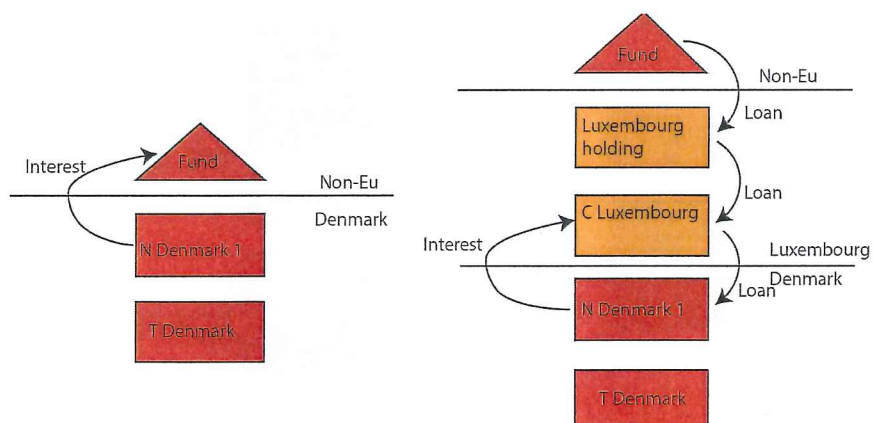


Beneficial ownership and abusive practices

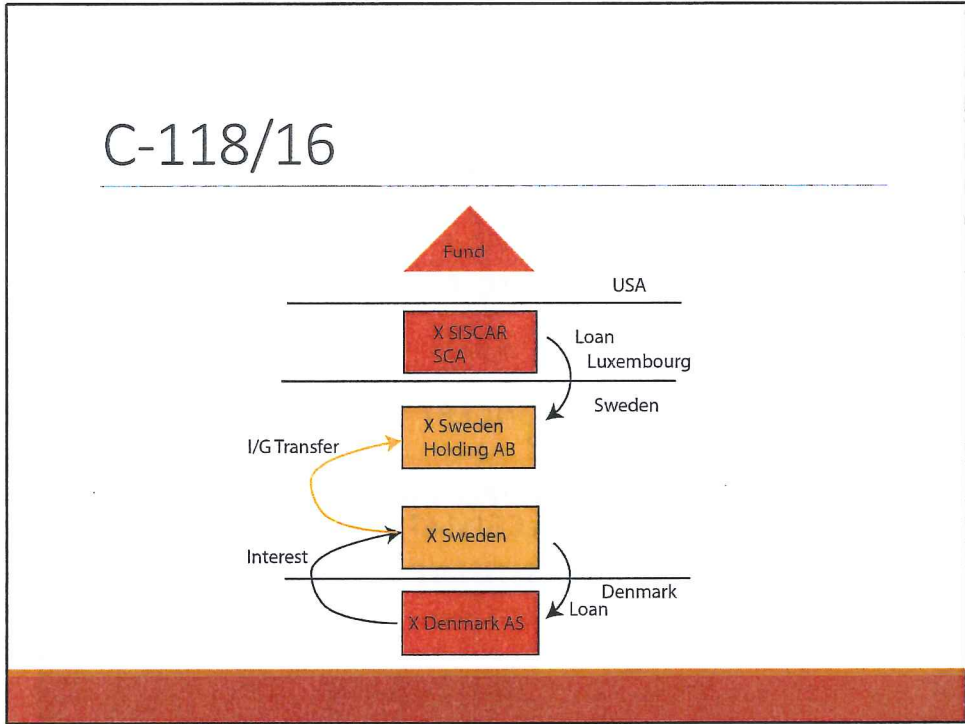
CJEU PROVIDED ANSWERS TO THE FOLLOWING QUESTIONS:

1. HOW SHOULD THE CONCEPT OF BENEFICIAL OWNER BE INTERPRETED?
2. DO ANTI-ABUSE PRINCIPLES NEED TO BE INCLUDED IN DOMESTIC LEGISLATION?
3. WHAT ARE THE CONSTITUENT ELEMENTS OF AN ABUSIVE PRACTICE?

