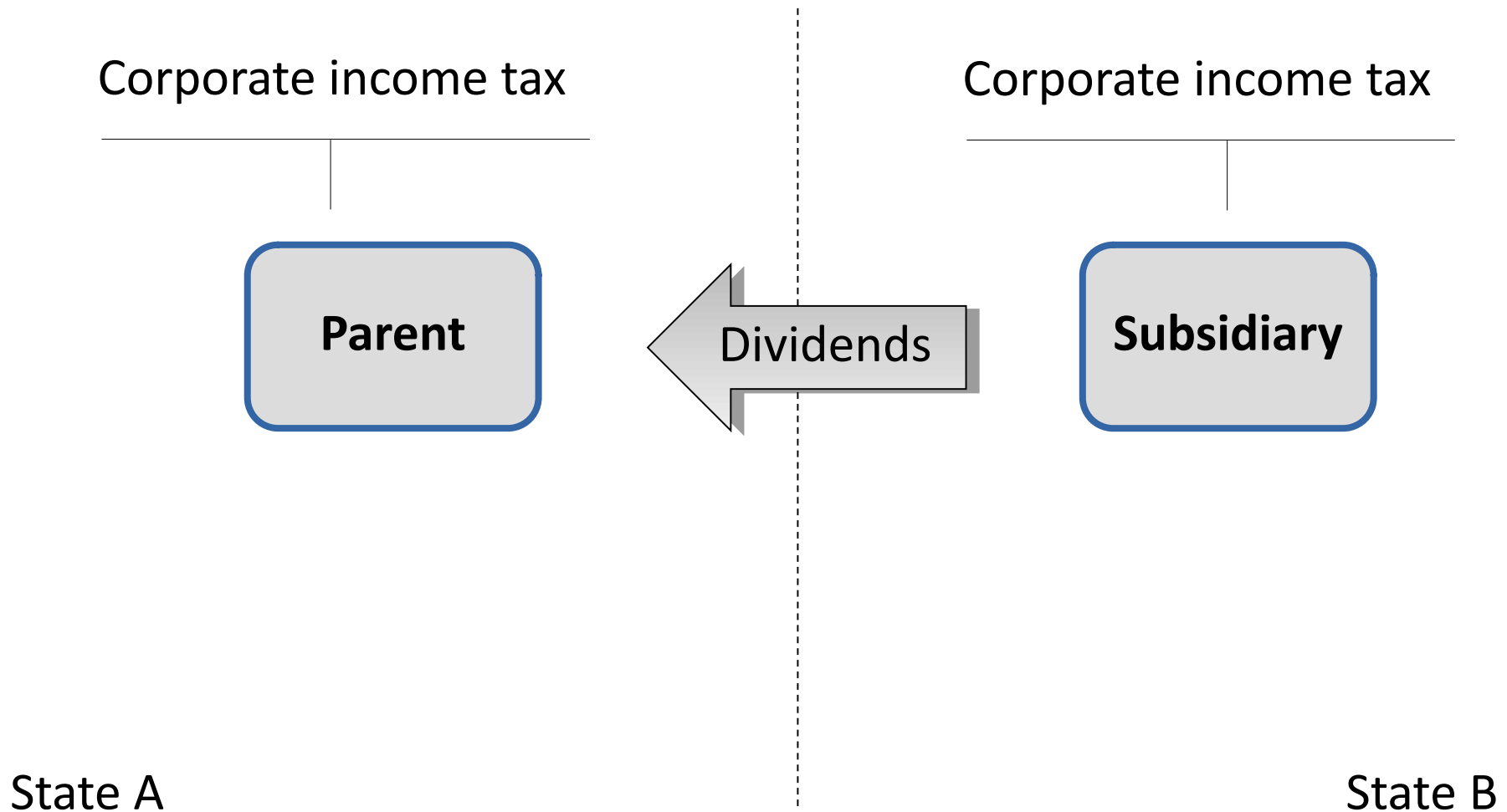


# International and European Tax Law



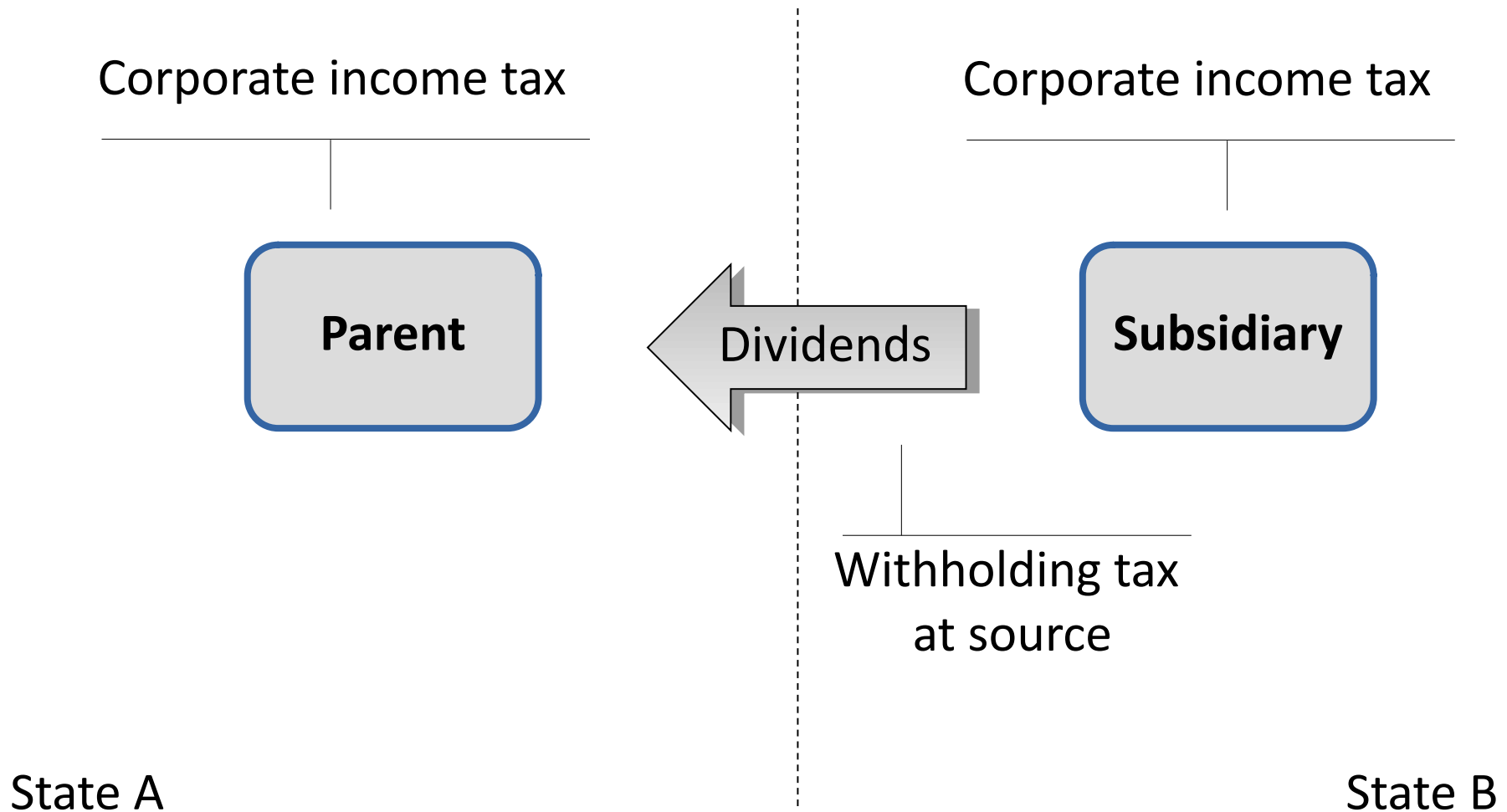
# International and European Tax Law

## Economic double taxation



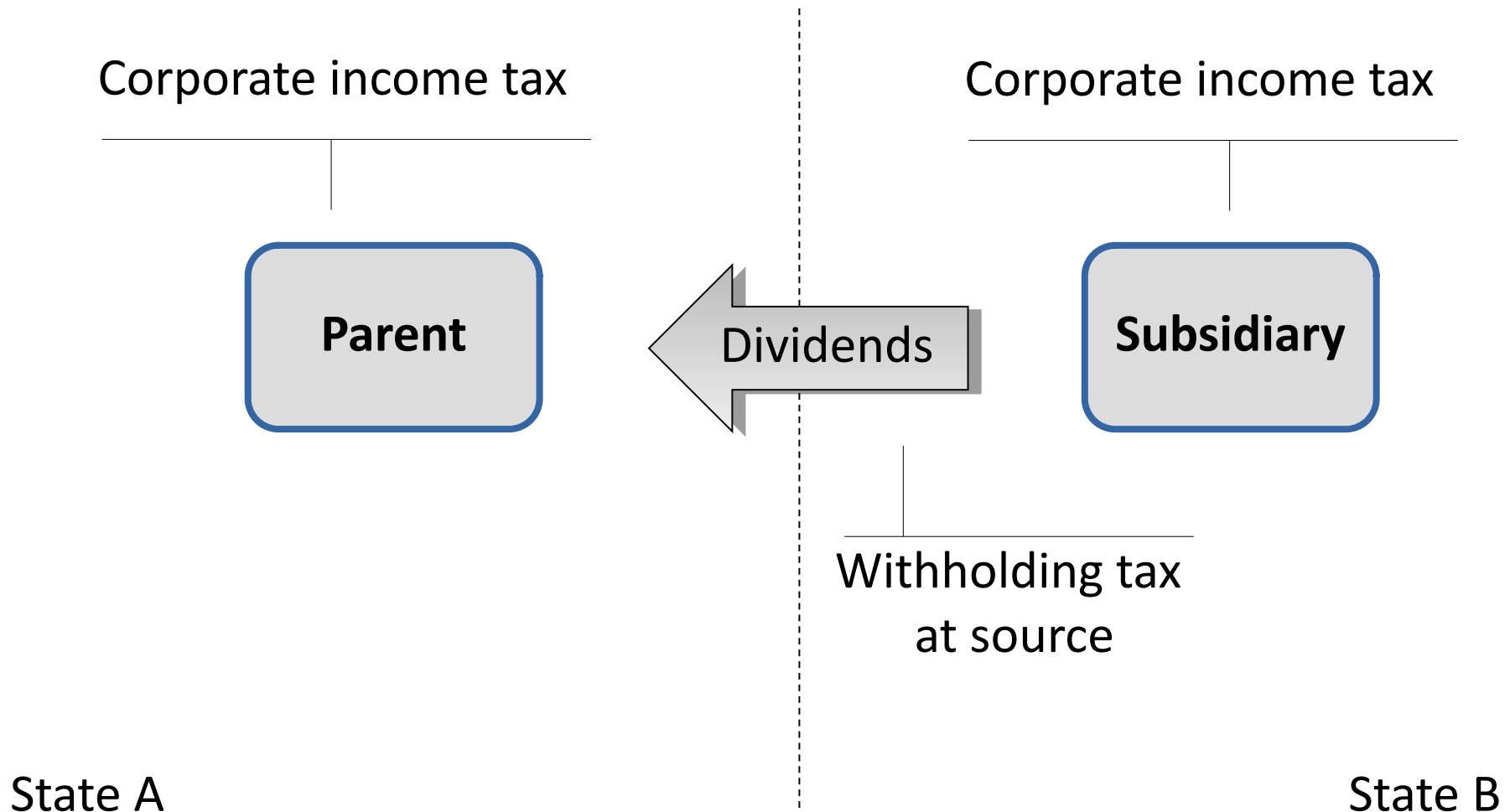


# International and European Tax Law



# International and European Tax Law

## 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

# International and European Tax Law

**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
<b>Double taxation</b>	Tax 80	Tax 100	Tax 180
