



OVERVIEW OF GLOBAL DEVELOPMENTS IN AGGRESSIVE TAX PLANNING

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Overview of Global Developments in ATP

What is Aggressive Tax Planning

- How does the OECD 'define' aggressive tax planning

A juridical approach to avoidance

- The limitations of a classical approach to avoidance

Aggressive tax planning in the global context

- Rethinking avoidance in the international context



HOW DOES THE OECD DEFINE AGGRESSIVE TAX PLANNING?



Aggressive tax planning





Relationship between tax avoidance and ATP

Tax
Avoidance



Aggressive
Tax
Planning

Difficult to define & impossible to come up with a single, consistent definition.

Tax avoidance will typically include an element of *artificiality* which gives rise to an unintended legal outcome

Narrow Objective Test

Typically has legal consequences for arrangement itself (i.e. GAAR)

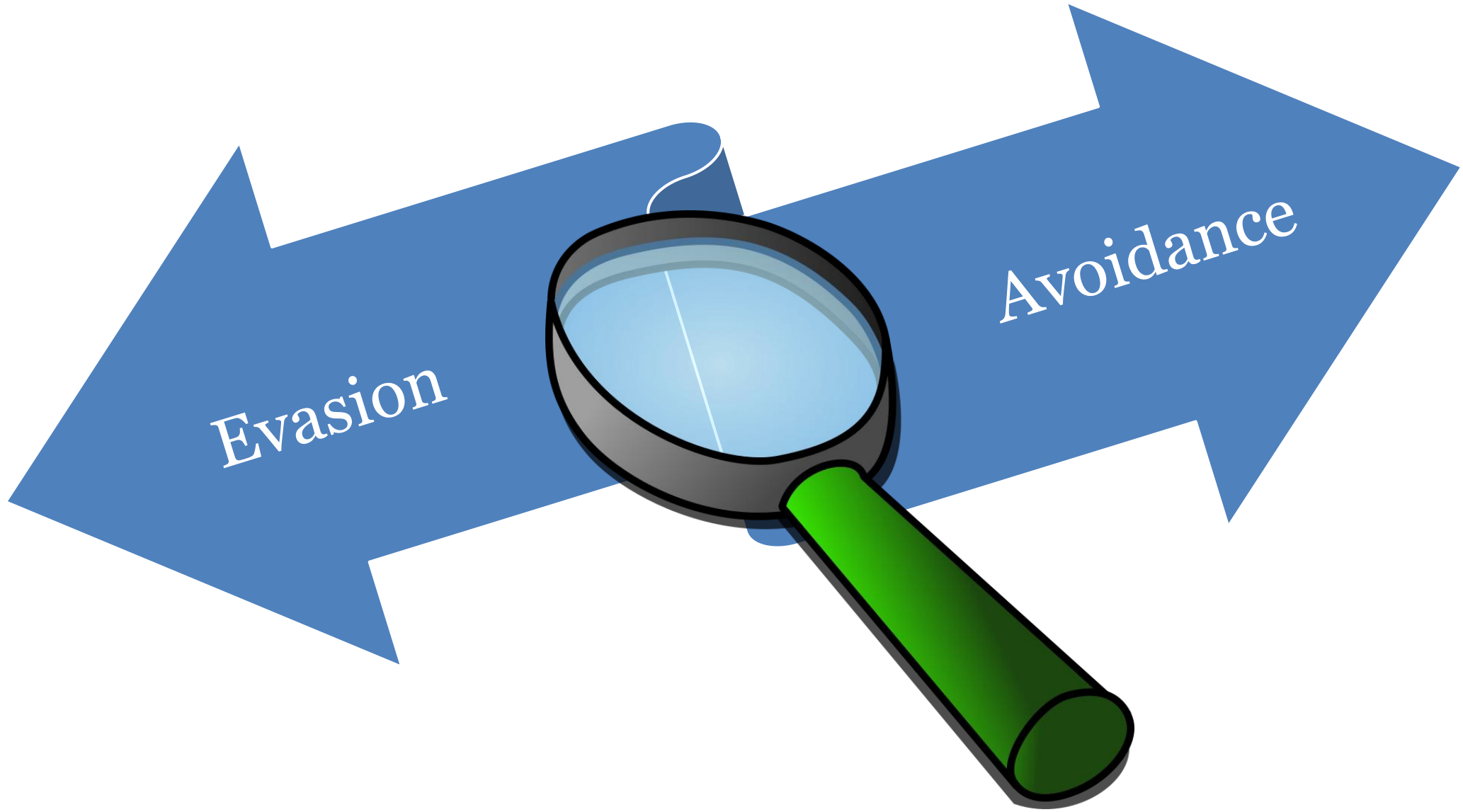
Aggressive tax planning could be anything that is considered to undermine the effective operation of the tax laws

