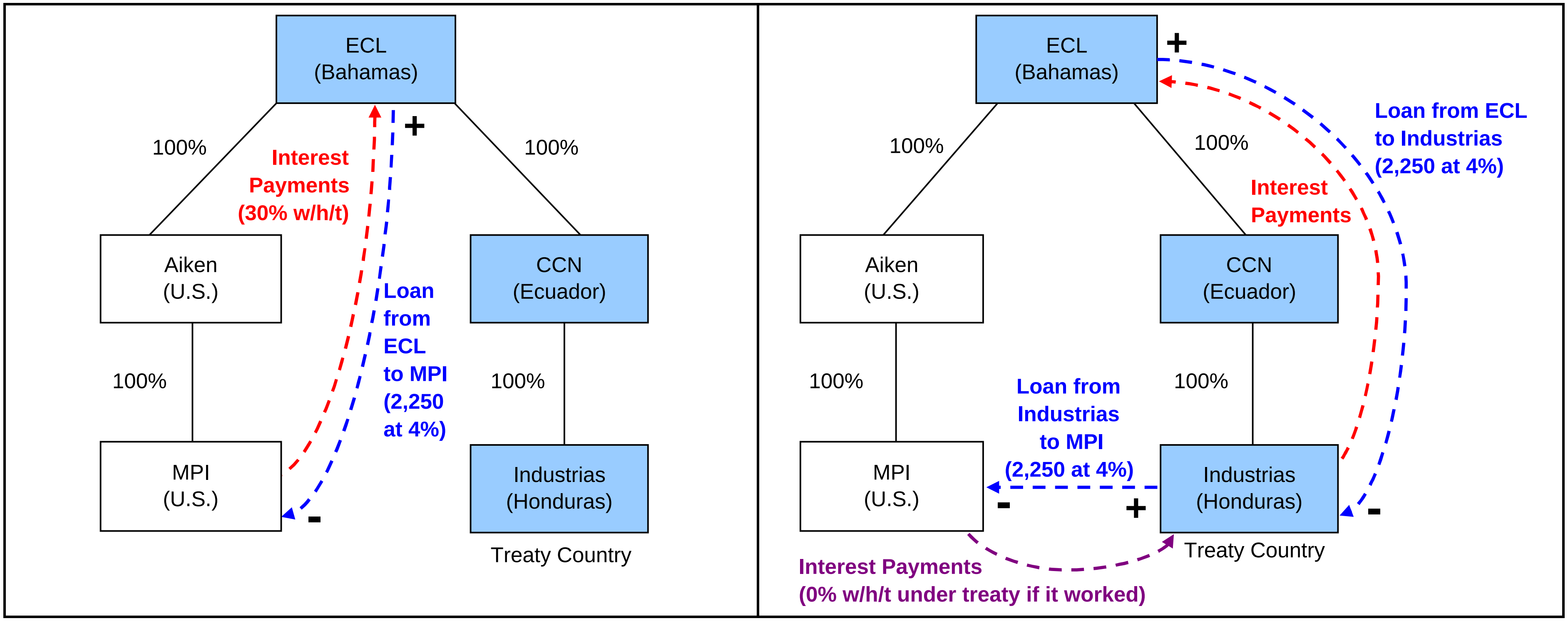
Aiken Industries v. Commissioner
56 T.C. 925 (1971)

Treaty Shopping
Back-to-Back Loans

Initial Loan | **Structure After Loan was Assigned / Sold**



No tax treaty existed between the U.S. and the Bahamas. Thus, a 30% withholding tax would have been imposed on interest paid from MPI to ECL. However, the then existing tax treaty between the U.S. and Honduras would have reduced the withholding tax on interest to zero.

The Tax Court recognized Industrias as a separate corporation. However, the court held that Industrias was a collection agent, or a conduit, for interest paid from MPI to ECL. The court held that Industrias had no beneficial interest in the interest payments.

The critical factor was that Industrias "was committed to pay out exactly what it collected, and it made no profit . . . " If the interest rate on the loan between MPI & Industrias had been higher than the interest rate on the loan between Industrias and ECL (leaving a profit within Industrias), the case may have gone the other way. See also Reg. § 1.881-3 regarding conduit financing arrangements.