<b>Exemption method</b>	Tax 80	<del>Tax 100</del>	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	<del>Tax 100</del>	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



# International and European Tax Law

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

		<i>Exemption</i>	<i>Credit</i>
<b>Source state</b>	Dividend	100	100
	Tax withholding	20	20
	Dividend received	80	80
<b>Residence state</b>	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>
<b>Source state</b>	Dividend	100	100
	Tax withholding	30	30
	Dividend received	70	70
<b>Residence state</b>	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 bilatérales 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

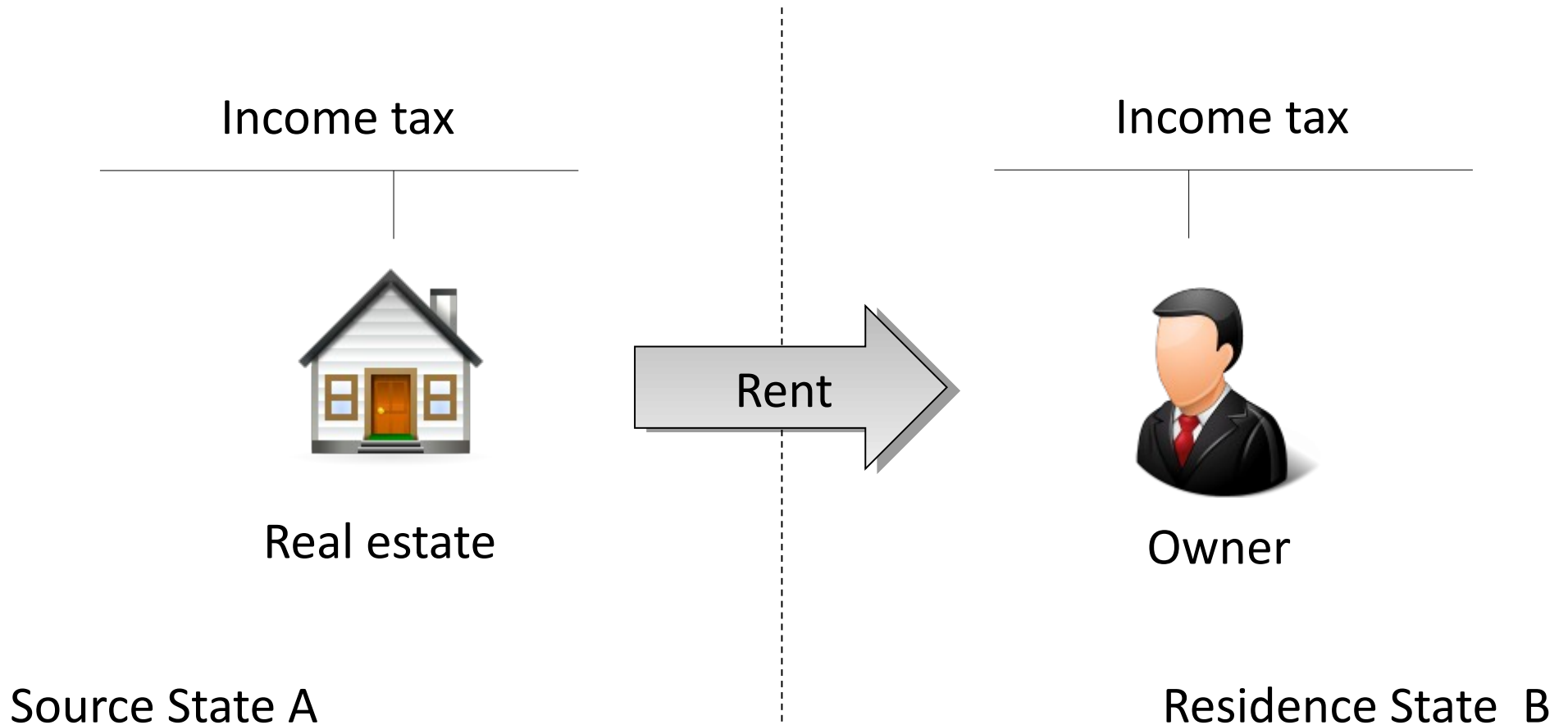
- The treaties
  - ♦ do not impose tax
  - ♦ do not split up the taxable base
- The treaties allocate the taxing rights
  - ♦ Only to the source state → no double taxation
  - Only to the residence state → no double taxation
  - To both states → double taxation