Broad subjective description of undesirable behaviour

Impacts on tax administration resource and tax policy design



Relationship between evasion and avoidance

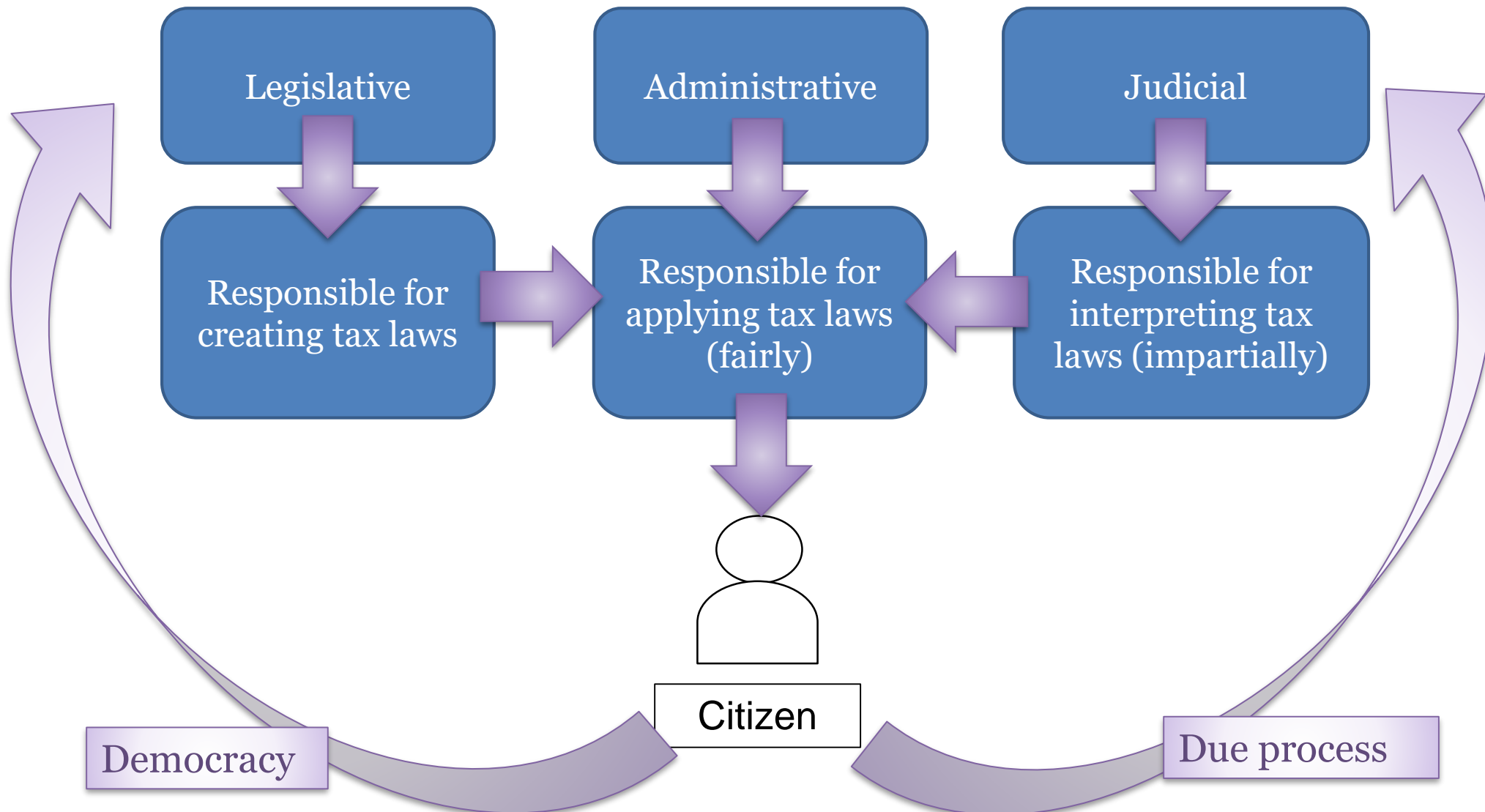




JURIDICAL APPROACH TO TAX AVOIDANCE

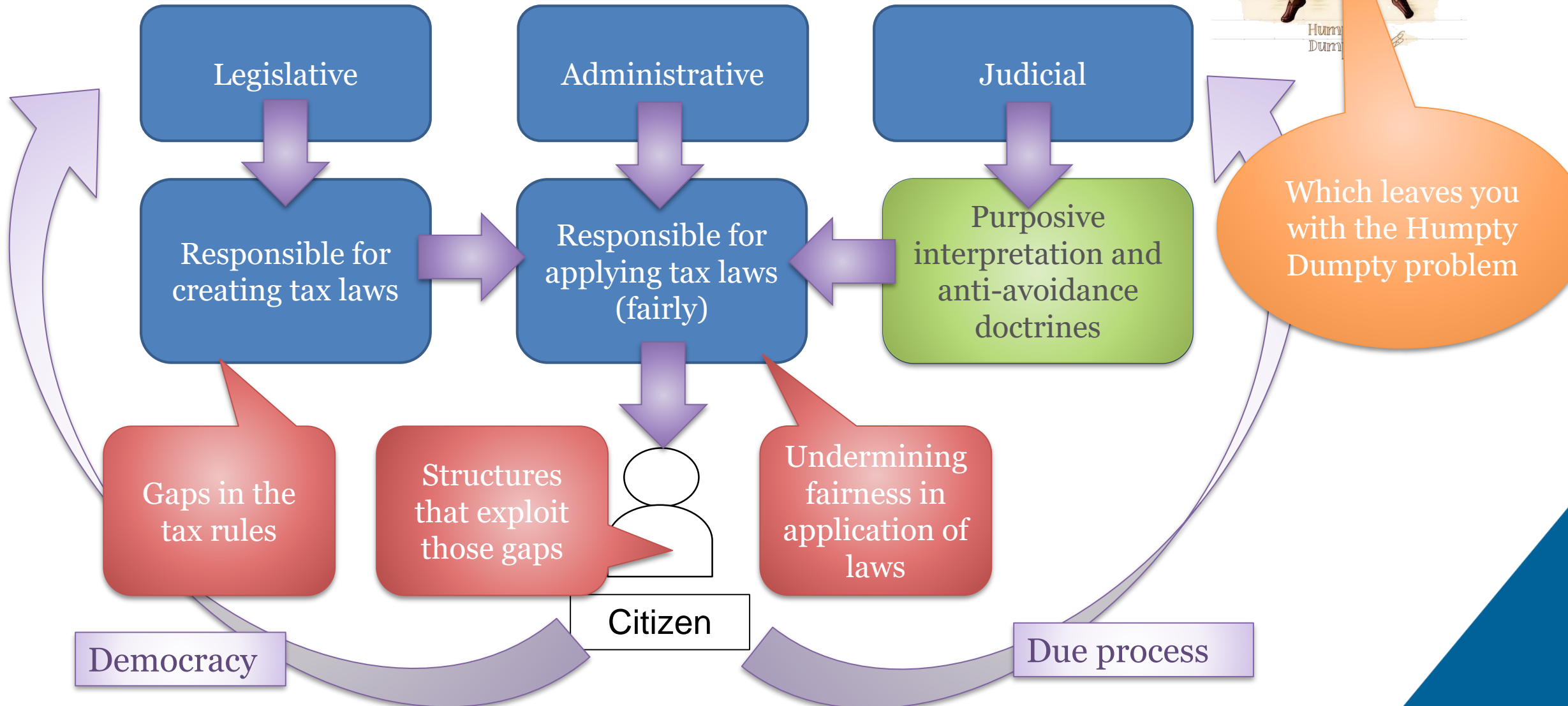
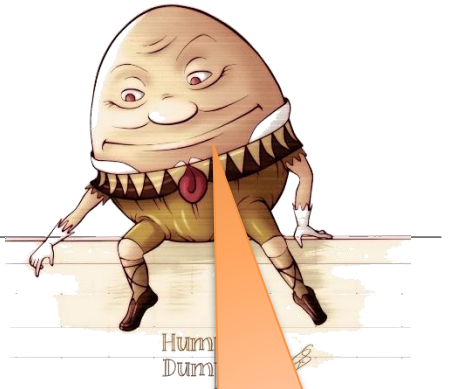


