

# Structuring Inbound & Outbound Investments through Luxembourg

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# Introduction to Luxembourg

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# Introduction to Luxembourg

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***Stability***

***Respectability***

***Flexibility***

***Quality***

***Notoriety***

# Introduction to Luxembourg

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## *Stability*

- ❑ Political
- ❑ Economical
- ❑ Tax

# Introduction to Luxembourg

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## *Respectability*

- ❑ Founding member of the EU
- ❑ Member of OECD
- ❑ Member of NATO since 1949

# Introduction to Luxembourg

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## *Flexibility*

- ❑ Tax law
- ❑ Corporate law
- ❑ Finance law

# Introduction to Luxembourg

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## *Quality*

- ❑ Skilled Workers
- ❑ Multicultural Labour Force
- ❑ Access to Foreign Know-How

# Introduction to Luxembourg

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## *Notoriety*

### ❑ Central Location

### ❑ Internationally Recognised Financial Center

- A prime location for banking and investment management
- A prime location for investment funds, hedge funds and listings

### ❑ Track Records

- 2nd largest global leader for domiciled funds behind the United States
- 1st for safety (in 2005)
- One of the best quality-of-life locations in the world

# Introduction to Luxembourg

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## *Cornerstones of the Financial Center*

- ❑ 150+ Banks
- ❑ 3,400+ UCIs
- ❑ 220+ SICARs
- ❑ 90+ Insurance Companies
- ❑ 260+ Reinsurance Companies
- ❑ 12,000+ Holding Companies

# Introduction to Luxembourg

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## *Tax Structuring Background*

- ❑ 50+ Tax Treaties
- ❑ 20+ Tax Treaties in Pipeline
- ❑ Forbes Tax Misery & Reform Index\* (2008)
  - N° 1 = France
  - N° 2 = Netherlands
  - N° 3 = Belgium
  - N° 27 = Luxembourg
  - N° 52 = Russia
  - N° 64 = Hong Kong
  - N° 65 = UAE
  - N° 66 = Qatar

*\* includes Corp. Tax, Pers. Tax, Wealth Tax, VAT, Sales Tax, Social Security Contributions*

# Introduction to Luxembourg

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## *Multicultural Environment*

- ❑ Population = 495,000+
- ❑ Employment = 330,000+
  - Nationals = 37.6%
    - Public sector = 9.6%
    - Private sector = 28.0%
  - Foreigners = 62.4%
    - Resident = 20.8%
    - Non-resident = 41.2%
- ❑ Unemployment = 4,800+

# Introduction to Luxembourg

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## ***Gross Domestic Product***

❑ GDP 2007 = USD 47.9 Billion (Debt = 7% of GDP)

❑ GDP Growth

2006 (+6.4%)

2008 (+2.0% *estimate*)

2007 (+5.2%)

2009 (+0.5% *estimate*)

❑ GDP per Capita

- N° 1: Liechtenstein
- N° 2: Qatar
- N° 3: Luxembourg (USD 85,100 *estimate*)

❑ Income per Capita

- N° 1: Luxembourg (USD 39,840)

# Fiscal Environment

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- ❑ General Principles
- ❑ Important Participation Exemption
- ❑ Withholding tax (WHT)
- ❑ International
  - EU Directives
  - Tax Treaty Network
- ❑ Capita Selecta
  - Advanced Tax Agreements
  - Mergers & Relocations
  - Intellectual Property

# Fiscal Environment – General Principles

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## Tax Base

- Worldwide Income

## Tax Rates

- Corporate Income Tax – 21.84% (21% plus Unemployment Tax)
- Local Business Tax – 6.75% (in the City of Luxembourg)
- Global Income Tax Rate – 28.59%
- Net Wealth Tax – 0.5%

## Fiscal Unity – Tax Consolidation

## No CFC Rules

## No Stamp Duty on Disposal of Shares

## No Capital Duty

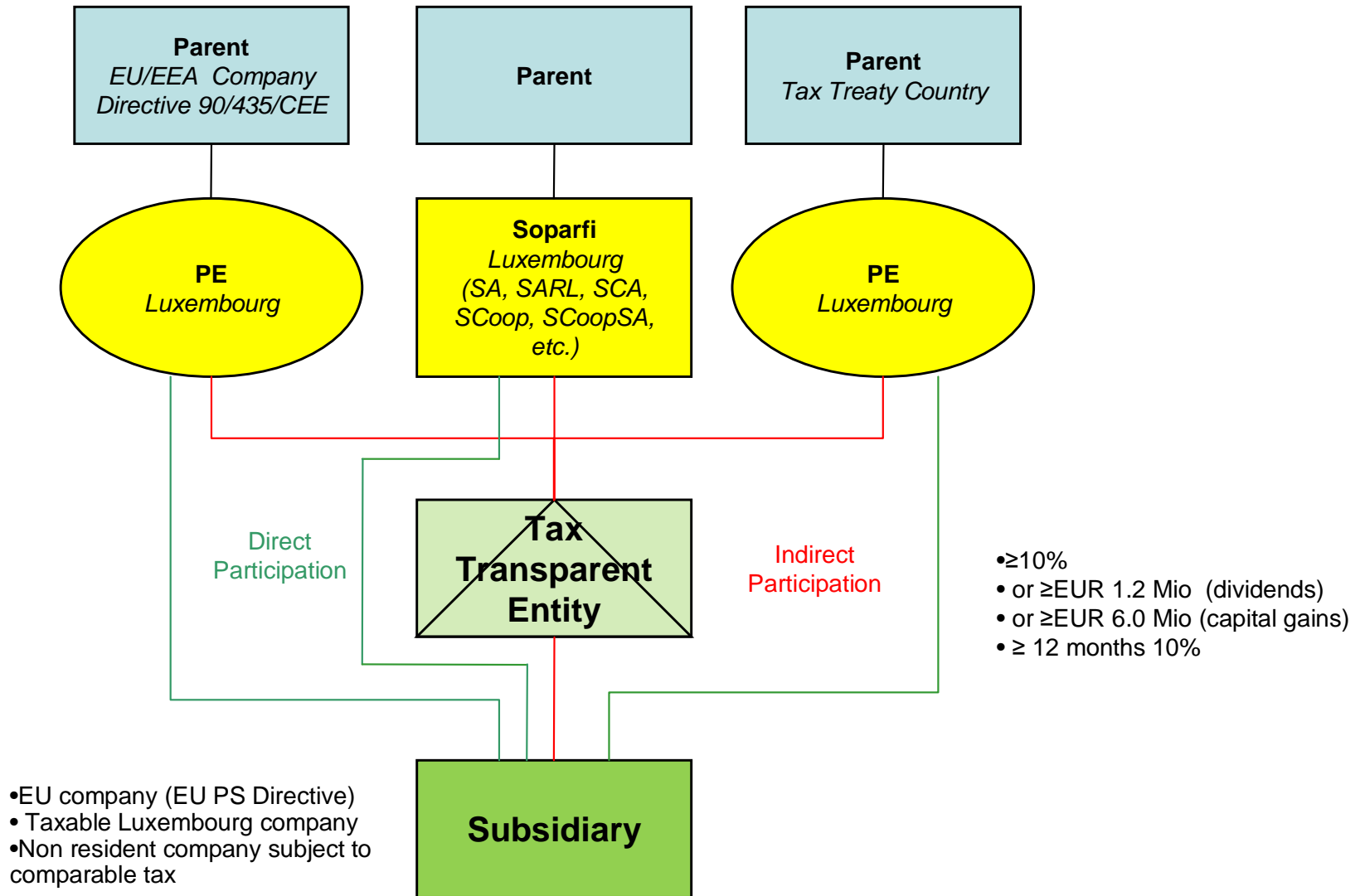
# Fiscal Environment – Important Participation Exemption

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## □ Dividend Income

- Full exemption Corporate Income Tax (CIT)
- Conditions
  - Parent Company
  - Subsidiary
  - Direct / Indirect Participation
  - Participation held during 12 months
  - Participation  $\geq$  10% or €1.2 Mio
  - Liquidation Proceeds
  - Limitations on Deductibility
  - Exchange of Participations

# Fiscal Environment – Important Participation Exemption



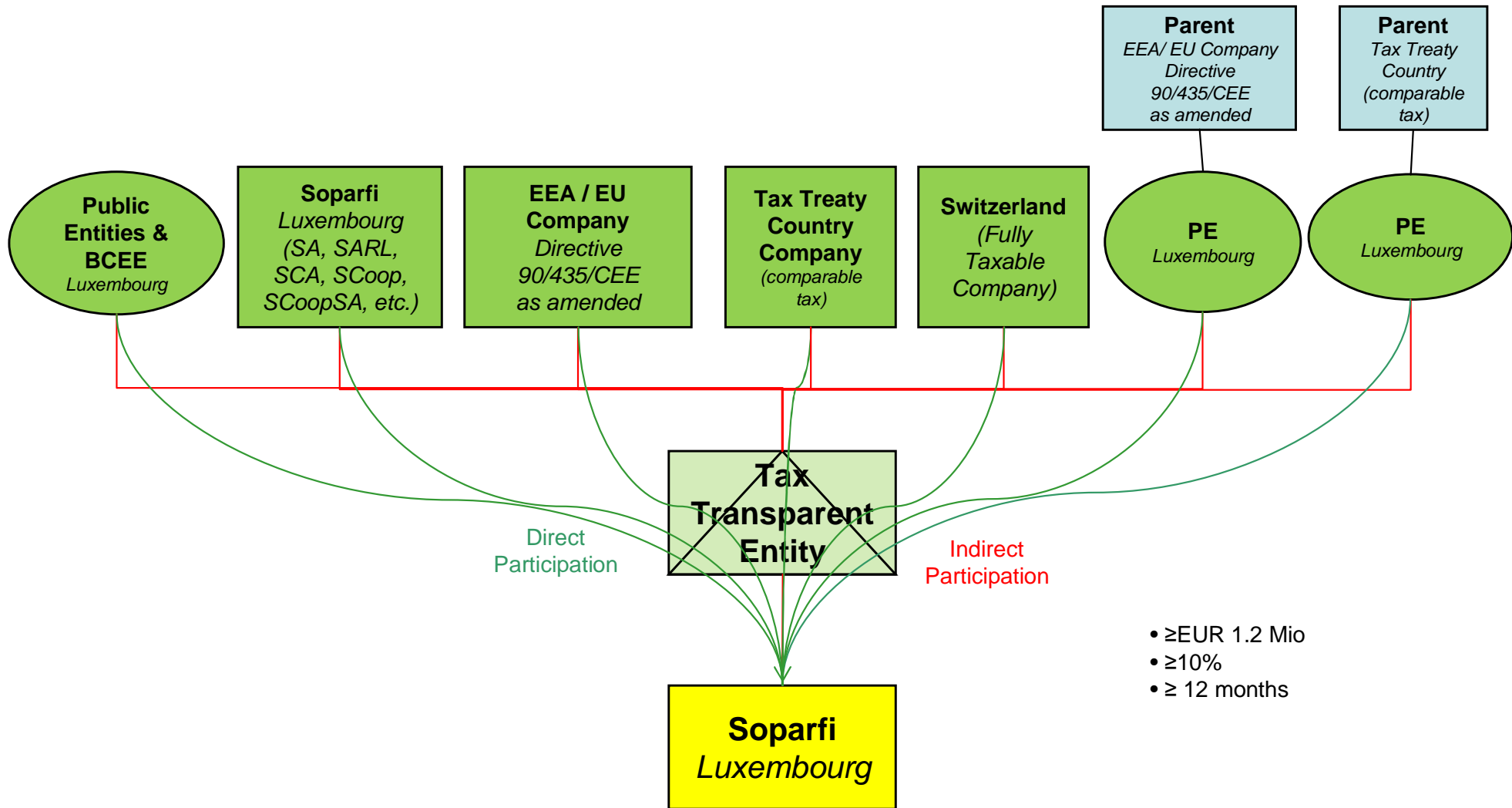
# Fiscal Environment – Important Participation Exemption

