

Private Equity – The New Kings of M&A

January 25-26, 2007

New York

Tax Structuring Cross Border Acquisitions – U.S.:
Europe and Canada.

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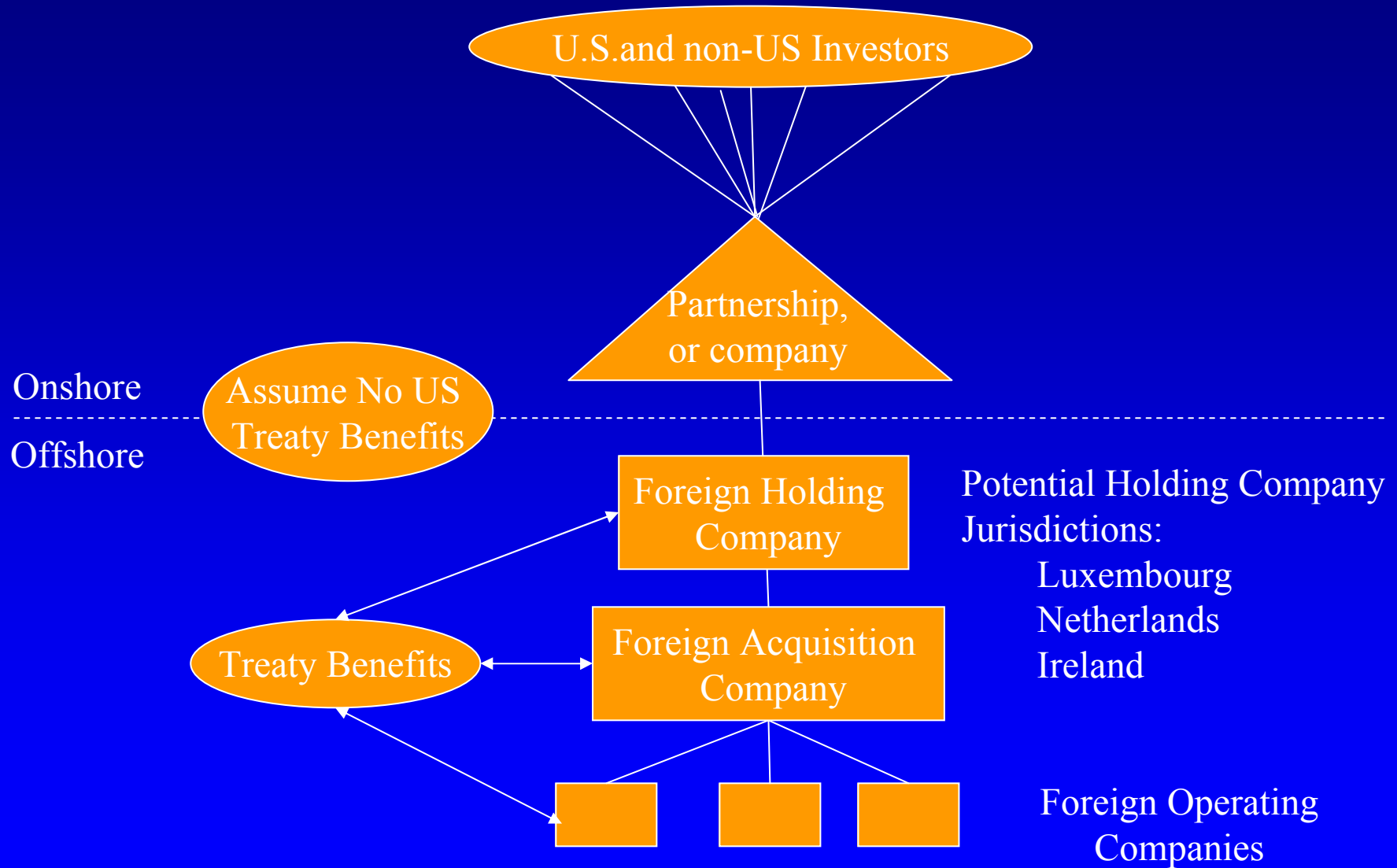
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Holding company: what is important

1. Foreign tax planning of subsidiaries
(including tax treaty shopping rules)
2. Foreign tax planning of ultimate parent
(including, future anti-abuse rules)
3. Organizational / Business reasons
4. Combination with other functions within group
5. Practical issues: can the people with know how get there for board meetings? Are the service providers in the countries reliable?

US PE Fund – Eligible for Treaty Benefits?



Ideal Holding Regime

1. Reduction of source country taxation for the operational subsidiaries
 - (i) withholding tax, and
 - (ii) capital gains
2. No additional taxation in the Holding company country:
 - (i) upon injection of funds,
 - (ii) going forward (realization of income)
 - (iii) upon exit
3. Flexibility (not only holding but also financing and head quarters or operational activities)
4. Other:
 - (i) advance certainty
 - (ii) corporate law system
 - (iii) political and economical stability
 - (iv) infrastructure
 - (v) protection under BIT treaties
 - (vi) etc. etc.

