

Inward Investment in the EU

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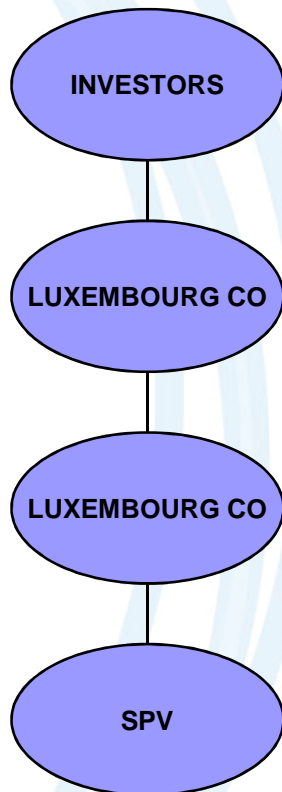
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INWARD INVESTMENT STRUCTURES

Investing through Luxembourg



- Can liquidate top LuxCo without withholding tax
→ 0% dividend withholding tax LuxCo to LuxCo
- Beneficial treaty network
- Participation exemption
- EU Directives apply – Parent/Subsidiaries & Merger Directives

Luxembourg – changes to dividend withholding tax regime

- From 1 January 2009, dividends paid by a Luxembourg company to a foreign parent company which is subject to a tax rate comparable to Luxembourg rate, exempt from Luxembourg withholding tax if tax treaty in place between Luxembourg and foreign jurisdiction
- Exemption subject to recipient company holding minimum investment of 10% or shares with acquisition price of at least EUR 1.2mn in Luxembourg company for period of at least 12 months

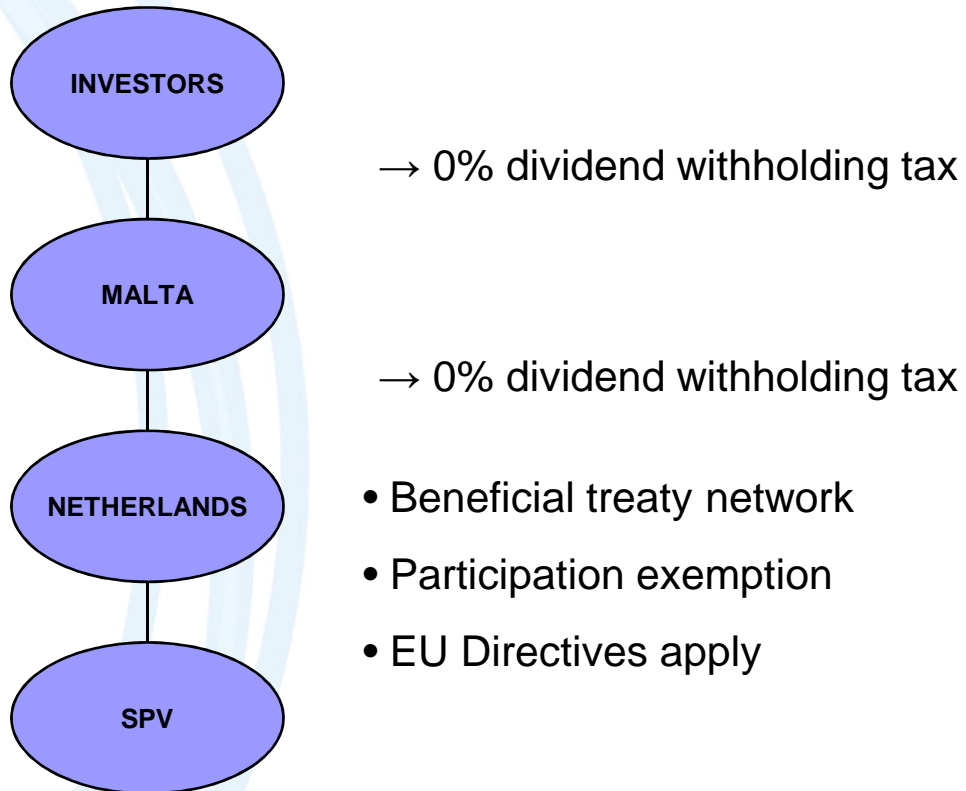
New Luxembourg / Hong Kong treaty

- Dividends paid from a Luxembourg company to a Hong Kong company not subject to Luxembourg withholding tax, subject to same conditions as domestic rules
- Provides new alternative to CPECs