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## □ Dividend Distribution

- Full Exemption from WHT
- Conditions
  - Parent Company
  - Subsidiary
  - Direct Participation
  - Participation held during 12 months
  - Participation  $\geq$  10% or €1.2 Mio

# Fiscal Environment – Important Participation Exemption



# Fiscal Environment – Important Participation Exemption

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## □ Capital Gains Income

- Full Exemption from CIT
- Conditions
  - Parent Company
  - Subsidiary
  - Direct Participation
  - Participation held during 12 months
  - Participation  $\geq$  10% or €6.0 Mio

# Fiscal Environment – Important Participation Exemption

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## □ Net Wealth Tax

- Full Exemption
- Conditions:
  - Parent Company
  - Subsidiary
  - Direct Participation
  - Participation  $\geq$  10% or €1.2 Mio
  - No holding period requirement
- Reference date = 1 January

# Fiscal Environment – Withholding Taxes

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## □ Interest

- Principle: No WHT
- Exceptions:
  - No arm's-length interest (hidden dividend)
  - Profit sharing bonds and alike
  - Silent partnership arrangements
  - Interest within the scope of the EU Savings Directive (20% - 35%)
    - ⇒ Only for interest paid to individuals residing in EU
    - ⇒ Not for interest paid to individuals residing outside EU
    - ⇒ Not for interest paid to Corporate
    - ⇒ Alternative: Exchange information
  - 10% final levy for resident individuals

# Fiscal Environment – Withholding Taxes

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## □ Royalties

- Patents, Trade Marks, Copy Rights – 0%
- Artistic Rights, Sport Rights (exercised in Luxembourg) – 10% WHT

## □ Dividends

- 15%
- Tax Treaties (0% - 15%)
- Important Participation Exemption (0%)

## □ Liquidation Proceeds

- No WHT

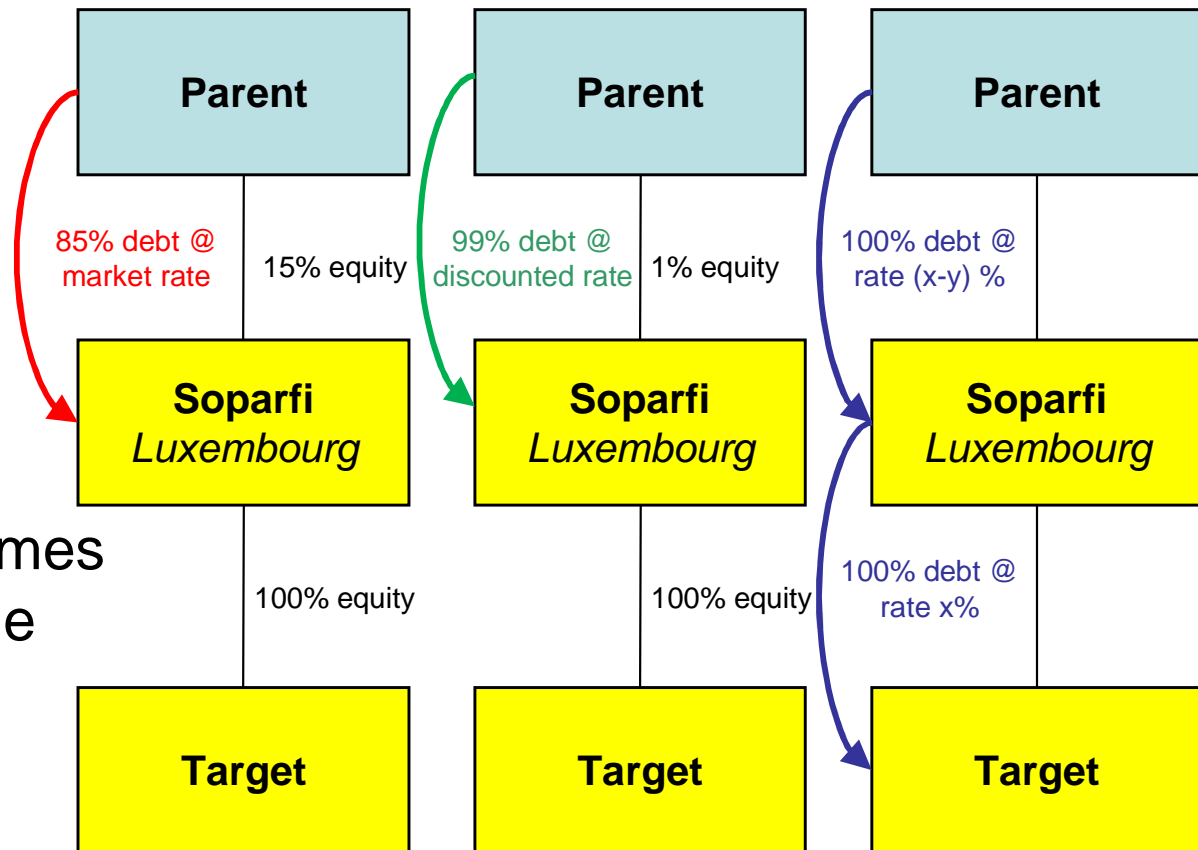
# Fiscal Environment – Thin Cap Rules

## ❑ Debt Equity Ratio

- 85/15
- Conduit Financing

## ❑ If Not Respected:

- Requalification
  - Interest becomes non deductible dividend
  - WHT



# Fiscal Environment – Intellectual Property

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## □ Principle

- Fully taxed at 28.59%

## □ For certain IP acquired as of 1/1/2008

- 80% Exemption of income/capital gains
- 100% Exemption from net wealth tax
- IP: copyright of software, patents, industrial or commercial trademarks and industrial designs
- Available for royalty received from related parties
- Not available for IP acquired from parties directly related for 10% or more

## □ Alternative Structuring

- Fiscal Capital

## □ Attention

- Business Permit
- VAT

# Fiscal Environment – EU Directives

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- ❑ EU Parent Subsidiary Directive
- ❑ EU Interest and Royalty Directive
- ❑ EU Merger Directive
- ❑ EU Savings Directive

# Fiscal Environment – Tax Treaty Network

## Existing Treaties

Austria	Belgium	Brazil	Bulgaria	Canada
China	Czech Rep	Denmark	Estonia	Finland
France	Germany	Greece	Hong Kong	Hungary
Iceland	Indonesia	Ireland	Israel	Italy
Japan	Latvia	Lithuania	Malaysia	Malta
Mauritius	Mexico	Mongolia	Morocco	Netherlands
Norway	Poland	Portugal	Romania	Russia
San Marino	Singapore	Slovakia	Slovenia	South Africa
South Korea	Spain	Sweden	Switzerland	Thailand
Trinidad & Tobago	Tunisia	Turkey	UK	USA
Uzbekistan	Vietnam			

# Fiscal Environment – Tax Treaty Network

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## □ Treaties Under Negotiation

Albania	Argentina	Armenia	Azerbaijan	Bahrain
Barbados	Cyprus	Georgia	India	Kazakhstan
Kirgizstan	Kuwait	Lebanon	Macedonia	Moldavia
Pakistan	Qatar	Serbia and Montenegro	Ukraine	United Arab Emirates

# Fiscal Environment – Tax Treaty Network

## □ Luxembourg - Russia Tax Treaty

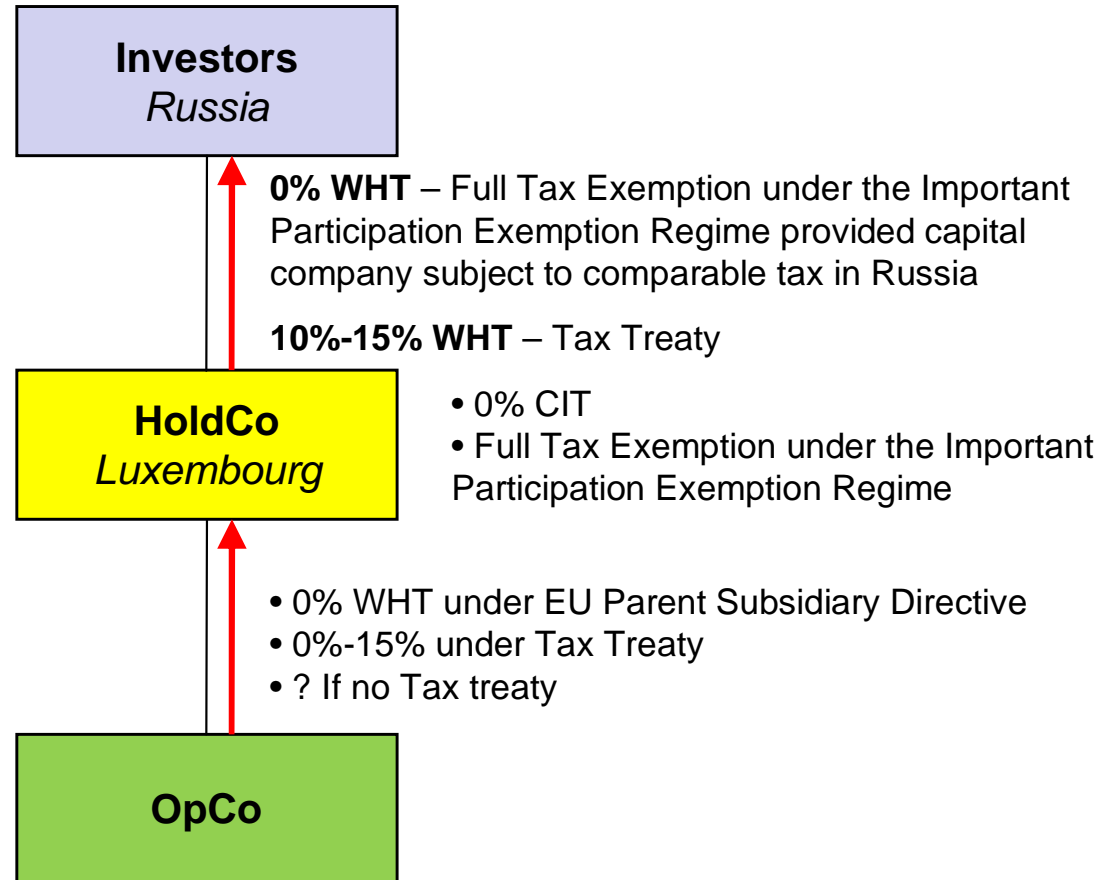
Income	Taxation
Dividends	<ul style="list-style-type: none"><li>□ 10 % WHT in case of minimum participation of 30% and minimum EUR 75.000</li><li>□ 15% WHT in other cases</li></ul>
Interest	0%
Royalties	0%
Director Fees	Taxation in the State where the company is resident
PE	Taxation in the State of permanent establishment
Real Estate	Taxation in the State of the immovable property
Capital Gains	Taxation in the State where the alienator is a resident