## 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





# International and European Tax Law

## Elimination of juridical double taxation

### Only source taxation

Income tax



Real estate

Source State A

Rent

~~Income tax~~



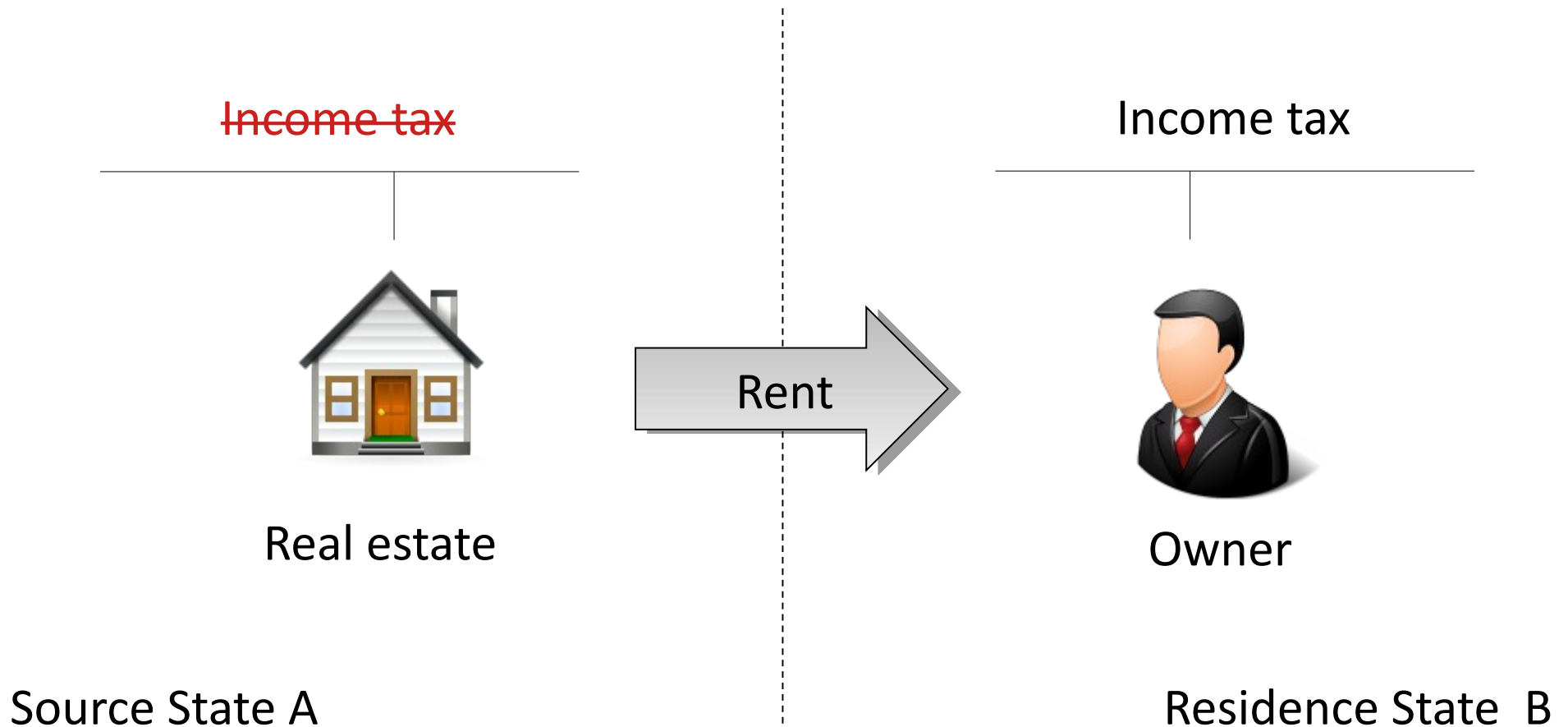
Owner

Residence State B

# International and European Tax Law

## Elimination of juridical double taxation

### Only residence taxation



# International and European Tax Law

## Elimination of