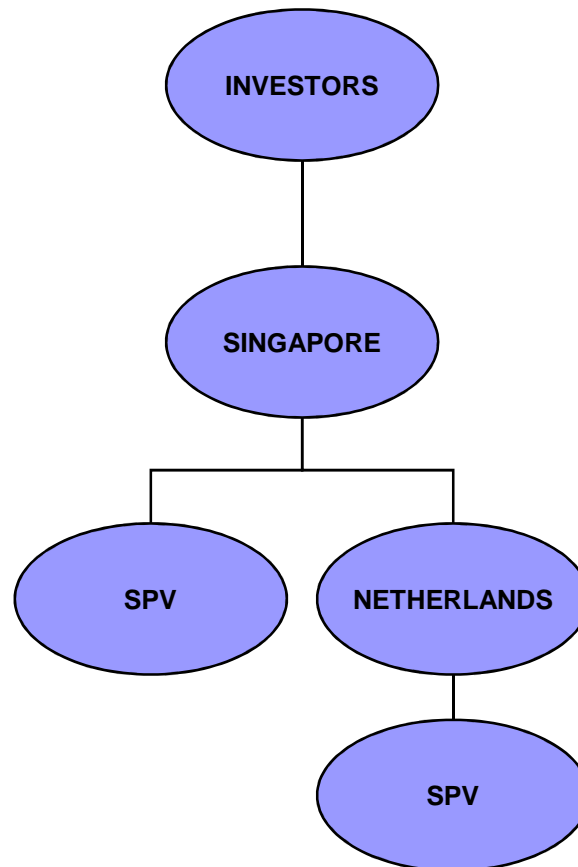
Hong Kong – other benefits

- Legal system based on UK law
- No dividend withholding tax
- Hong Kong system of territorial taxation exempts all non-Hong Kong-sourced income

Investing through the Netherlands



Investing through the Netherlands cont.



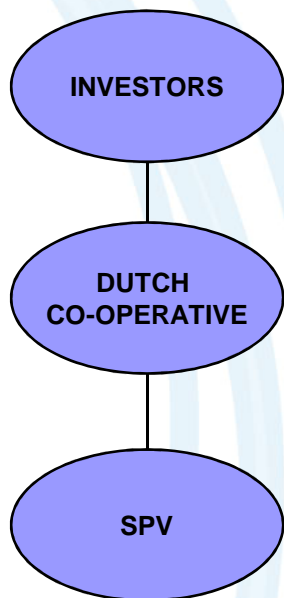
• Direct gains

- no dividend withholding tax
- participation exemption
- offshore income

← 0% dividend withholding tax

- BUT if Netherlands Co is intermediary, Singapore participation exemption does not apply because Dutch participation exemption exempts income in the Netherlands

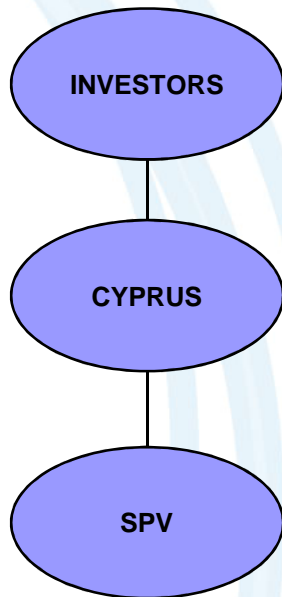
Dutch Co-operative



→ 0% dividend withholding tax

- no share capital
- members accounts
- corporate form
- unclear whether (mis)use of Co-ops to be accepted by Dutch Authorities

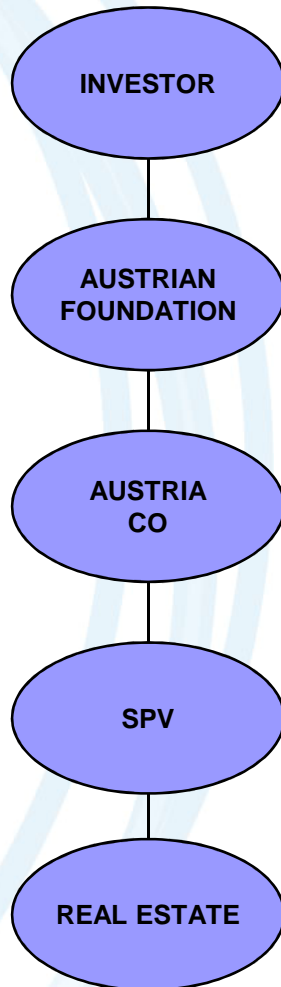
Investing through Cyprus



→ 0% dividend withholding tax

- participation exemption
- no capital gains tax
- EU Directives apply
- treaty network
- SDC!