# Frequently Used Structures

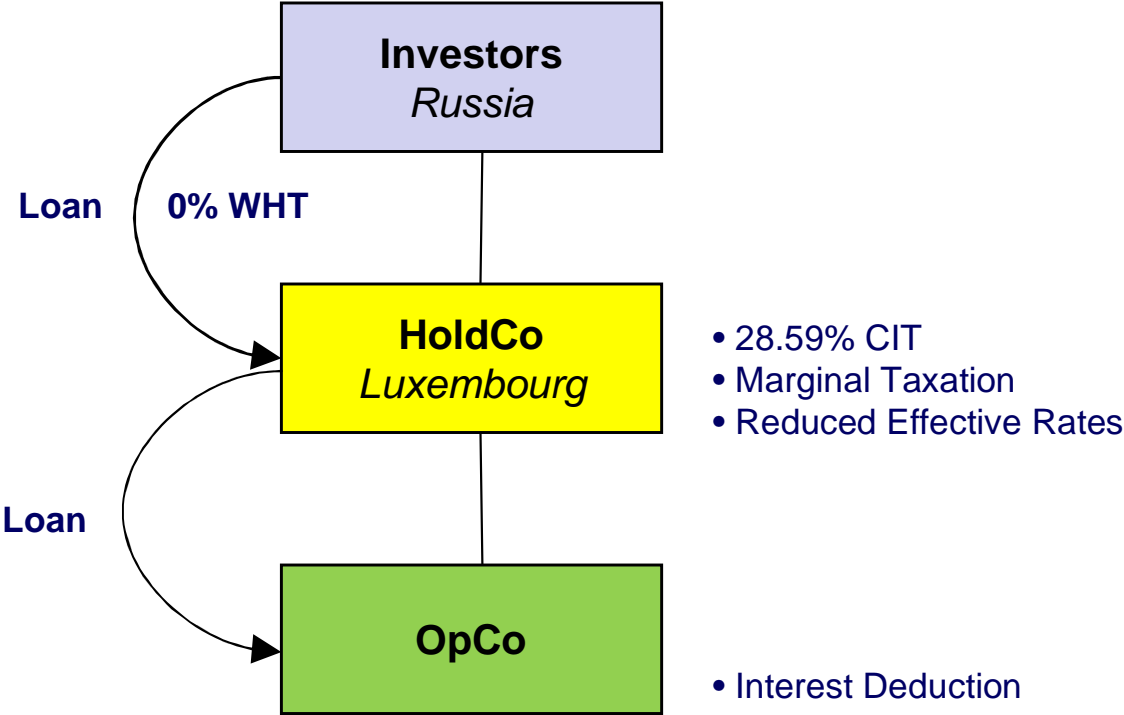
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- ❑ **Outbound Investments** – Equity Investment
- ❑ **Outbound Investments** – Debt Financing
- ❑ **Outbound Investments** – Convertible Debt Instruments
- ❑ **Outbound Investments** – Equity & Debt Financing
- ❑ **Inbound Investments** – Debt Financing
- ❑ **Inbound Investments** – Using Treaty Network
- ❑ **Inbound Investments** – Exit Structures
- ❑ **Inbound Investments** – Deemed Interest Deduction
- ❑ **Inbound Investments** – Intellectual Property
- ❑ **Inbound Investments** – Finance Branch

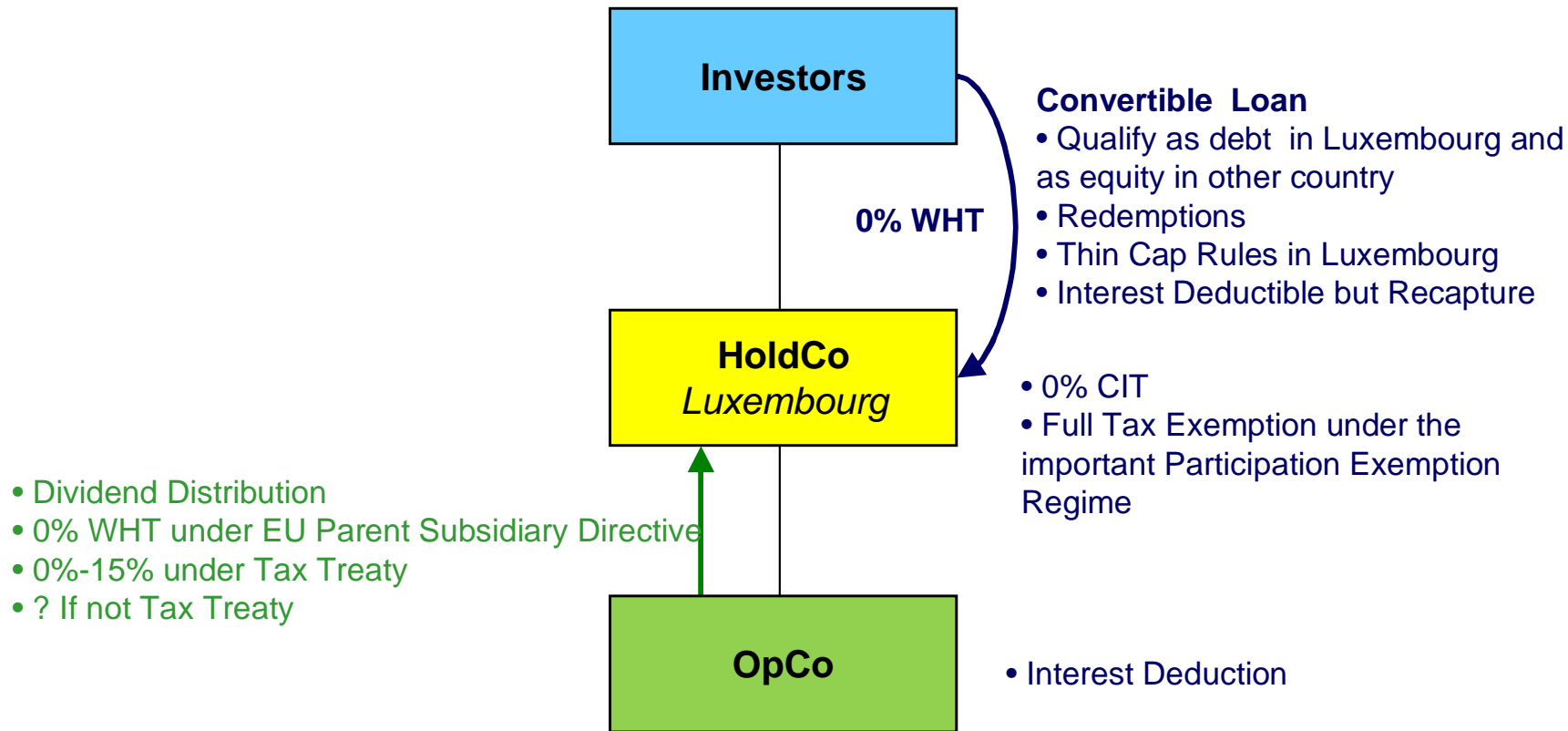
# Structures – Outbound Equity Investment