juridical double taxation

### Allocation to both states

Income tax withholding



Real estate

Source State A

Rent

Exemption or credit



Owner

Residence State B

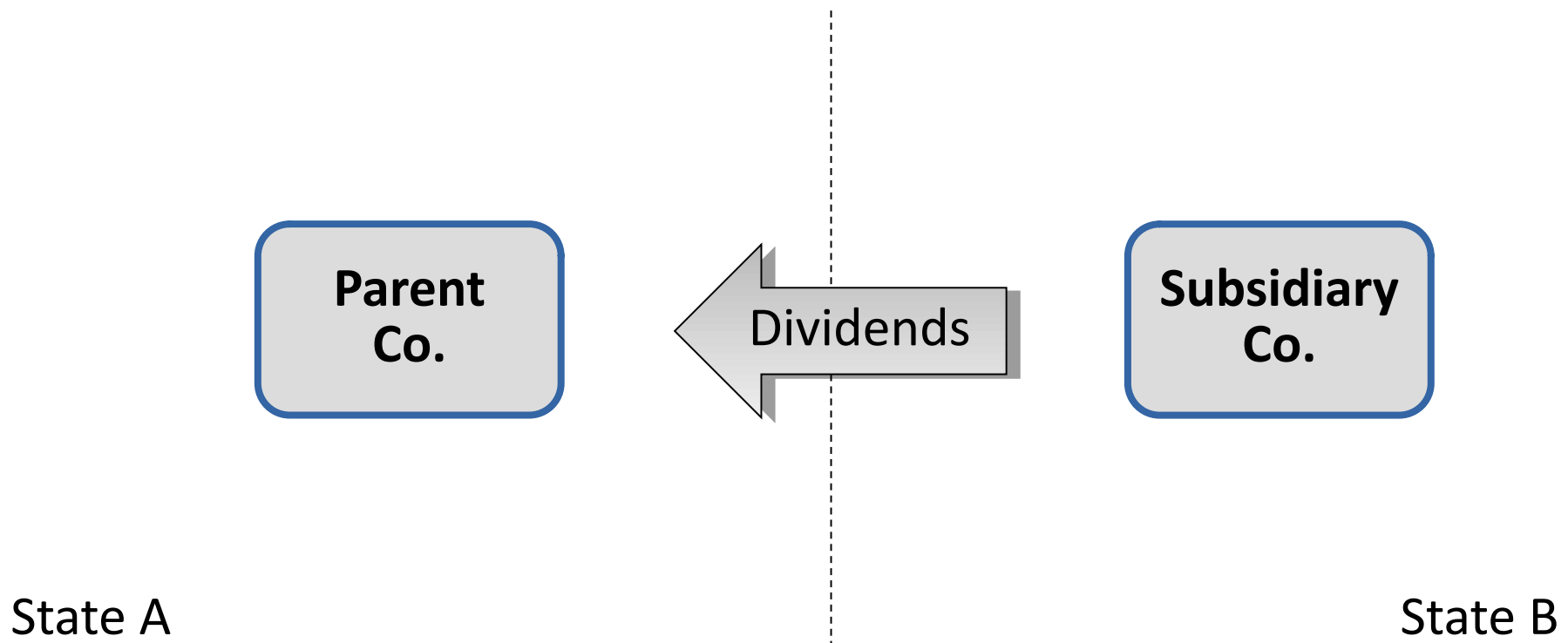
## The system of tax treaties

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

# International and European Tax Law

## The system of tax treaties

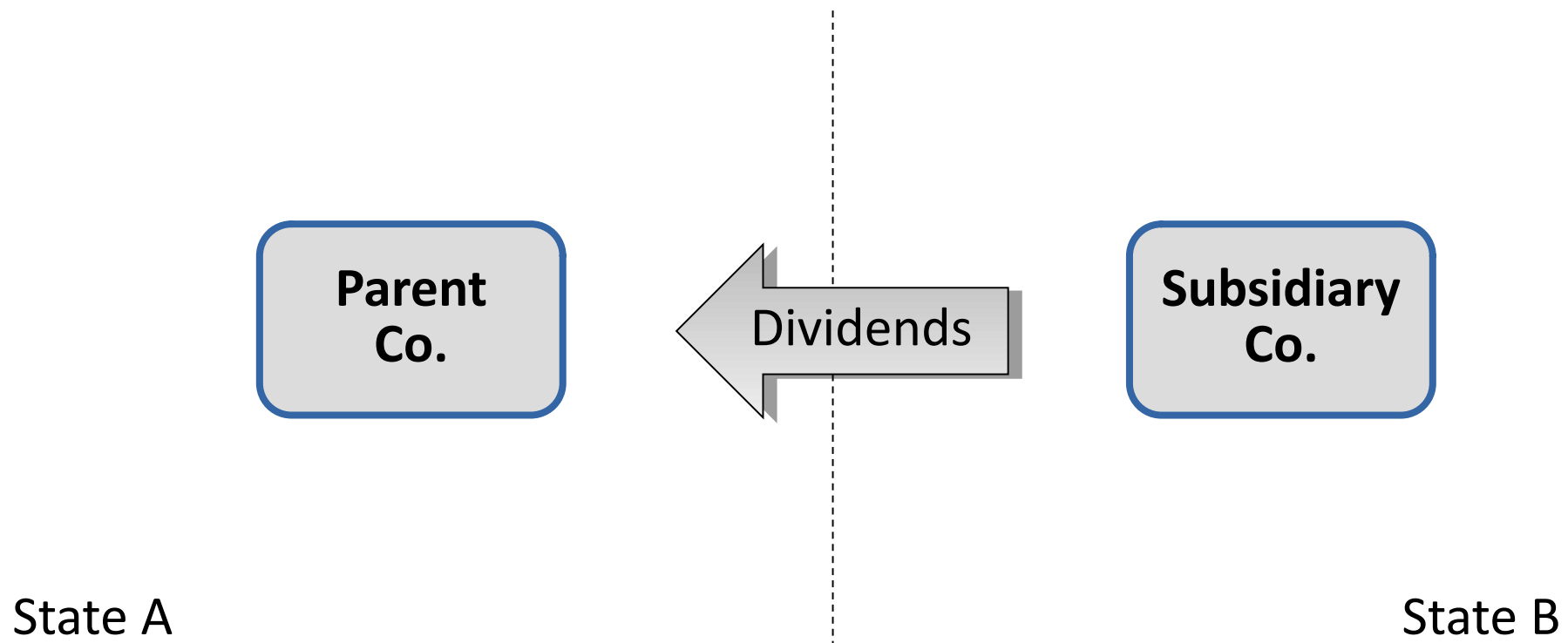
- Examples
  - ♦ Source state: Regular tax rate 10% - treaty rate 5% → ?



