

The 10 Commandments for International Corporate Structuring



Disclaimer: These commandments are for informational guidance only, not for legal advice.

I. BASE ALL DECISIONS ON COMMERCIAL SUBSTANCE

- Thou shalt structure the organization based on demonstrable economic and commercial purpose.
- The days of shell companies without real staff, offices, or decision-making power are over. Legal structures must follow and reflect where value creation (management, R&D, manufacturing) actually occurs.
- **Request advise from Simplex Tax.**

II. RESPECT THE PLACE OF EFFECTIVE MANAGEMENT (POEM)

- Thou shalt carefully manage the "Place of Effective Management" (POEM) of all holding and financing companies.
- Ensure the ultimate strategic decisions for the entity are genuinely made by directors physically present in the intended country of residence to avoid being inadvertently taxed elsewhere.

III. ALIGN IP OWNERSHIP WITH R&D ACTIVITY

- Thou shalt locate the ownership of high-value Intellectual Property (IP) in the jurisdiction that bears the development risks and performs the key Development, Enhancement, Maintenance, Protection, and Exploitation (DEMPE) functions.
- This aligns the high-value returns (royalties) with the substance that generated them, as required by BEPS Actions 8-10.

IV. MAINTAIN RIGOROUS TRANSFER PRICING DOCUMENTATION

Thou shalt treat all intra-group transactions as if they were with unrelated third parties (Arm's Length Principle). Maintain comprehensive, contemporaneous Transfer Pricing Documentation (TPD) for every jurisdiction, justifying the pricing of goods, services, and financial arrangements.

V. MASTER THE HOLDING COMPANY STRATEGY

Thou shalt select a holding company jurisdiction based on its treaty network and domestic tax law. This choice should minimize Withholding Tax (WHT) on dividends and allow for tax-free Capital Gains Exemption (CGE) upon the eventual sale of a subsidiary.

VI. DEFEND AGAINST CONTROLLED FOREIGN CORPORATION (CFC) RULES

Thou shalt understand and mitigate the parent company's Controlled Foreign Corporation (CFC) rules. These rules are designed to prevent the deferral of tax by forcing the parent to pay domestic tax immediately on certain passive or "mobile" income earned by a foreign subsidiary in a low-tax jurisdiction.

VII. UTILIZE THE FOREIGN TAX CREDIT (FTC) SYSTEM EFFECTIVELY

Thou shalt structure profit repatriation (e.g., through dividends, interest, royalties) to maximize the Foreign Tax Credit (FTC) available in the parent company's jurisdiction, ensuring no credit is lost and profits are repatriated at the lowest possible overall ETR.

VIII. BEWARE OF ANTI-HYBRID AND INTEREST LIMITATION RULES

Thou shalt avoid structures that create "hybrid mismatches" (e.g., a payment that is deductible in one country but not taxable in the other). Further, be mindful of new interest limitation rules (like BEPS Action 4), which cap the amount of interest expense that can be deducted relative to earnings.

IX. PLAN FOR THE GLOBAL MINIMUM TAX (PILLAR TWO)

Thou shalt anticipate and model the impact of the 15% Global Minimum Tax (Pillar Two) rules on your corporate structure.

For multinational groups exceeding the €750 million revenue threshold, the structure must be optimized to ensure compliance and understand the top-up tax implications.

X. ESTABLISH A GROUP-WIDE TAX GOVERNANCE AND TRANSPARENCY POLICY

Thou shalt commit to tax transparency and robust governance. Prepare and file Country-by-Country (CbC) Reports where required, disclose uncertain tax positions, and proactively manage tax risk to protect corporate reputation and reduce the risk of future audits and penalties.