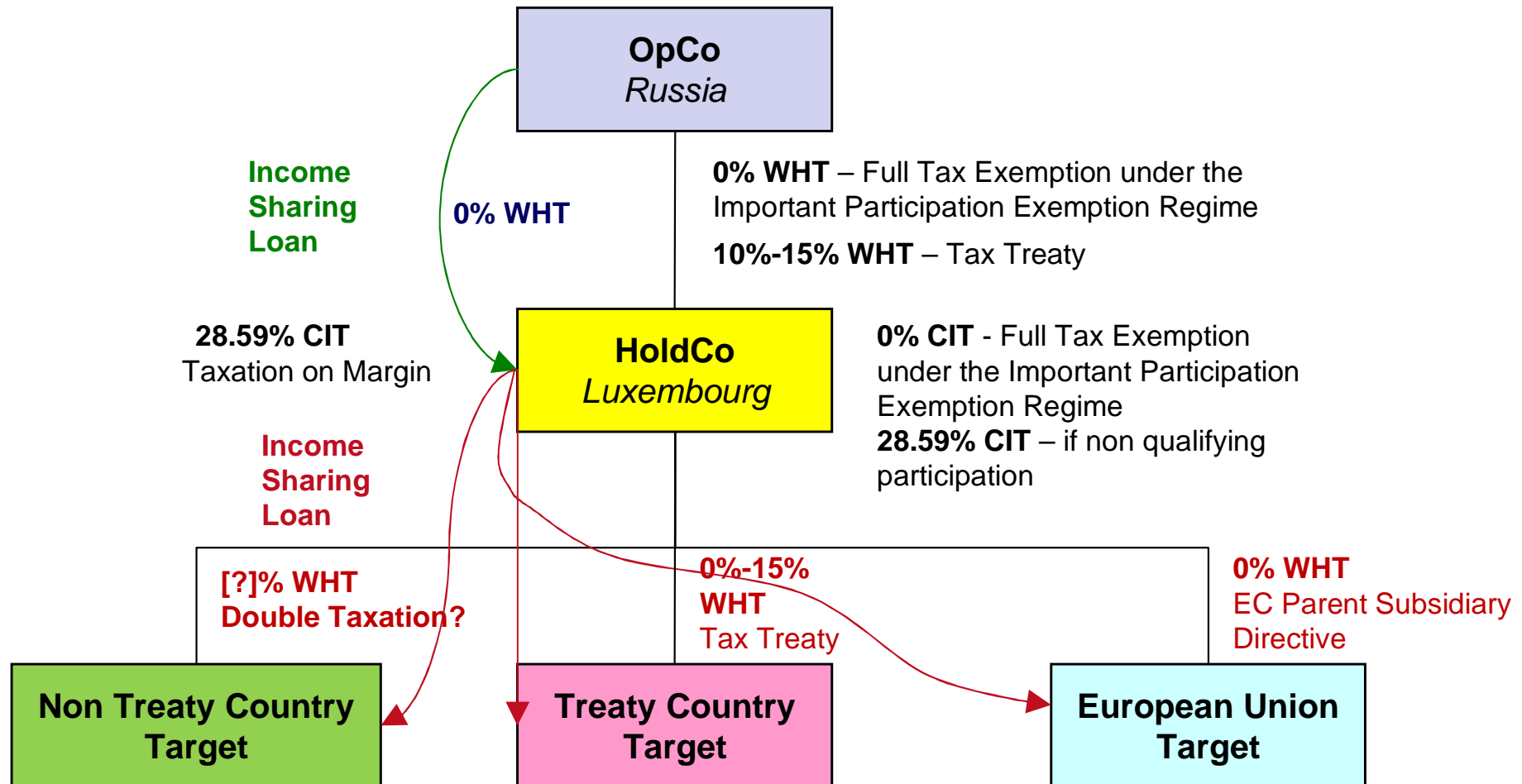
# Structures – Outbound Debt Financing



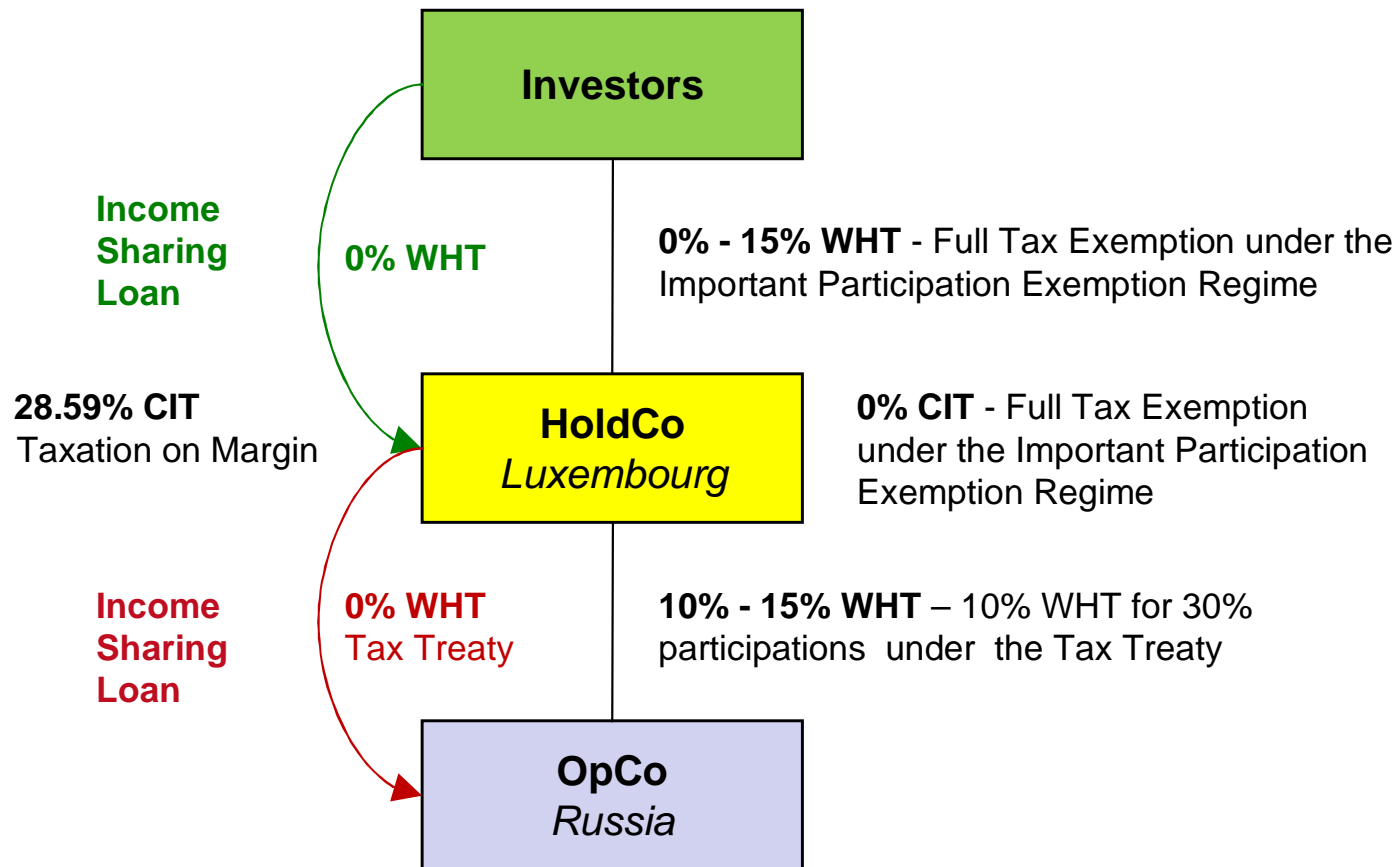
# Structures – Outbound Convertible Debt



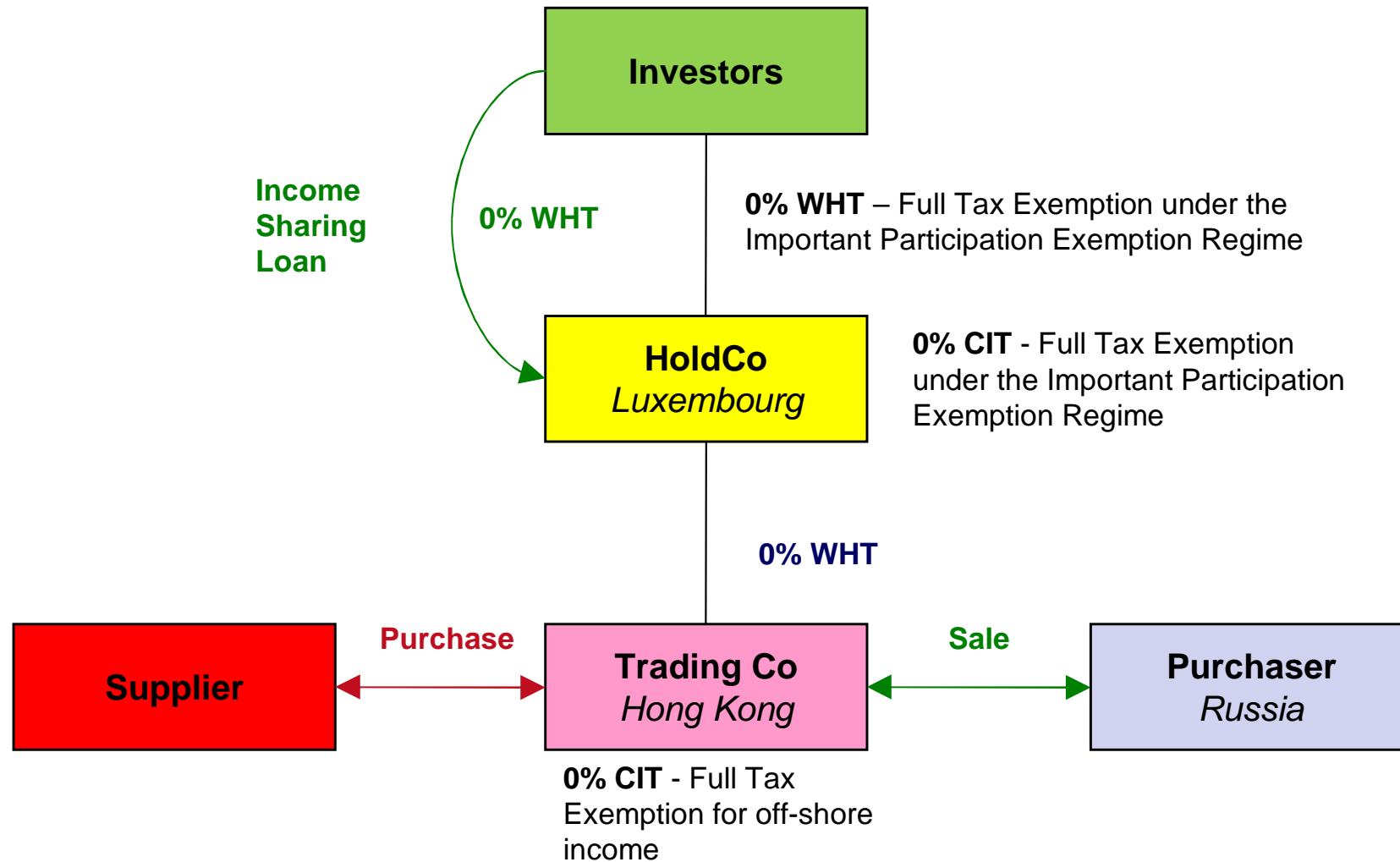
# Structures – Outbound Equity & Debt Financing