# International and European Tax Law

## The system of tax treaties

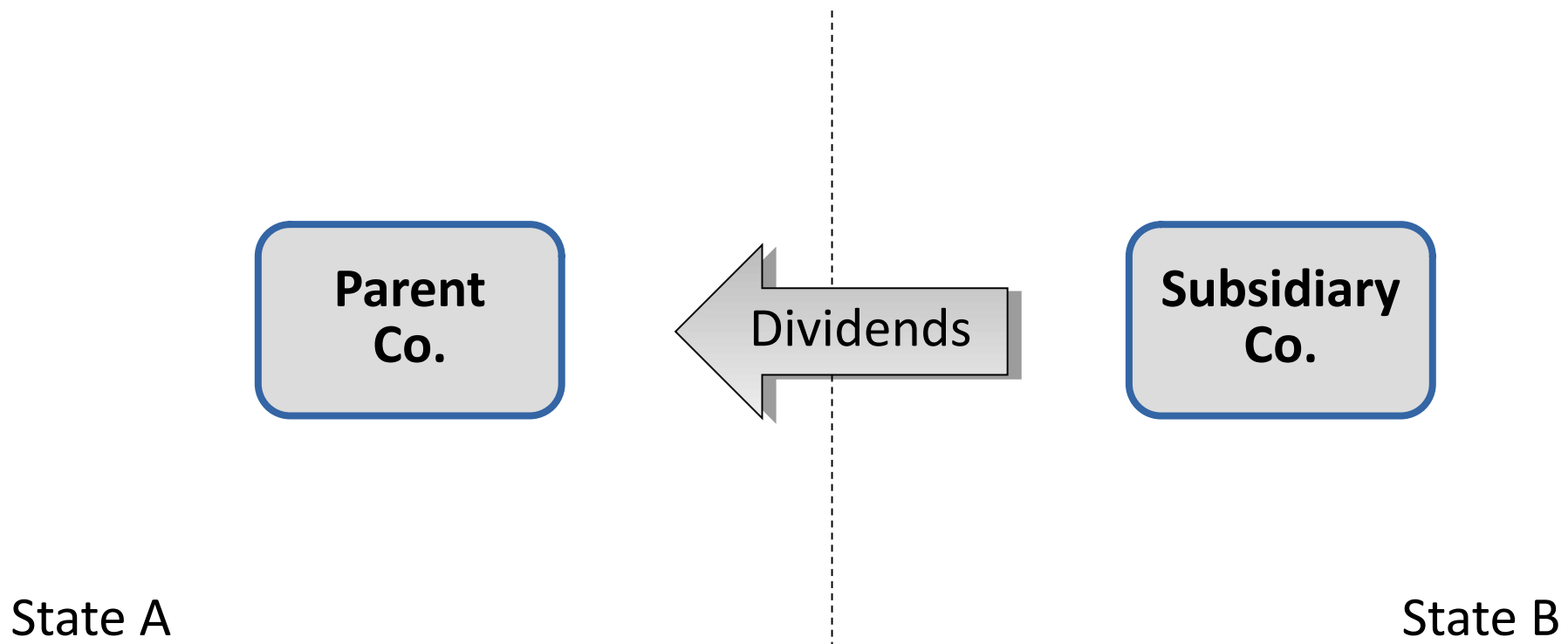
- Examples
  - ♦ Source state: Regular tax rate 10% - treaty rate 5% → **Applicable 5%**



# International and European Tax Law

## The system of tax treaties

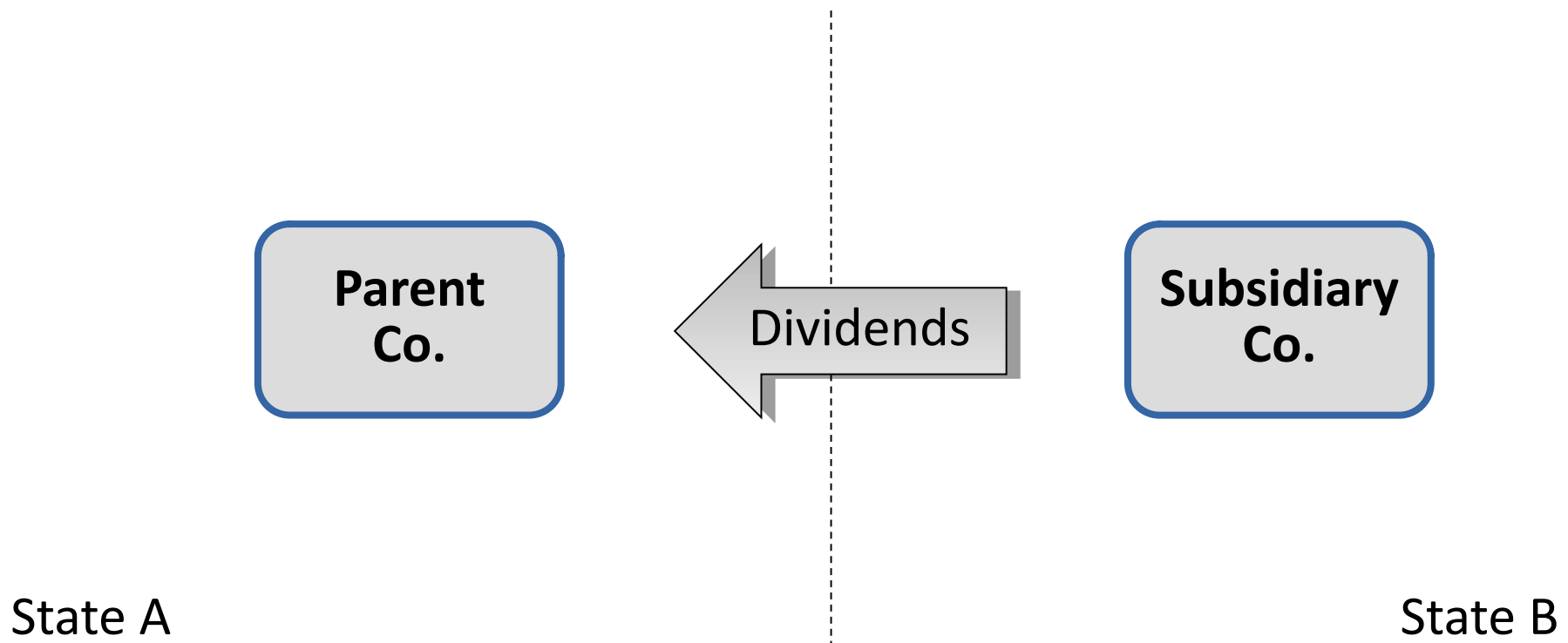
- Examples
  - ♦ Source state: Regular tax rate 10% - treaty rate 5% → **Applicable 5%**
  - ♦ Source state: Regular tax rate 10% - treaty rate 15% → ?



