

IAP 2024

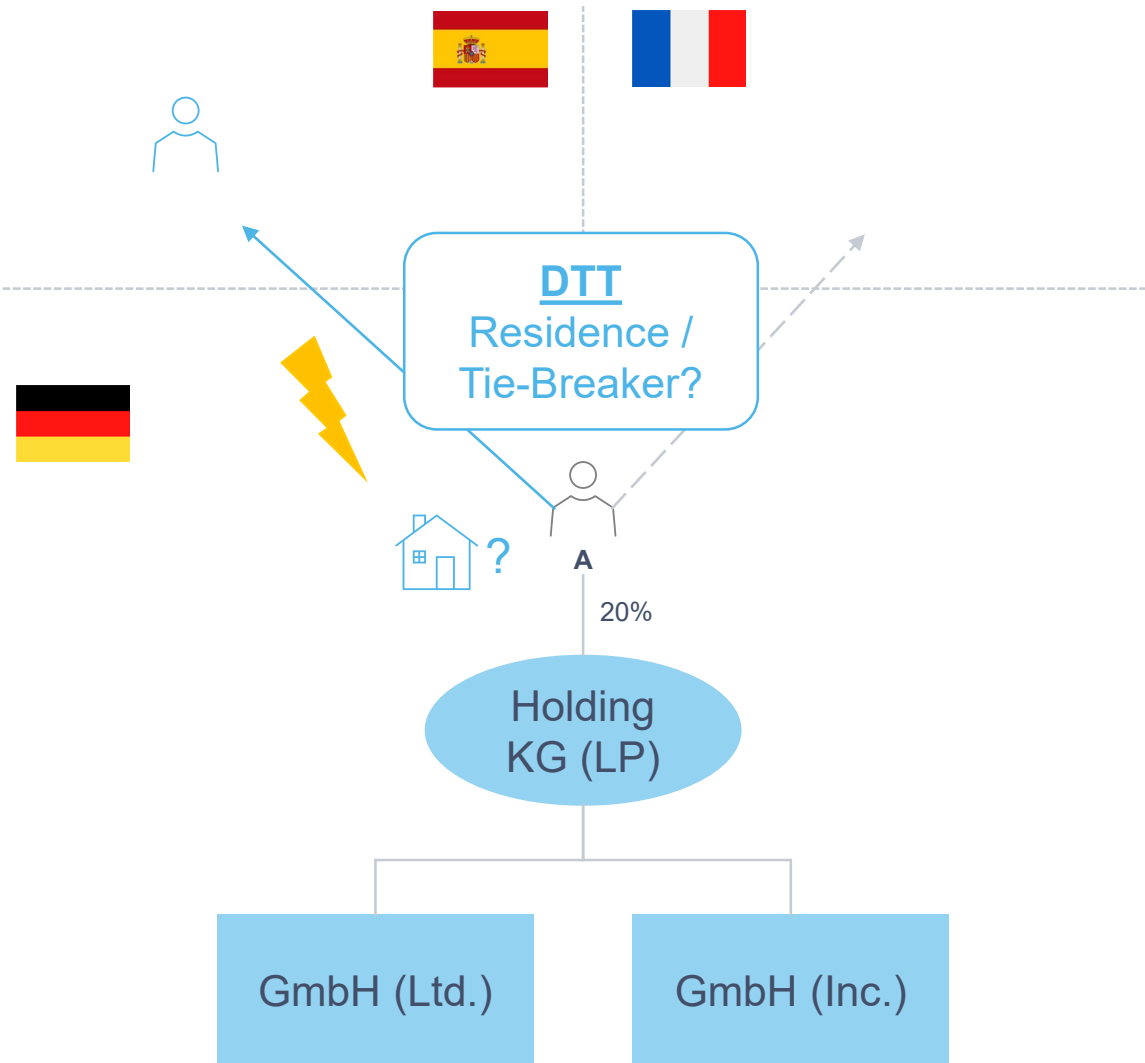
Case Study 5

The Surprising Relocation, Exit Tax
and the Spanish Beckham Law

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Case Study 5

Relocation and Exit Tax



Status quo

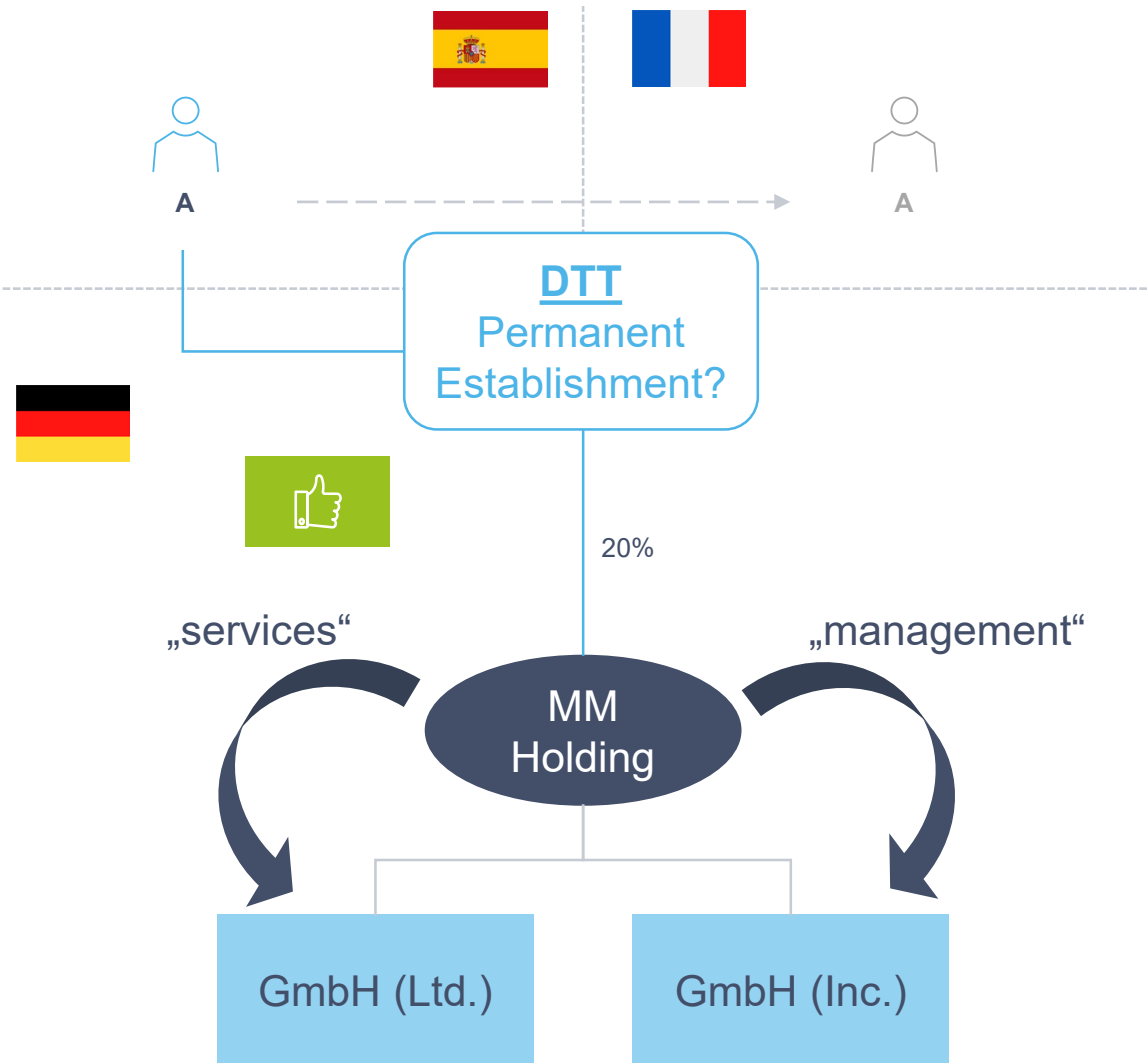
- A is a limited partner of a German limited partnership (KG).
- The KG is a simple holding company with several operating subsidiaries (e.g. GmbH).
- A moves to Spain.

Tax consequences in Germany?

- A remains subject to German limited tax liability.
- If Germany loses its taxation right (e.g. A becomes tax resident in Spain under the DTT), there will be a deemed realization (dry income).
- In general, Germany loses its taxation right for capital gains on the assets of the KG (Art. 13(6) DTT-Spain 2011), as the company does not constitute a permanent establishment under the DTT.
- However, there is a special trailing right of taxation for Germany within a 5-year period after the exit (Art. 13(7) DTT-Spain 2011), which could avoid immediate taxation.

