



State aid investigation into tax planning practices

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These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

Tax Planning and State aid

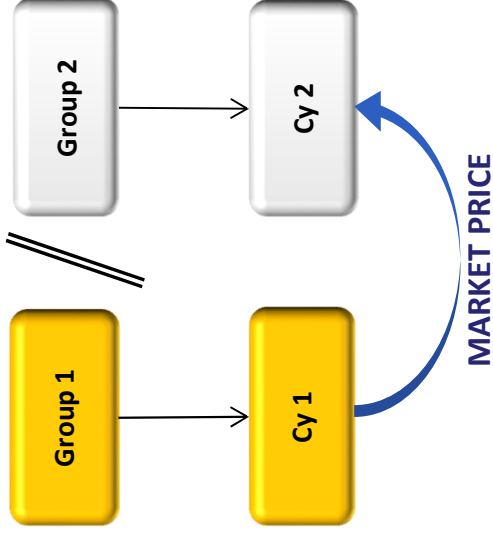
- Direct taxation falls within the competence of the Member States, but exercise of national competences must be consistent with Union law
- State aid essentially implies granting a selective advantage
 - Aid scheme
 - Individual aid

Tax planning and State aid

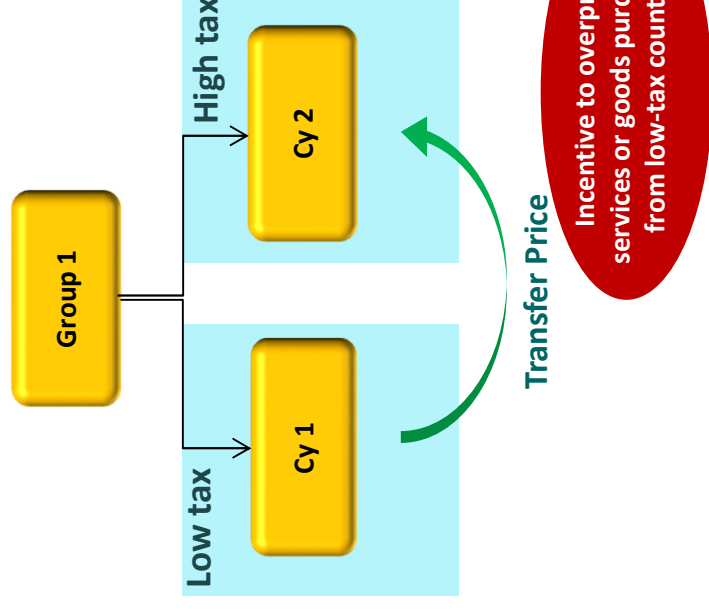
- In tax cases concerning schemes, the focus is on selectivity, i.e. schemes that are not available to all taxpayers
- In individual tax cases (e.g. tax rulings), the focus is on advantage; existence of an advantage presumes the existence of selectivity
- Tax rulings as such are not problematic for State aid control (Notion of Aid)

Profit shifting through transfer pricing

FREE MARKET TRANSACTION



CONTROLLED TRANSACTION



Assessment of advantage

If national rules provide that group companies are to be taxed on the same terms as independent companies (separate entity approach);

- The Commission uses the arm's length principle as a tool to check whether the pricing of intra-group transactions (transfer pricing) corresponds to prices that would have been charged in the market, based on Forum 187 case law.
- In doing so, the Commission relies on the OECD guidelines as a reference in the assessment of the transfer pricing analysis conducted.

Assessment of selectivity

- Presumption of selectivity: In case of an individual aid measure, once an advantage is demonstrated, selectivity can be presumed
 - Based on case law (MOL)
- Selectivity assessed under the 3-step test:
 - Group and standalone companies are legally and factually comparable



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