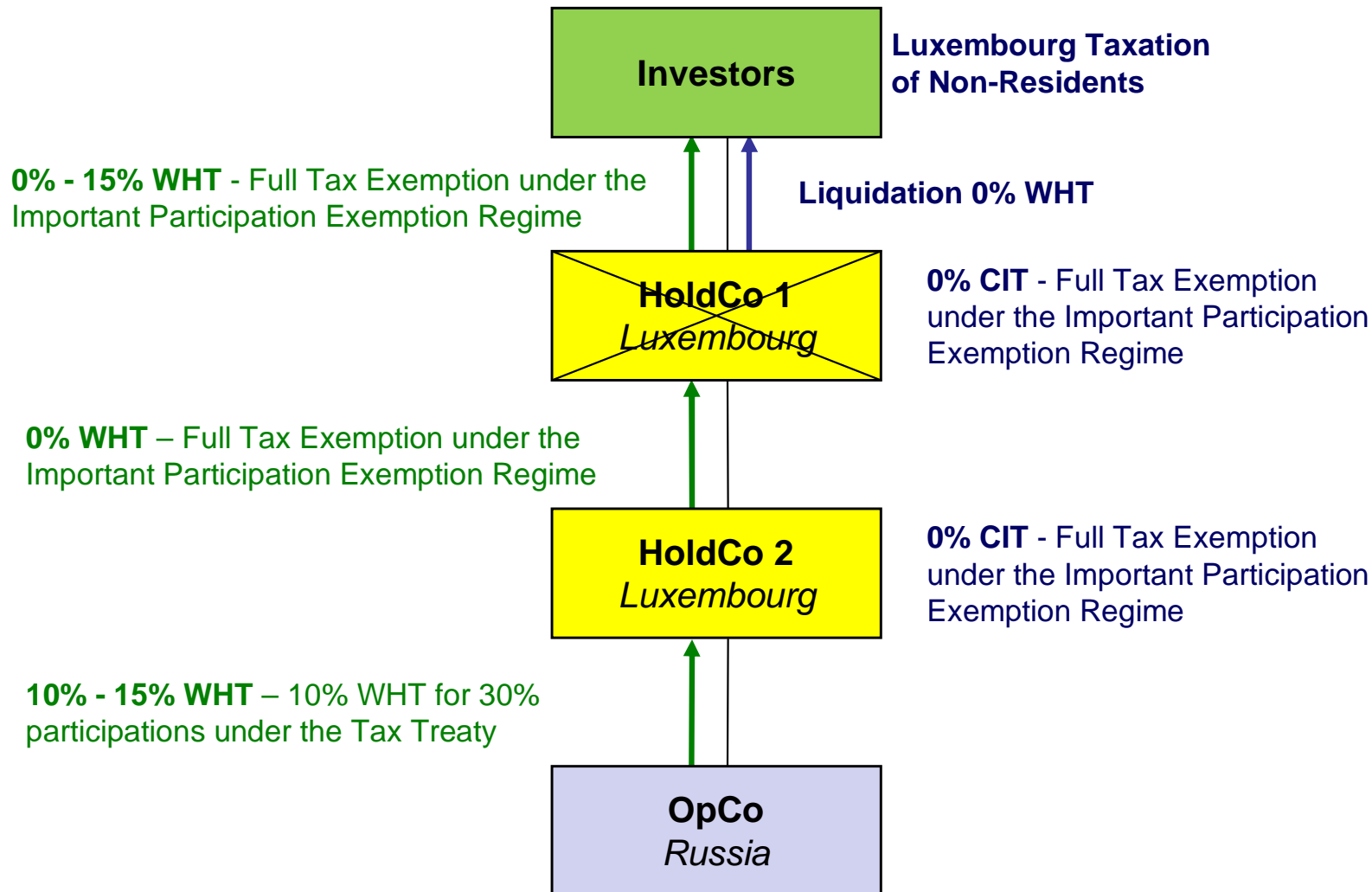
# Structures – Inbound Debt Financing



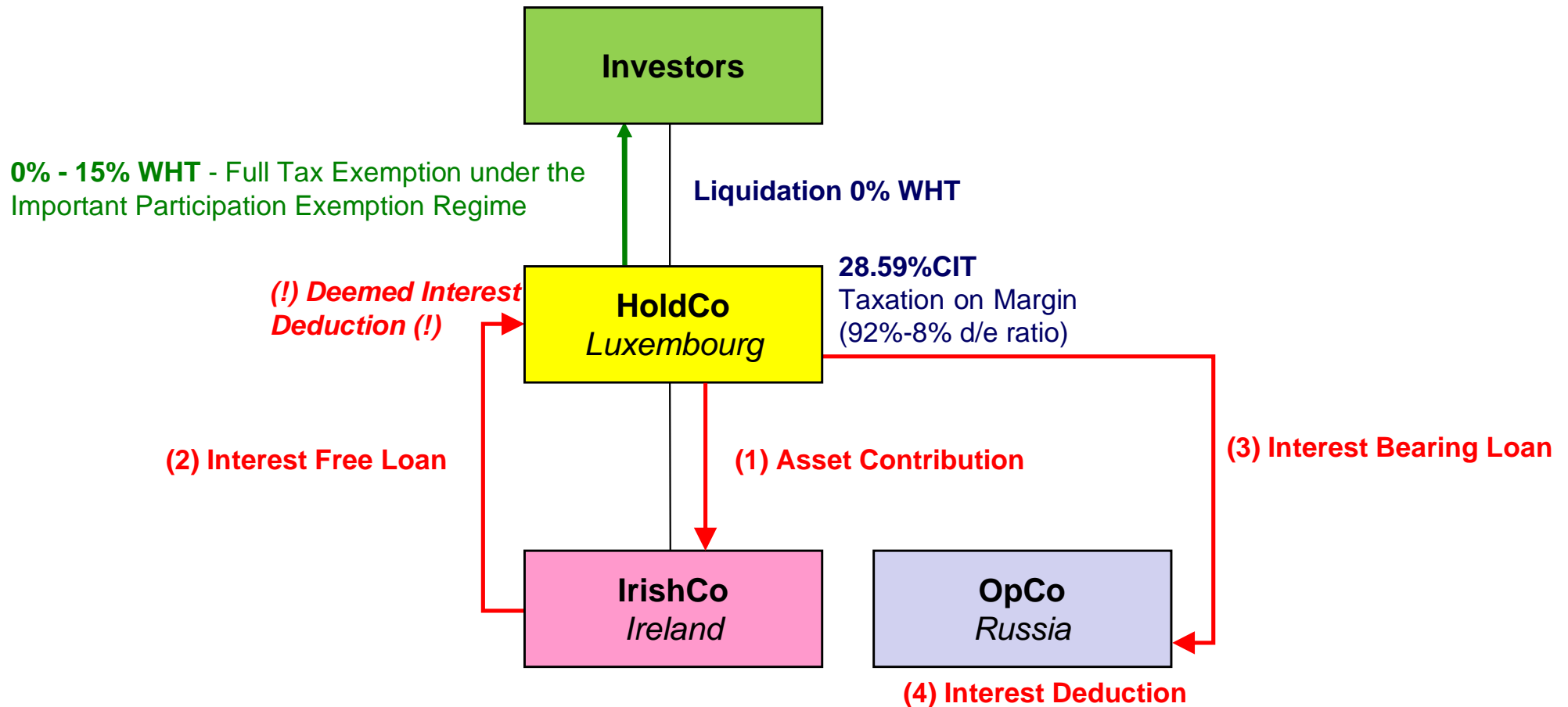
# Structures – Using Treaty Network



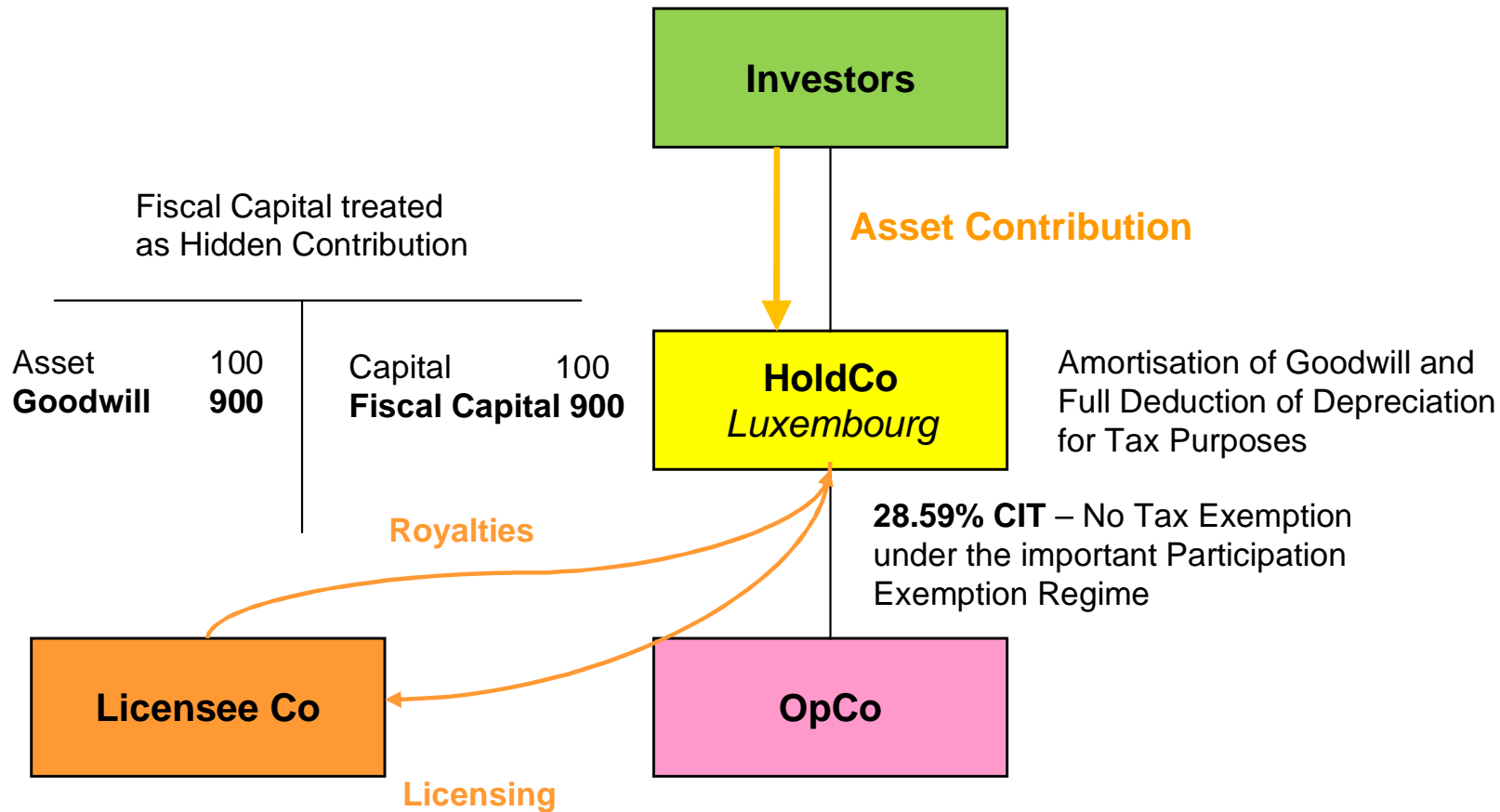
# Structures – Outbound Exit Structures



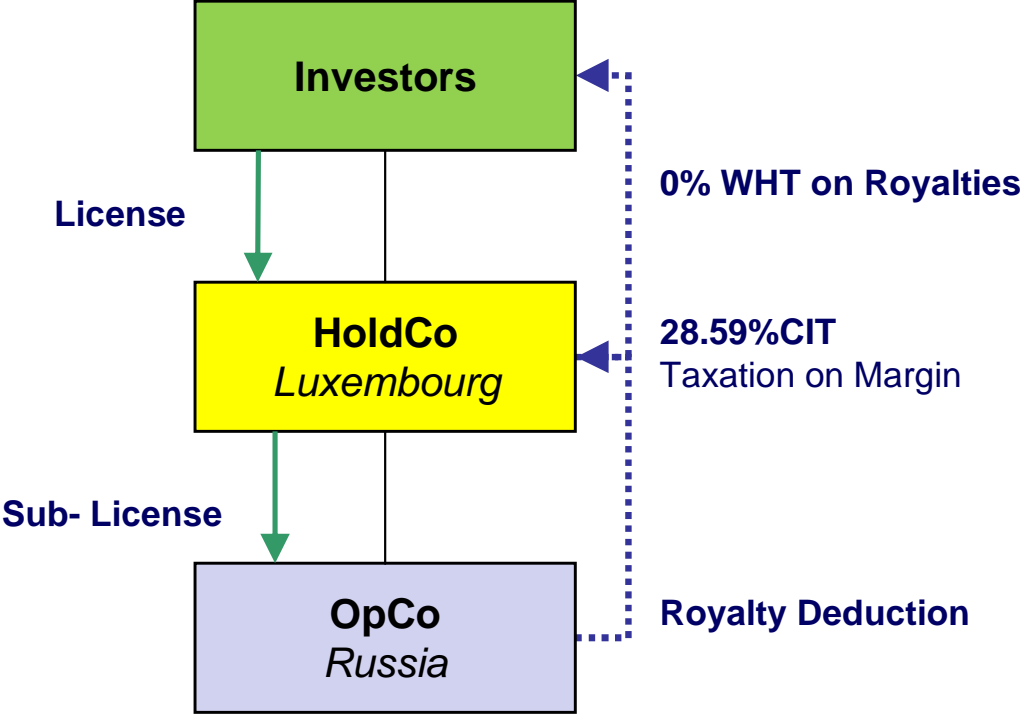
# Structures – Deemed Interest



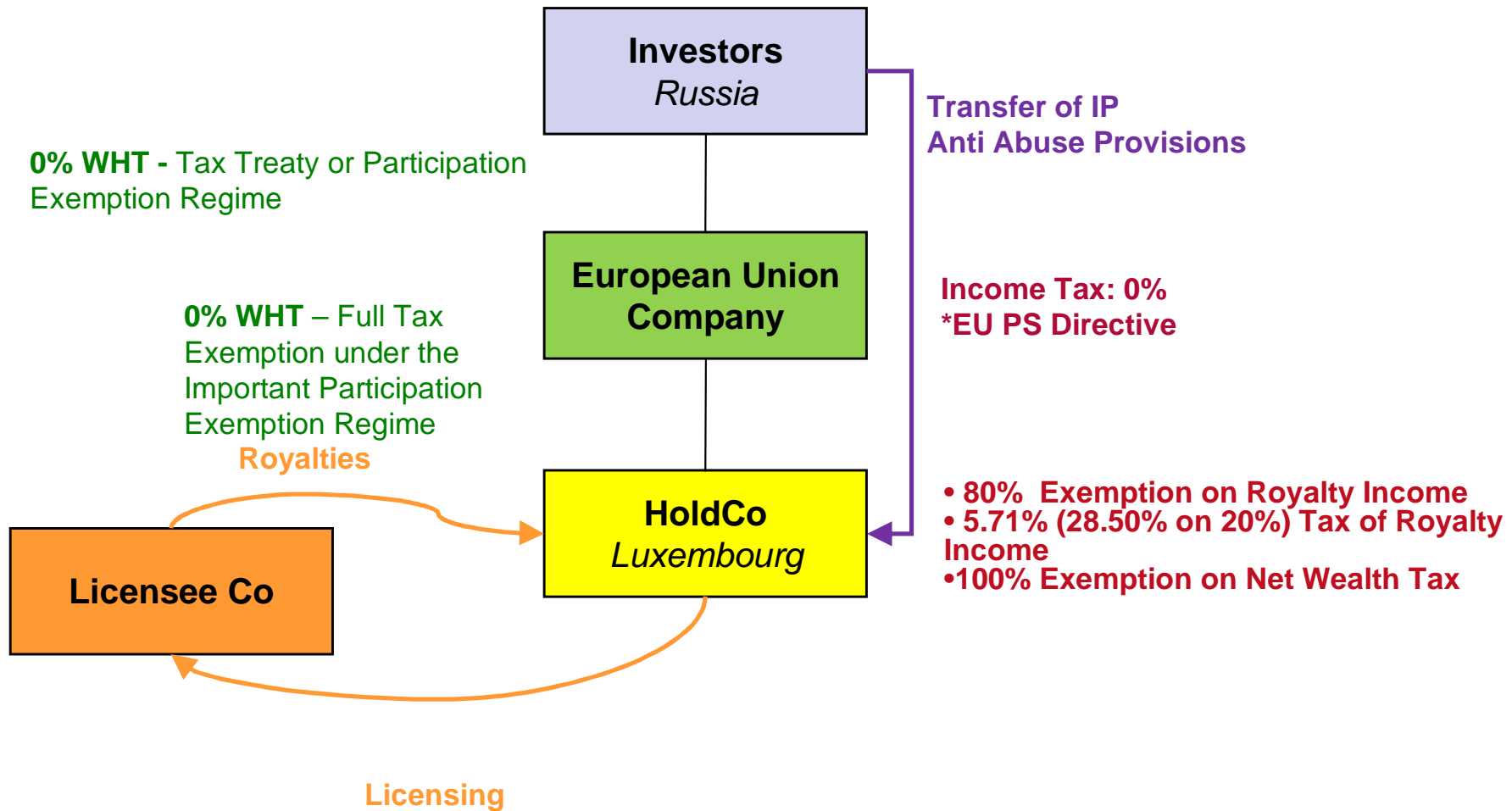
# Structures – Intellectual Property



# Structures – Intellectual Property



# Structures – Intellectual Property



# Financial Environment

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- ❑ Stock Exchange
- ❑ Securitisation Vehicle

# Financial Environment – Stock Exchange

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## □ Luxembourg Stock Exchange: Prime Location for Listing

- Key Figures
  - Luxembourg ranks 1<sup>st</sup> for listed international bonds
  - Dominant position for investments funds

## □ Two Markets

- Luxembourg Stock Exchange: EU-Regulated Market
  - EU – Regulated
  - N°1 for Eurobonds

# Financial Environment – Stock Exchange

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## □ Euro MTF

- Non EU-regulated but Luxembourg Stock Exchange regulated
- Flexible, rapid and less costly

## □ Wide range of securities admitted to trading

- Debt Securities
- Investment Funds
- Equity / GDR
- Warrant Certificates

## □ Variety of legal vehicles for issuing securities

- SV, SIF or UCI

# Financial Environment – Stock Exchange

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## ❑ London Stock Exchange - Alternative Investment Market (AIM)

- No minimum shares to be in public hands
- No trading record requirement
- Admission documents not pre-vetted by LSE or UK listing authority
- Nominated adviser required at all times
- No minimum market capitalisation