Classical model of taxation





Juridical model of avoidance





Key limitations with juridical model

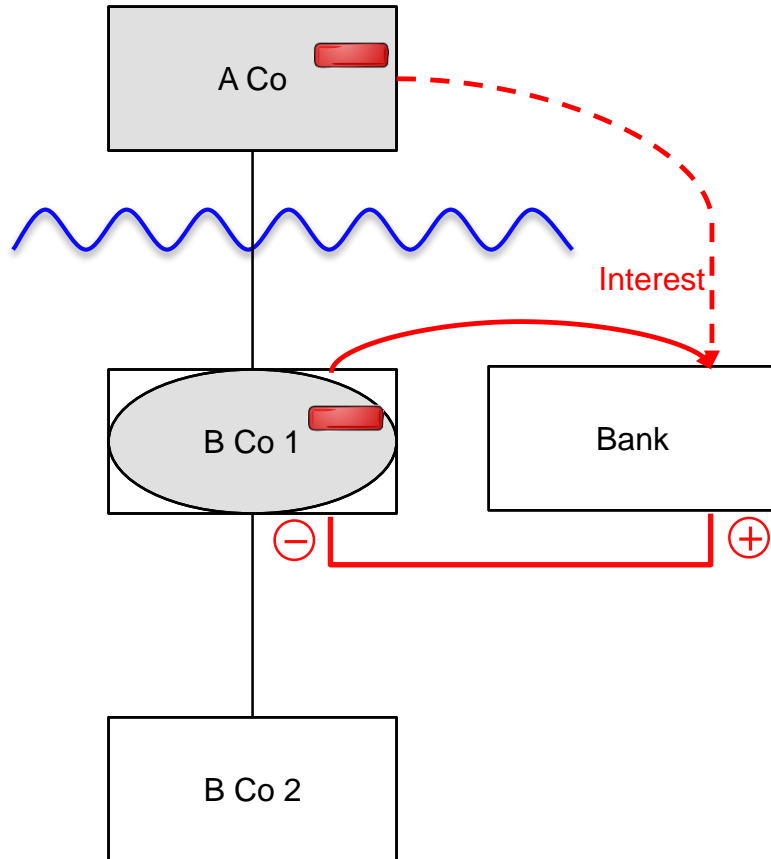
- Uncertainty for taxpayers
- Increased burden on tax administration
- Heavy reliance on voluntary compliance and transparency
- Global dimension
 - Whose tax advantage?
 - Interaction between purpose and scope of domestic tax jurisdiction
 - Determining artificiality in international context
 - Identifying and addressing common risks
 - Avoiding double taxation



GLOBAL DIMENSION



Payment made by a hybrid entity giving rise to a DD Outcome



A Co establishes B Co 1 in Country B. B Co 1 is a hybrid entity (an entity that is transparent under Country A law but is treated as a separate entity under Country B law).