# International and European Tax Law

## 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%**

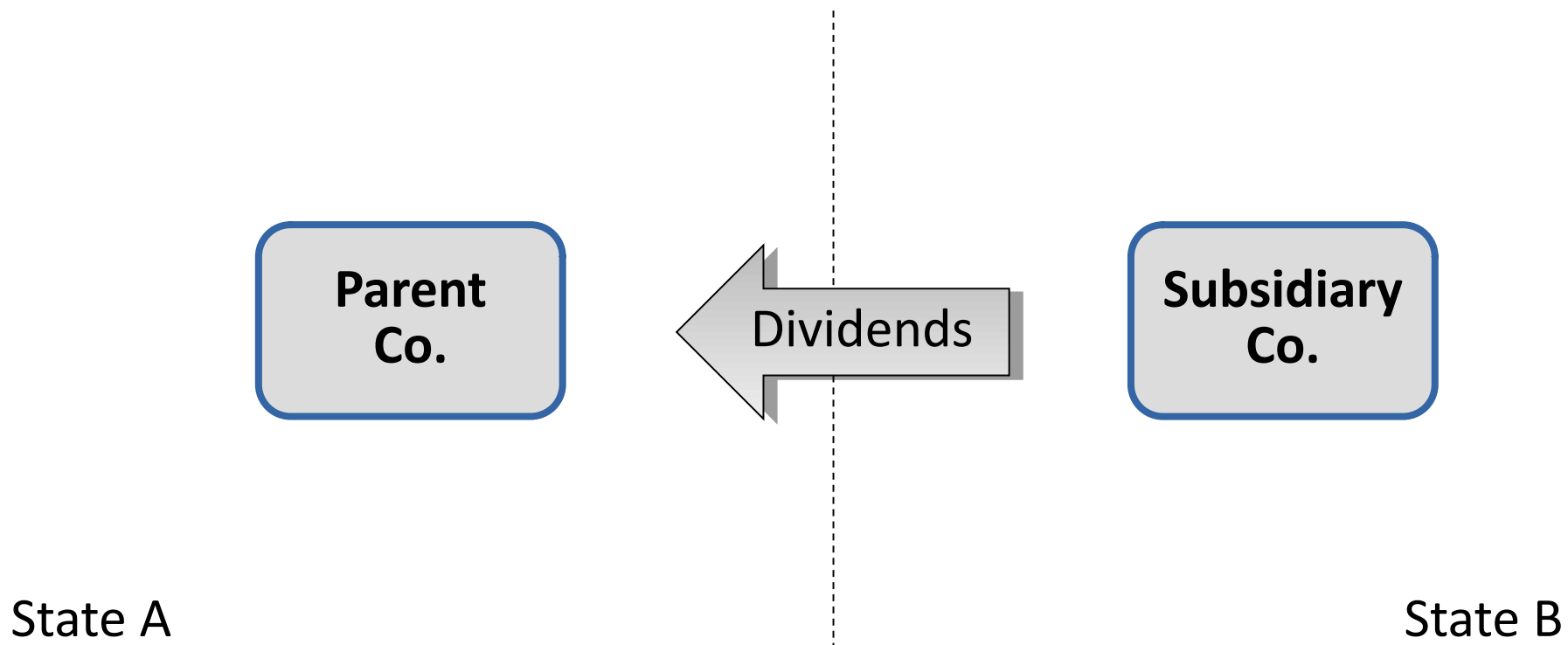




# International and European Tax Law

## The system of tax treaties

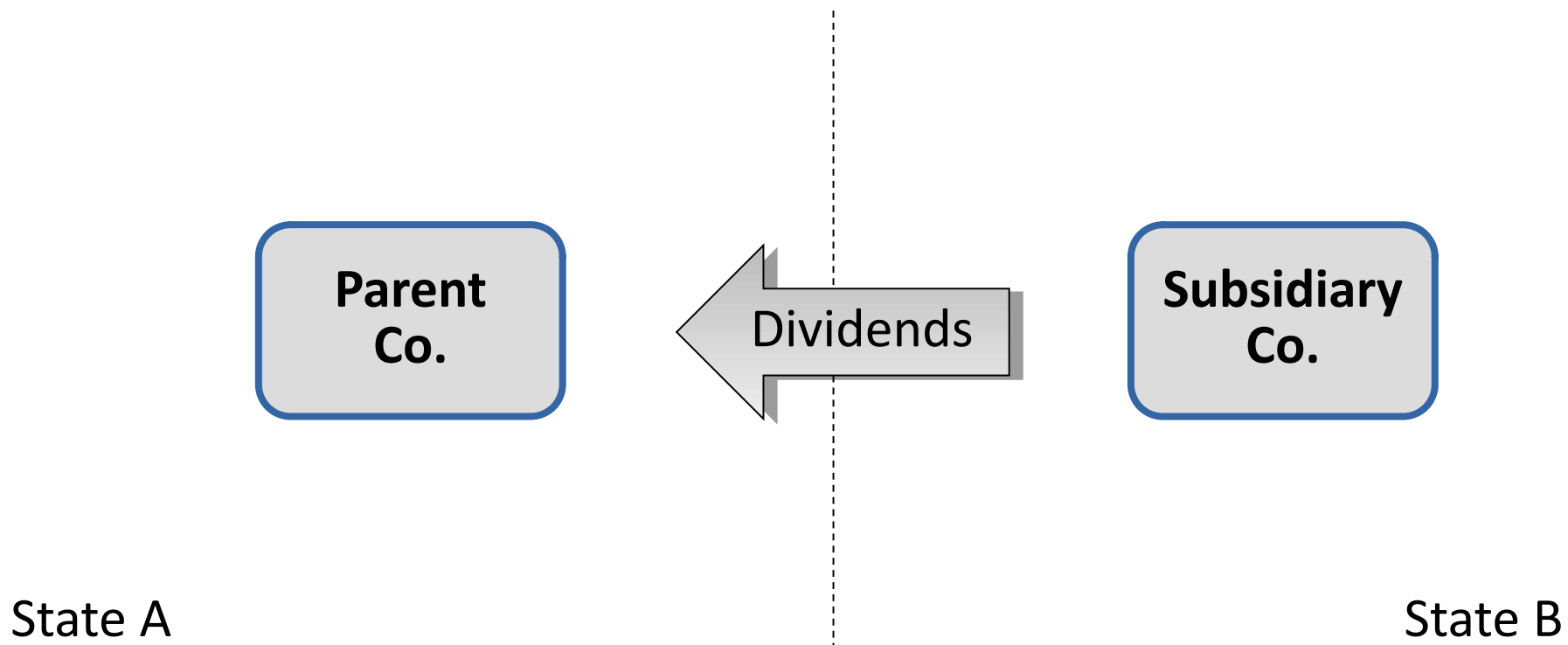
- Examples
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  - ◆ Source state: Exemption - treaty rate 15% → ?



# International and European Tax Law

## 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

# International and European Tax Law