# Financial Environment – Securitisation Vehicle

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- ❑ Law 2004
- ❑ **Securitisation** = process of distributing risk by the transfer of a pool of financial assets (typically debt instruments) from an originating company to a Special Purpose Vehicle which subsequently issues new securities, backed by the pool, to investors
- ❑ Form of Securitisation Vehicle ('SV')
  - Company (S.A., S.à.r.l., S.C.A., ...)
  - Funds (mutual funds, fiduciary funds)
  - Compartments
- ❑ Regulated vs. Unregulated

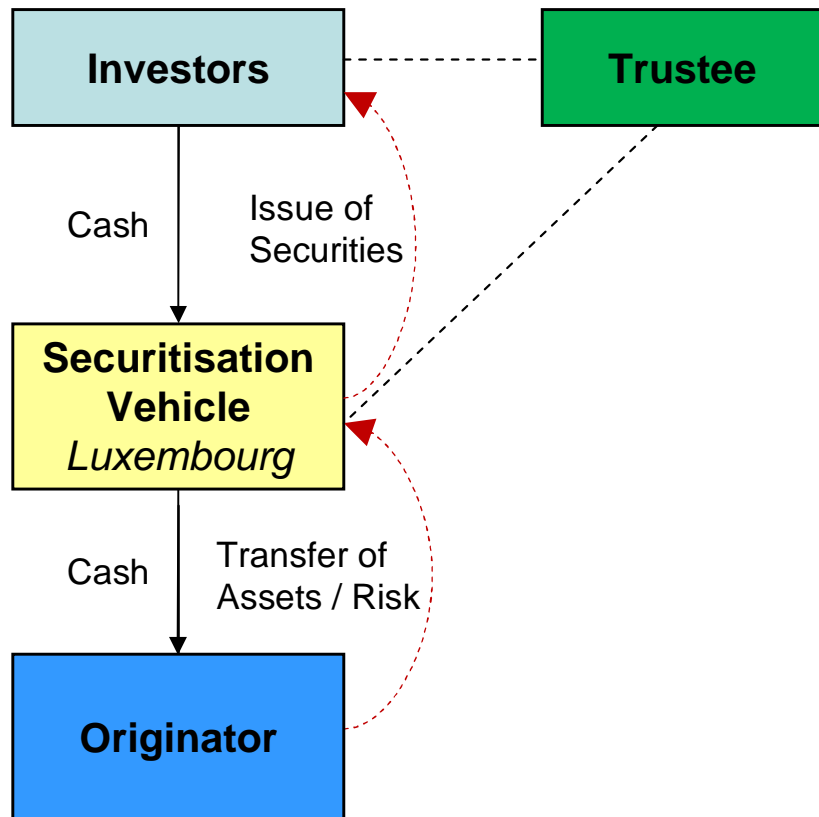
# Financial Environment – Securitisation Vehicle

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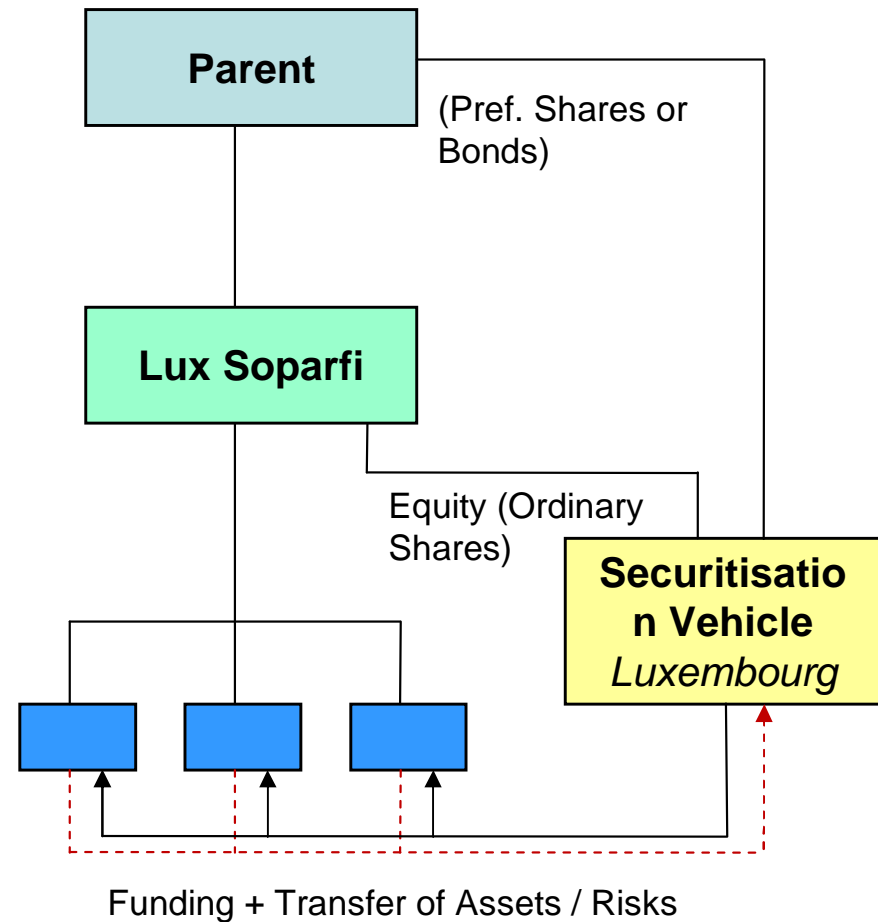
- ❑ No limitation for the assets to be securitised
- ❑ Financing of the SV
  - Securities issue
  - Ordinary loan – leverage
- ❑ Taxation:
  - **Contractual Form:** transparent
  - **Corporate Form:** fully taxable, but all commitments towards investors are deductible

# Financial Environment – Securitisation Vehicle

Issuance of securities to the capital market



Intra-group transactions



# Investment Funds/Vehicles

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## □ Regulated Funds

- UCITS
- SICAR
- SIF
- SV

## □ Unregulated Funds/Investment Vehicles

- SV
- Soparfi

# Investment Funds – Regulated vs. Unregulated

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## ❑ Vehicles within a Regulated Environment

- Undertakings for Collective Investment (UCI) in Transferable Securities (UCITS) – Law of December 20, 2002
- Specialised Investment Fund ('SIF') - Introduced in February 2007
- Venture Capital Investment Company ('SICAR') - Introduced in 2004 and further enhanced in October 2008

## ❑ Vehicles within an Unregulated Environment

- Securitisation company/fund introduced in March 2004
- Soparfi (ordinary taxable company)