B Co 1 borrows money from a bank.

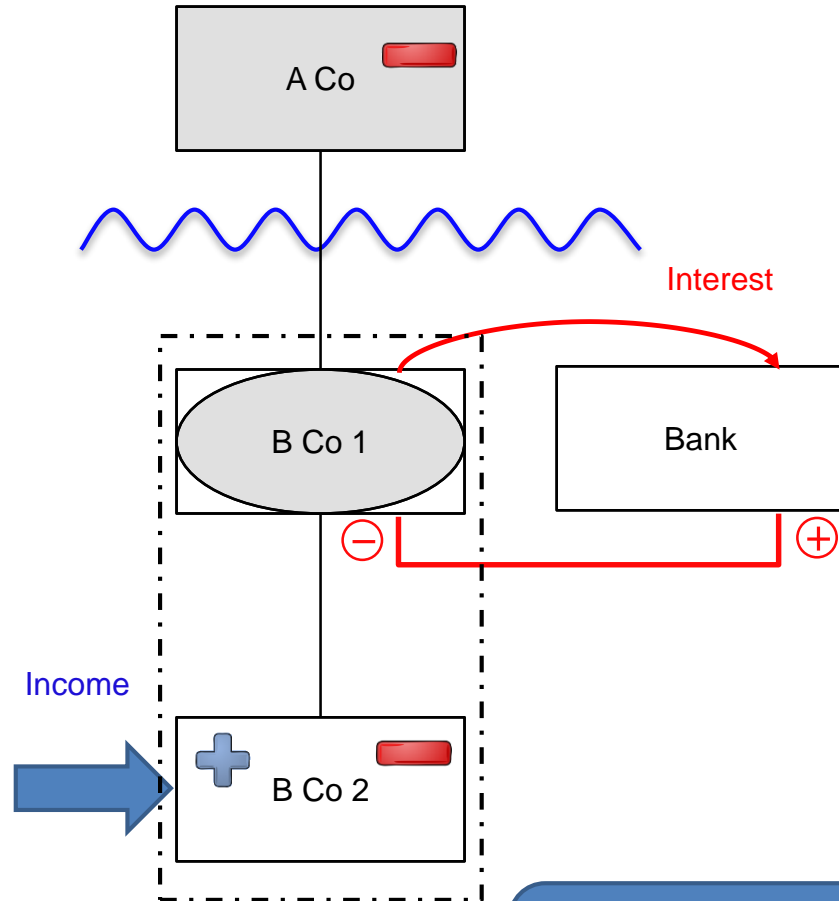
Because B Co 1 is treated as transparent under Country A law, the interest payment made by B Co 1 triggers two deductions.

A deduction for A Co under Country A law

A deduction for B Co 1 under Country B law



Payment made by a hybrid entity giving rise to a DD Outcome



B Co 1 enters into a tax consolidation or grouping arrangement that allows the interest deduction to be set-off against the income of B Co 2

A Co treats B Co 2 as a separate taxpayer so that B Co 2's income is not taxable under the laws of Country A

The deduction that arises under the hybrid entity structure has been set-off against **non dual inclusion income**.

A Co will be left with a duplicate deduction that is available to be set-off against (unrelated) Country A income.