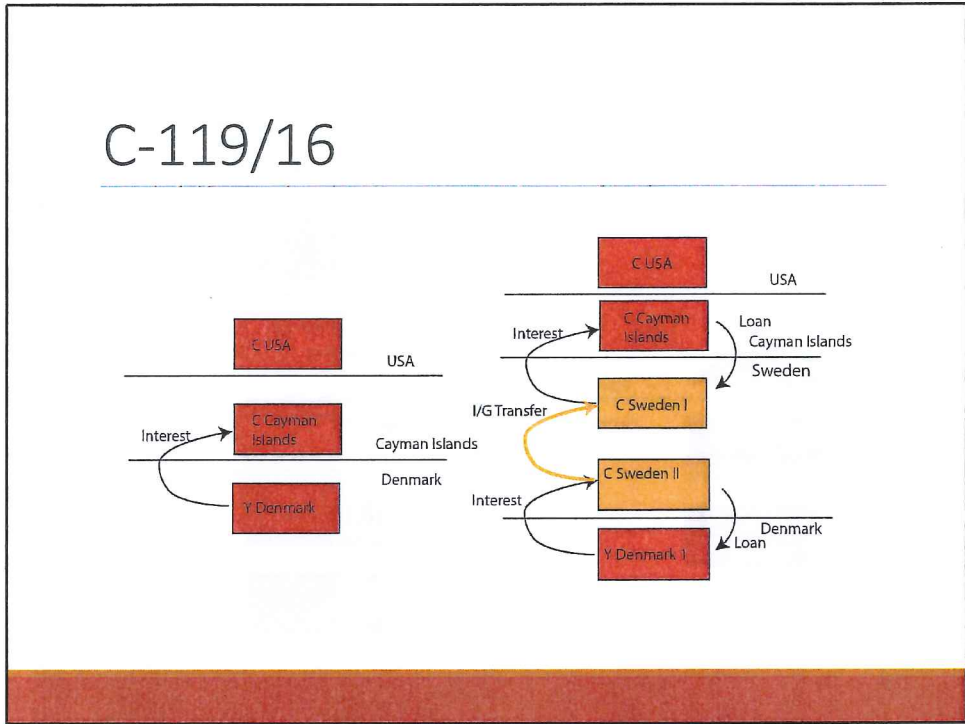
Facts of the cases-C-115/16



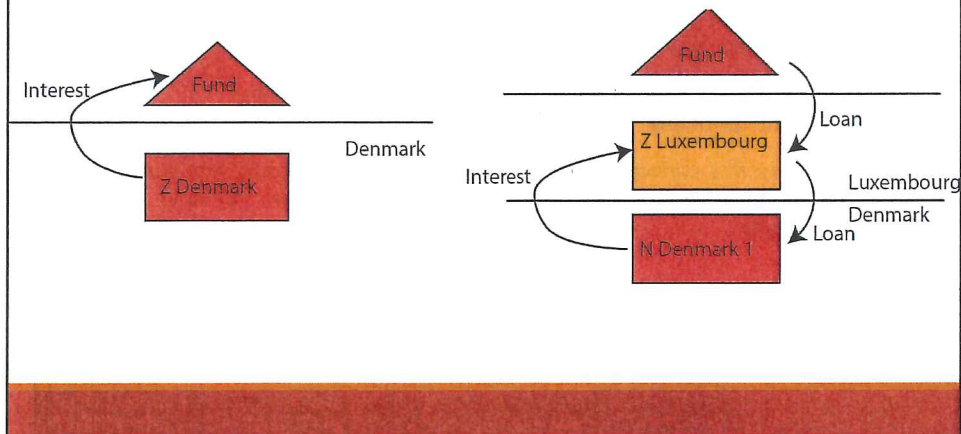
C-118/16



C-119/16



C-299/16



Conclusion

A beneficial owner is an entity that **actually economically benefits** from the interest and accordingly has the power freely to determine the use to which it is put. The beneficial owner is the entity that truly gains from the interest received as opposed to the entity that is merely the formally identified recipient on a legal basis as an intermediary, such as an agent, trustee, or authorized signatory, on behalf of others.

Furthermore, the CJEU indicated that the 'beneficial ownership' definitions, which appear in OECD-model based tax treaties, and the commentary thereto are also relevant for the interpretation of the IRD.

Conclusion

The CJEU points out that, even if no anti-abuse legislation in the form of a provision or general principle is included in the domestic legislation of a Member State, **on the basis of EU law**, national authorities should have the right to refuse the exemption of withholding tax payments in abusive or fraudulent situations.

The CJEU seems to have departed from the "wholly artificial arrangement" principle.

The presence of a certain number of indications may demonstrate that there is an abuse of rights, in so far as these indications are objective and consistent.

The CJEU mentions the following set of indications:

-the existence of conduit companies which are without economic justification and the purely formal nature of the structure of the group of companies, the financial arrangements and loans;

-an artificial arrangement consisting in a group of companies that is not set up for reasons that reflect economic reality, with a structure that is purely one of form and with a principal objective or one of its principal objectives being to obtain a tax advantage running counter to the aim or purpose of the applicable tax law;

-the interposition of a conduit entity between the distributing company and the beneficial owner of such distribution whereby payment of tax on the dividends is avoided; and

-the fact that all or almost all of the dividends are, very soon after their receipt, passed on by the recipient to entities which do not fulfil the conditions for the exemption.

It is now for the Danish courts to decide the cases in accordance with the guidance provided by the CJEU and the Court's previous case law.