# Investment Funds – UCI(TS)

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- ❑ EU Directive 2001 (Part I and Part II) and the Law of 2002
- ❑ Definition: Collective Investment / Investment of Savings / Risk Spreading
- ❑ Strongly regulated vehicle:
  - Approval by CSSF (Supervisory authority)
  - Asset diversification requirements
  - Restricted indebtedness
  - Reporting
- ❑ Promoter / Custodian/ Central Administration/ Auditor
- ❑ Prospectus
- ❑ Umbrella Funds/Compartments
- ❑ Taxation:
  - Exemption from CIT or transparent
  - Annual Subscription Tax (from 0.01% to 0.05%)
- ❑ Limited access to DTTs

# Investment Funds – SICAR

## ❑ SICAR

- Regulated VC / PE vehicle
- Institutional, professional and expert investors

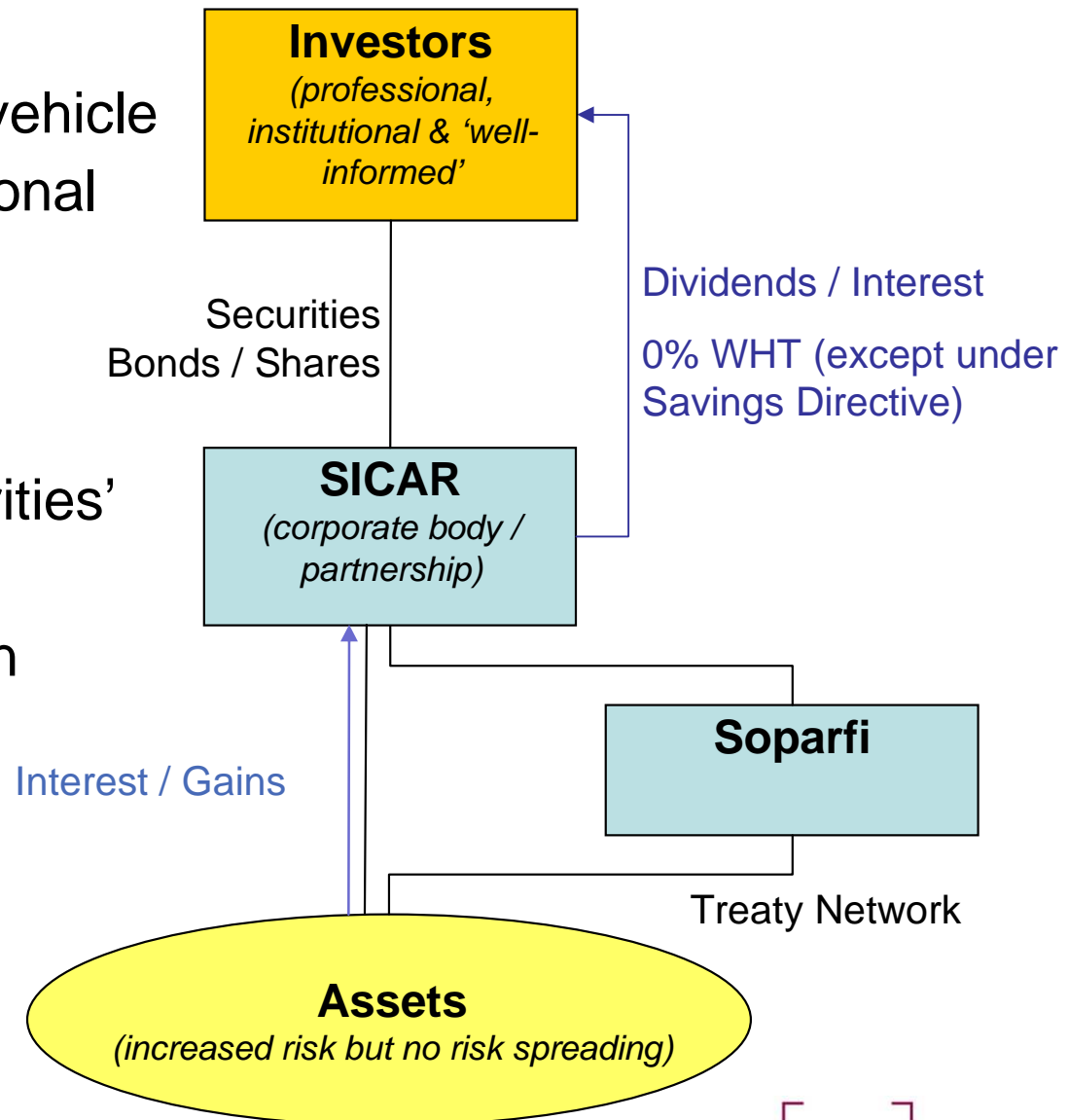
## ❑ Investments

- In 'risk capital'
- In 'transferable securities'
- No risk spreading
- No leverage limitation

## ❑ Compartments

- Fully segregated

## ❑ Tax neutral



# Investment Funds – SIF

## □ SIF

- Flexible, regulated investment fund
- Institutional, professional and expert investors

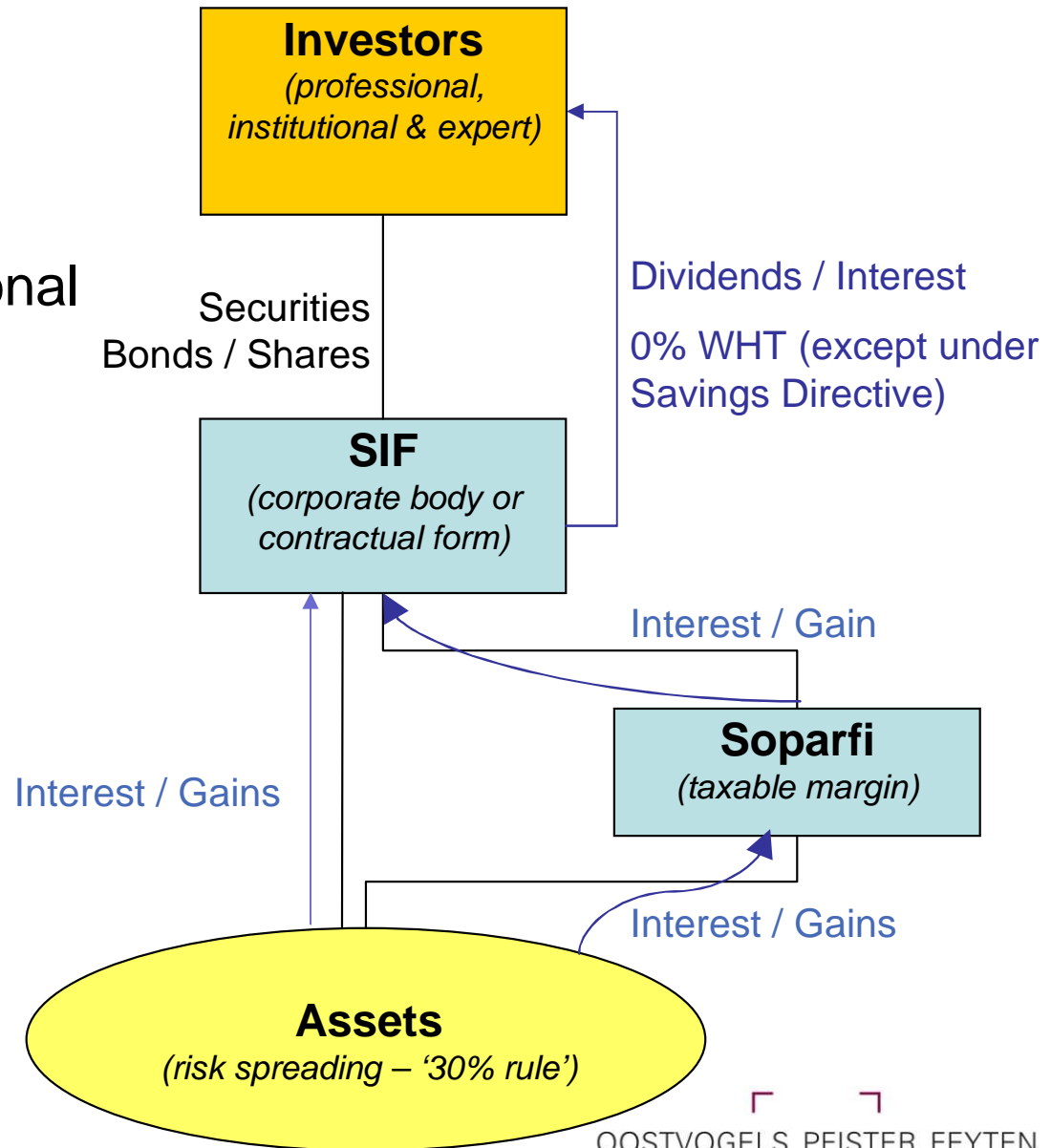
## □ Investments

- In 'values'
- Risk spreading
- Leverage - CSSF

## □ Compartments

- Fully segregated

## □ Tax neutral



# Investment Vehicles – SPF

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- ❑ °2007 in Replacement of Holding 1929
- ❑ Private Asset Management Company
- ❑ Limited Corporate Object and Activity
- ❑ Limited Scope of Investors / Shareholders
- ❑ Cannot be Listed
- ❑ Cannot hold Real Property
- ❑ Supervision and Compliance

# Investment Vehicles – SPF

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## ❑ Tax Regime Similar to Holding 1929

- CIT and NWT, subject 5% off-shore dividend limitation
- No WHT on dividends and exemption of capital gains taxation for non-resident shareholders
- Exempt from VAT
- Annual Subscription Tax of 0.25%, capped at EUR 125,000
- No access to DTTs / EU Directives

# Investment Vehicles – Soparfi

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## □ Legal Aspects

- Legal Form (*SA, SCA, SARL, SCoop*)
- Companies Act 1915
- Features
  - Not regulated
  - Quickly implemented
  - Flexible investment strategies
  - No formal thin capitalisation rules

# Investment Vehicles – Soparfi

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## □ Tax Aspects

- Fully taxable company
- Deductibility of:
  - Capital losses on shares
  - Interest expenses (tax deferral – ‘recapture rules’)
- EU Directives applicable
- DTTs applicable
- No Capital Duty since January 1st, 2009

# Trends in Corporate Structures

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- ❑ Selecting the Appropriate Legal Form
- ❑ Corporate Partnership Limited by Shares
- ❑ Different Classes of Shares
- ❑ Corporate Relocations

# Corporate – Commonly Used Legal Form

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## Checklist

- Limited Liability for Investors
- Limited Liability for Managers
- Management
- Control
- Tax Neutrality
- Check-the-Box
- Public Bond Issue

# Corporate – Commonly Used Legal Form

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## □ SA

- Public
- Limited Liability
- Share Capital EUR 31,000
- Management
- One-Tier and Two-Tier Management
- Permanent Representative
- Auditor Required
- Shares are Freely Transferable