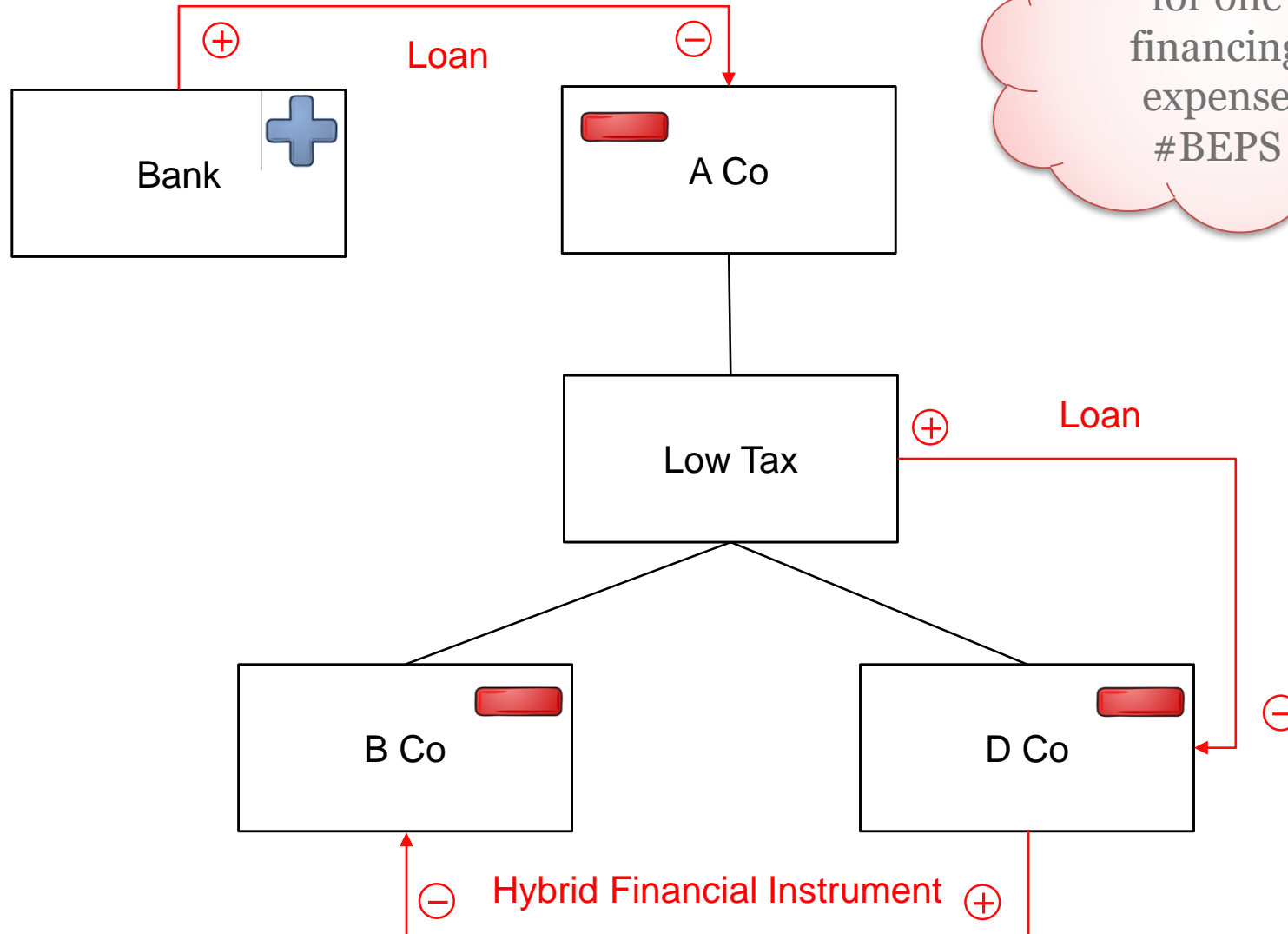




Interest deductibility

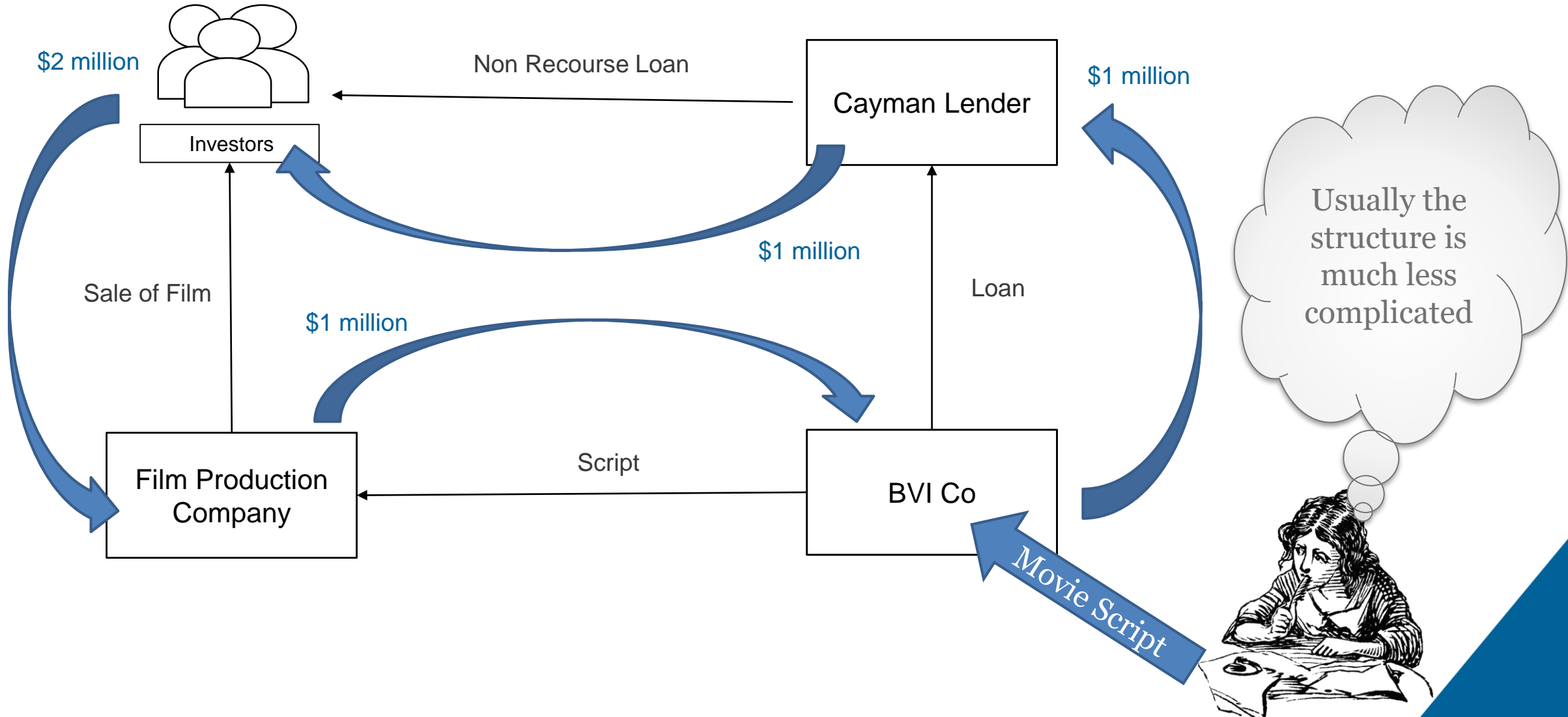


3 Deductions
for one
financing
expense
#BEPS





Transparency, evasion and offshore entities





Approaches to ATP in the international context

- Aligning taxation and substance
- Addressing harmful tax practices
- Co-ordinated and comprehensive domestic rules that improve certainty of outcomes for taxpayers and avoid double taxation.
- Increased transparency
- Enhanced information exchange and collaboration
- Improved MAP and risk assessment



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