Case Study 5

Preventing Exit Tax: „Management Holding“



Implementing a Management Holding

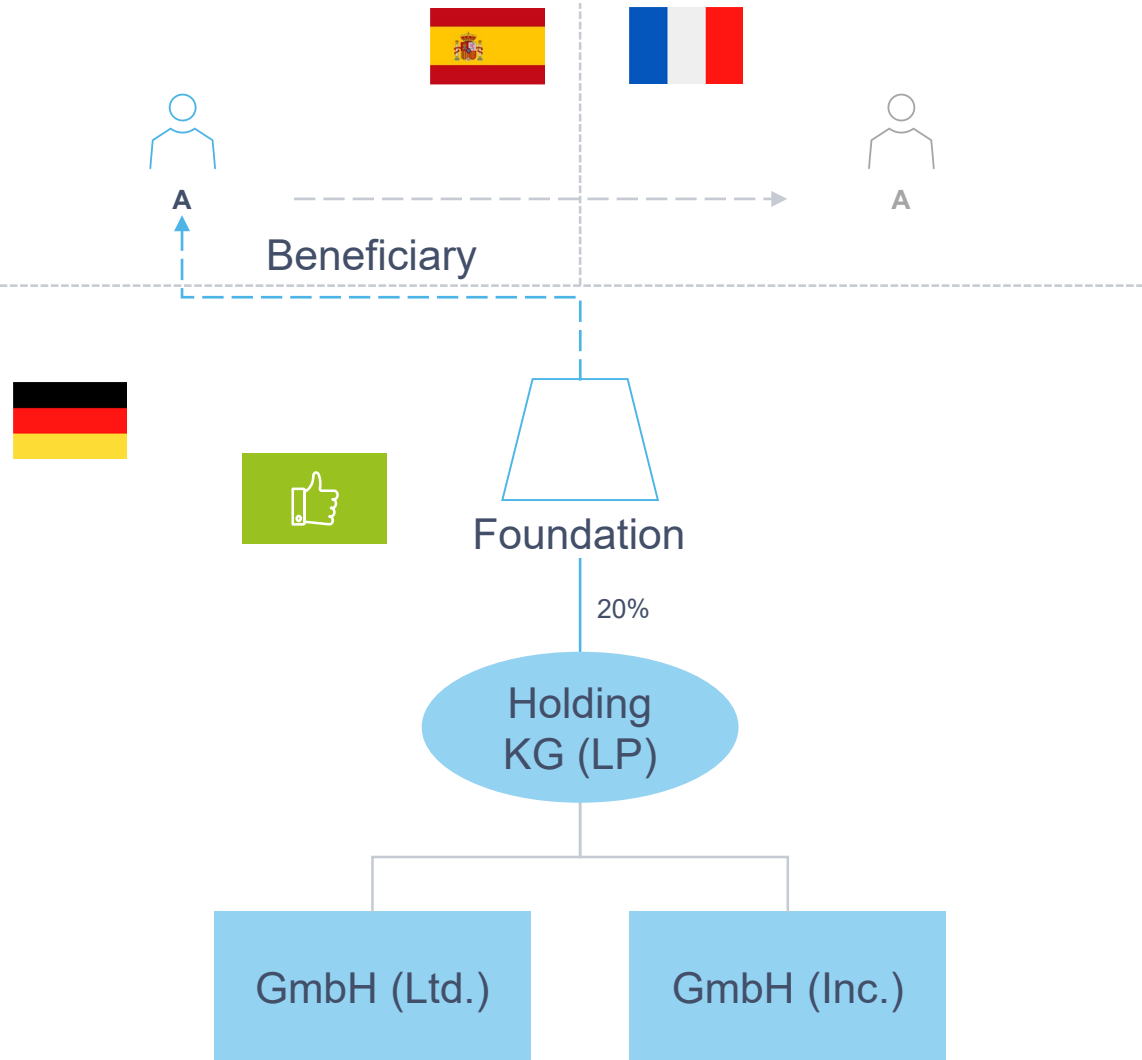
- Expanded functions of the holding company:
 - Paid services to the subsidiaries (IT, legal, HR, tax etc.).
 - Defining business areas, setting long-term corporate goals, determining responsibilities and organization, filling management positions, managing the cashflow within the Group, coordinating the group.
- Own staff and facilities („Substance“).

Tax consequences in Germany?

- The Management Holding constitutes a business with business profits due to its commercial activities under Art. 7 DTT-Spain 2011.
- Therefore, the KG provides A with a permanent establishment in Germany not only from a national point of view but also under Art. 5 DTT-Spain 2011.
- Exit tax can be avoided for all assets that can be allocated to the permanent establishment under the treaty law, based on the economic connection and thus the economic affiliation of the assets to the business activities actually carried on in the permanent establishment.

Case Study 5

Preventing Exit Tax: „Family Foundation“



Implementing a Family Foundation

- A establishes a private foundation whose only beneficiaries are herself and her family members (family foundation).
- A transfers the share in the KG to the foundation.

Tax consequences in Germany?

- The transfer to the Foundation is subject to gift tax, which can be avoided to a large extent by taking advantage of tax exemptions for business assets.
- Due to the foundation, Germany's right to tax capital gains is permanently secured and A can therefore move freely wherever he/she wants without triggering any exit tax.
- Every 30 years, the foundation is subject to a special inheritance tax, which simulates an inheritance.