Use of Austria and Austrian Foundation



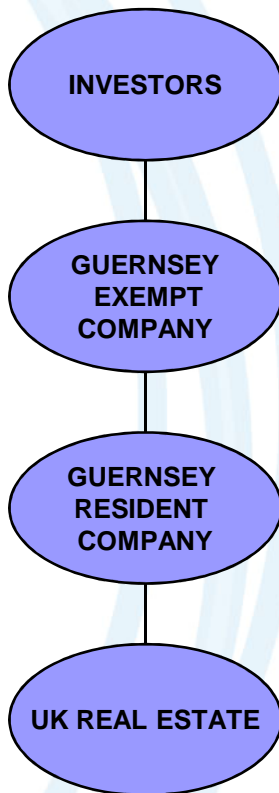
- 0% withholding tax on distributions from Austria Co to Austrian Foundation

- Austrian Foundation can receive payment under participation exemption and can pay out to a third party in a treaty country without Austrian withholding tax

- gains on sale of real estate allocated to Austria under Austria/SPV Country treaty

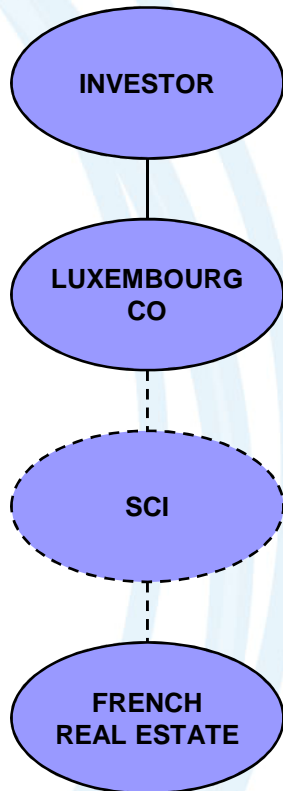
- EU Directives apply

Investing in UK real estate



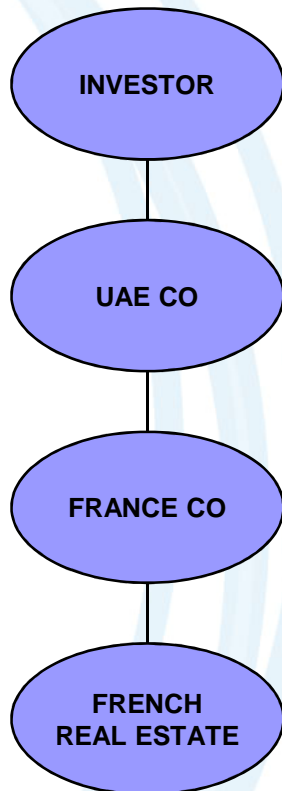
- “90-10” structure
- Anticipated revision of UK / Guernsey treaty
- Management and Control
- Permanent Establishment – HMRC attack
- Trading Profit vs Investment
- Speculative gains

Investing in French Real Estate



- Under old France/Luxembourg treaty profits not taxable in France or Luxembourg
- Treaty now amended so profits taxed in France
- French tax can be avoided by:
 - i) Selling shares of Luxembourg company
 - ii) Interposing SCI and selling shares of SCI
 - iii) Redomiciling Lux co to e.g. Lebanon (but may create French tax charge)

Investing in French Real Estate cont.



- UAE/France treaty exempts gain on sale of French subsidiary provided French real estate used for the business of the owner (Article 11(1)(b))
- Buyer taking the company with inherent tax liability therefore need for discount on sale

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GENERAL DEVELOPMENTS

Requirement for Economic Substance

- CFC rules
 - current 'exempt activities' test eg Article 209B CGI
 - consultation throughout 2009 on scope of new UK CFC rules and discussion with businesses re what constitutes real substance
- Switzerland/Austria anti-abuse provisions
 - Art 1(2) EU Parent-Subsidiary Directive
 - If no substance in parent company, the Directive will not be applied

Beneficial Ownership

- Case law does not give conclusive definition:
 - *Indofoods v JP Morgan*
 - *Prévost Car*
 - *MIL Investments*
- Conduit companies must have proper degree of substance

Permanent Establishments

- Real estate
 - can a real estate development constitute a PE?
- E-Commerce
 - can a server constitute a PE?

Reliance on Double Tax Treaties

- Treaty Overrides and Vienna Convention
 - anti-avoidance legislation as specific provisions
- Title of Double Tax Treaties
 - for the avoidance of double taxation
 - and the prevention of fiscal avoidance