# Corporate – Commonly Used Legal Form

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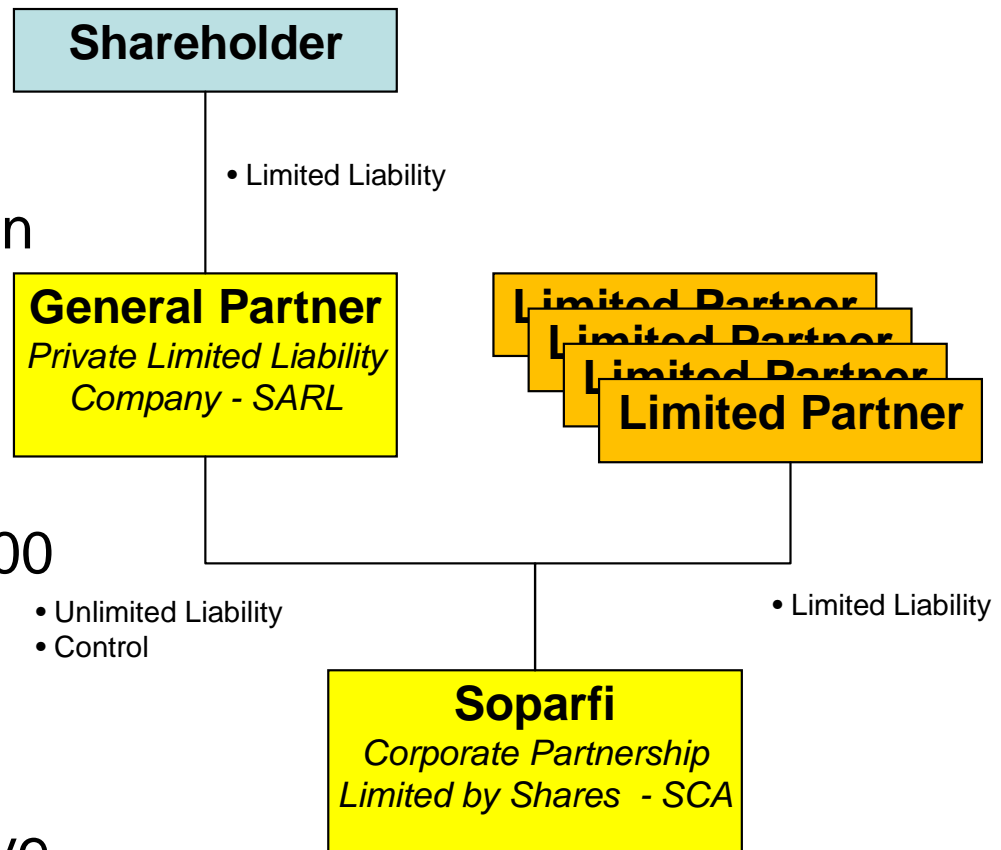
## □ Sàrl

- Private
- Limited Liability
- Share Capital EUR 12,400
- Management
- Auditor not always Mandatory
- Transfer of Shares: Double Majority

# Corporate – Commonly Used Legal Form

## □ SCA

- Partnership
- Limited liability for certain partners
- Unlimited liability for General Partner
- Share capital EUR 31,000
- Management
- Veto Right
- Permanent representative
- Auditor required



# Corporate – Different Classes of Shares

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## ❑ Compartments vs. Classes

## ❑ Company Act

- ❑ Voting Shares vs. Non Voting Shares (Art. 44)
- ❑ Founder Shares (Art. 37)
- ❑ Profit Shares (Art. 37)
- ❑ Redeemable Shares (Art. 49-8)
- ❑ Amortisable Shares (Art. 69-1)
- ❑ Contractual Freedom (Art. 1)

## ❑ Limitations

- Voting Rights
- *Leonine* Clause

# Corporate – Relocation of Companies

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## ❑ Taxable person

- Resident vs. Non Resident
  - Tax base = Worldwide income vs. Lux. source income
  - Link = Registered office or Central Administration
- Tax Transparent Entities vs. Taxable Entities

## ❑ Double Tax Residence

## ❑ Tax Residency Certificates

## ❑ Substance

# Corporate – Relocation of Companies

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## □ Inbound Relocation – Corporate Aspects

- Transfer of Registered Office or Central Administration to Luxembourg
  - Continuity legal personality recognised
  - Principle of ‘Reciprocity’
- Legal Consequences
  - Luxembourg domicile & Luxembourg nationality
  - Subject to Luxembourg Law (fully)
- Corporate Action Required
  - Transfer compliant with legislation jurisdiction of origin
  - Amendment of corporate form & articles of association
  - Interim accounts & valuation auditor
  - Notary deed
  - Registration & publication

# Corporate – Relocation of Companies

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## □ Inbound Relocation – Fiscal Aspects

- Considered as New Entity (Legal but no Tax Continuity)
- Entry Tax Balance Sheet
  - Assets booked at current operating values
  - Profits related to prior period immunised
  - Special reserve or informal capital
  - Advance Tax Agreements to avoid problems of interpretation
- Capital Duty
- Important Participation Exemption
  - New holding period starts
  - Revaluation of assets
- Net Worth Tax
  - Key date = 1 January

# Corporate – Relocation of Companies

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## □ Inbound Relocation – Fiscal Aspects

- Consequences for Luxembourg Resident Shareholders
  - Transfer is transformation in sense Art. 22 and 22Bis LIR
  - Treated as still holding original shares
  - No new holding period
  - Anti abuse clause Art. 166 (7) LIR
  - Merger can mitigate anti abuse clause
- Consequences for Luxembourg Non Resident Shareholders
  - None

# Corporate – Relocation of Companies

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## □ Inbound Relocation – Fiscal Aspects

- Dividend Distributions

- Important Participation Exemption
- Treaty network
- Attention:
  - ⇒ Distribution of dividends can be treated as (hidden) capital reduction not subject to WHT
  - ⇒ Reduction of (ordinary) capital will also be treated as capital reduction not subject to WHT provided there are genuine economic reasons

# Corporate – Relocation of Companies

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## □ Outbound Relocation – Corporate Aspects

- Transfer of Registered Office or Central Administration Abroad
  - Unanimous consent
  - Continuity legal personality recognised
  - Principle of reciprocity
- Legal Consequences
  - Foreign domicile & foreign nationality
  - No longer subject to Luxembourg Law (fully)
- Corporate Action Required
  - Transfer compliant with legislation Jurisdiction of Adoption
  - Amendment of corporate form & articles of association
  - Closing accounts
  - Notary deed
  - Registration & publication

# Corporate – Relocation of Companies

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## □ Outbound Relocation – Fiscal Aspects

- Capital Duty Abolished & Claw-back provisions Not Applicable
- Luxembourg Company Ceases to be Luxembourg Tax Resident
- Taxation as if Liquidation
  - Liquidation profit taxes (Values at Estimated Operating Value)
  - Taxation of hidden reserves and unrealised profits in Luxembourg unless application of the important participation regime
  - Exception: Permanent establishment (Values at Book Value)
    - ⇒ Transfer of Lux. permanent establishment as part of a contribution, a merger or a division to a EU resident company...
    - ⇒ Transfer of Lux. permanent establishment as part of a transformation of non-resident entity into another non-resident entity...
- Liquidation Bonus: No WHT

# Corporate – Relocation of Companies

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## □ Outbound Relocation – Fiscal Aspects

- Consequences for Luxembourg Resident Shareholders
  - Individuals
    - ⇒ Speculation Profits
    - ⇒ > 10% Participation
  - Corporates
    - ⇒ Deemed Liquidation Bonus
    - ⇒ Art. 166 LIR
- Consequences for Luxembourg Non Resident Shareholders
  - Tax treaty
  - Art. 156 (8) LIR

# Corporate – Mergers

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## □ Corporate Aspects

- Legal Framework
  - EU Directive 2005/56/EC
  - Law 2007
- Corporate Form
  - SA and Any Other Type
- Local & Cross Border Mergers
  - Reciprocity
  - EU and Non EU
- Types
  - Merger by Acquisition
  - Merger by Incorporation
  - Merger by Acquisition of a 90% Subsidiary

# Corporate – Mergers

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## □ Fiscal Aspects

- Conditions
  - Fully Taxable Company
  - Transfer of all Assets and Liabilities
  - In Exchange for Shares
- Domestic Merger
  - Profit Fully Exempt
  - Anti Abuse Provision - hidden reserve must remain subject to ultimate taxation
  - Values Reported at Book Value
- Outbound Merger
  - Transfer of all Assets and Liabilities to EU/EEA Qualifying Company
  - Taxed as Liquidation
  - Exempt if PE in Luxembourg
- Inbound Merger
  - Transfer by Qualifying EU/EEA Company of all Assets and Liabilities to Luxembourg
  - Values Reported at Book Value or at Fair Market Value

# Conclusions

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## □ ***Luxembourg is a Structuring Platform***

- ***Stable***
- ***Flexible***
- ***Tax Neutral***
- ***Wide Range of Alternatives***

# Annexes

## Investment Funds - General Summary

	<b>UCI</b>	<b>SIF</b>	<b>SICAR</b>	<b>Securitisation</b>	<b>Soparfi</b>	<b>SPF</b>
<b>Law</b>	2002	2007	2004	2004	1915	2007
<b>CSSF Approval</b>	Yes	Yes	Yes	Not required	Not required	Not required
<b>Investor</b>	Public	Expert	Expert	N/A	N/A	Individuals/ Trust / Foundations
<b>Investment Restrictions</b>	Quantative/ Qualitative	Diversification	Venture capital and private vehicles	Transfer of risks	No	Yes
<b>Promoter</b>	Yes	No	No	No	No	No
<b>Approval Of Management</b>	Yes	Yes	Yes	No	No	No

# Annexes

## Investment Funds/Vehicles - Financial Summary

	UCI	SIF	SICAR	Securitisation	Soparfi	SPF
<b>Listing</b>	Yes	Yes	Yes	Yes	Yes	No
<b>Significant Minimum Capital</b>	Yes	Yes	Yes	No	No	No
<b>Compartments</b>	Yes	Yes	Yes	Yes	No	No
<b>Risk Diversification</b>	Yes	Yes	No	No	No	No
<b>Borrowing Restrictions</b>	Yes	No	No	No	D/E Ratio	No
<b>Issue or Redemption Restrictions</b>	No	No	No	No	Yes	Yes

# Annexes

## Investment Funds/Vehicles -Tax Summary

	<b>UCI</b>	<b>SIF</b>	<b>SICAR</b>	<b>Securitisation</b>	<b>Soparfi</b>	<b>SPF</b>
<b>VAT</b>	Taxable person	Taxable person	Taxable person	Taxable person	Status to be considered	Exempt
<b>Subscription Tax</b>	0.05% or 0.01%	0.01%	No	No	No	0.25% (capped at EUR 125,000)
<b>Net Wealth Tax</b>	No	No	No	No	Exemption	No
<b>CIT</b>	No	No	Exemption	Exemption	Exemption	No
<b>WHT</b>	No	No	No	No	Exemption	No
<b>DTT Access</b>	Limited	Limited	Yes	Yes	Yes	No
<b>EU PS Directive</b>	No	No	Yes	Yes	Yes	No

# Annexes

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## Investment Funds

### List of Tax Treaties Applicable to SICAV / SICAF

Austria	China	Denmark	Finland	Germany
Indonesia	Ireland	Israel	Malaysia	Malta
Morocco	Mongolia	Poland	Portugal	Romania
Singapore	Slovenia	Slovakia	South Korea	Spain
Thailand	Trinity and Tobago	Tunisia	Turkey	Vietnam
Uzbekistan				

# Our Contacts Details

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