## 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

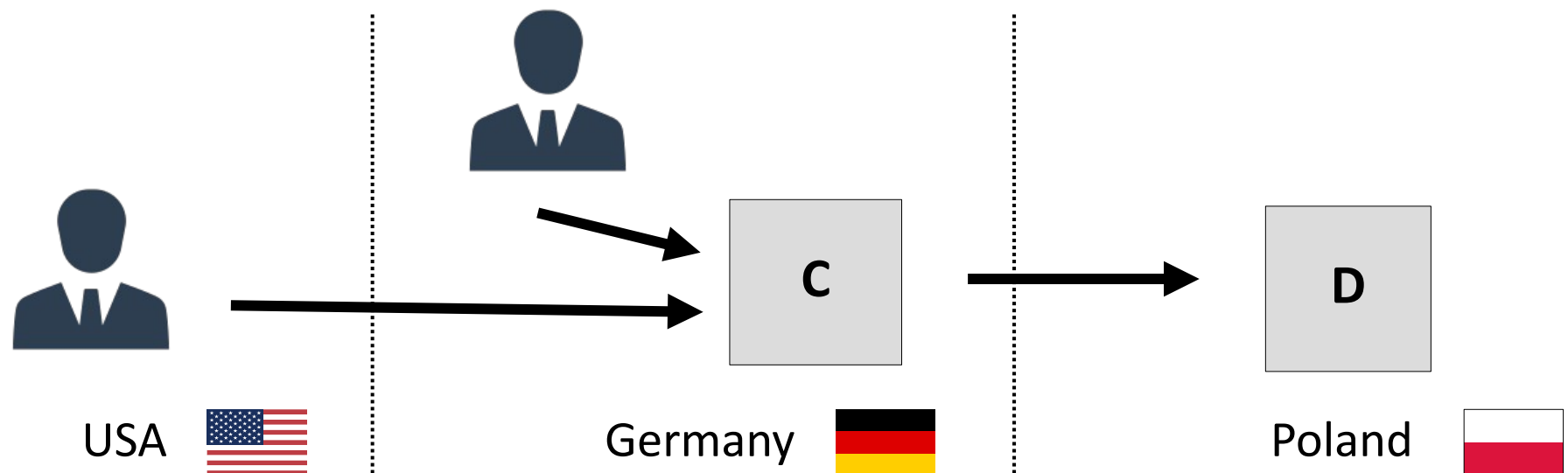
- Parent-Subsidiary Directive (1990/2011)
  - ◆ Elimination of double taxation of cross-border dividends
  - ◆ Scope of application: parent-subsidiaries
  - ◆ Elimination of withholding taxes
  - ◆ Residence state obliged to apply exemption or credit method

# International and European Tax Law

## 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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