European Holding Company Regimes

- Luxembourg
- Netherlands
- Belgium
- Switzerland
- Ireland
- Spain
- Denmark
- Austria
- Sweden
- U.K.
- Malta
- Cyprus
- Hungary



(Limited) Comparison of Holding Regimes

<u>NL</u>	<u>LUX</u>	<u>B</u>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	No taxes on dividends and capital gains
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No subject to tax requirement (for active investments)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	No exclusion of passive income (in case subject to tax)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Losses on participations deductible (no liquidation)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Financing expenses deductible
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No holding period
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No withholding tax on dividends paid
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	No withholding tax on liquidation dividends paid
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	No capital tax/stamp duties
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	No real CFC rules
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Ruling system
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	No withholding tax on interest and royalties paid
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No non-resident taxation rules



Ideal Holding Regime

All three countries could be perfect for holding and financing corporations:

- central location
- stable environment
- financial industries and e-commerce (mainly Luxembourg)
- participation exemption
- certainty in advance from tax authorities
- extensive tax and investment treaty network
- Protection against local dividend withholding taxes, capital gains, ‘de-privatization’
- access to EC directive network
- (relatively) easy exit for foreign investors
- specific (favourable) tax regimes to specific investments (e.g. Sicar in Luxembourg)
- highly developed financial industry available; service minded
- Relatively flexible corporate law
- Open economies and focussed on foreign countries.

Why Luxembourg:

Great location for holding and financing corporations:

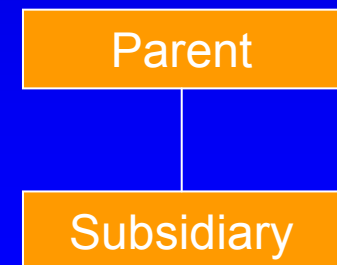
- Central location
- Stable environment
- Financial industries and e-commerce
- participation exemption
- certainty in advance from tax authorities
- extensive tax (48 + 11) and investment treaty
- access to EC directive network
- easy exit for foreign investors
- specific (favourable) tax regimes to specific investments (e.g. Sicar)
- highly developed financial industry available
- flexible corporate law



Participation exemption

(Domestic) conditions for application of participation exemption:

- subsidiary must be
 - fully subject to tax in Luxembourg, or
 - listed in Annex to EC Parent-Subsidiary Directive, or
 - subject to a comparable tax (comparable tax base and rate at least 11 %)
- interest in subsidiary must be qualifying:
 - at least 10 % or at least € 1.2 or € 6 million, and
 - 12 months minimum (committed) holding period
 - Sometimes more favourable treaty conditions



Exit tax

Dividends:

- rate 15% (reduced in most tax treaties)
- Exemptions:
 - EC Parent-Subsidiary Directive conditions:
 - parent qualifies EC Directive, or is CH taxed company
 - holds directly $\geq 10\%$ or € 1.2 mio
 - (commitment) for at least 12 months
 - (partial) liquidation

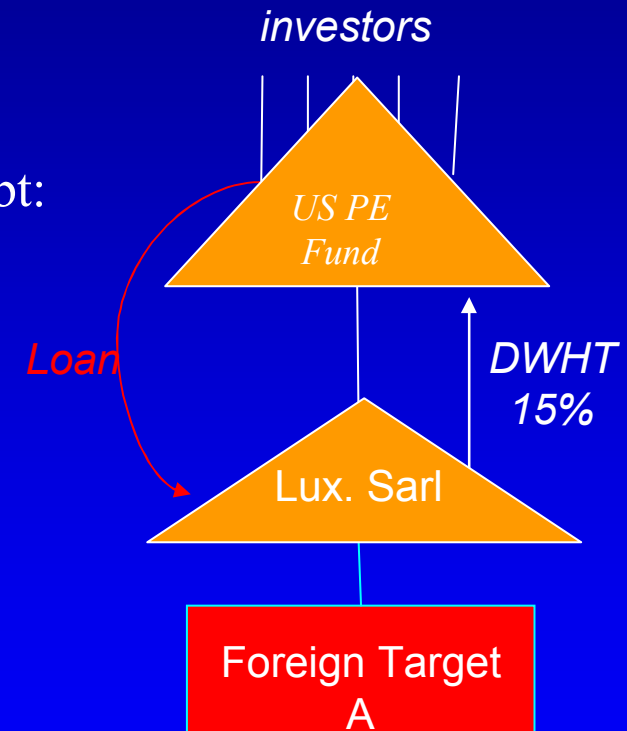
Interest and Royalty:

In principle, no withholding taxes

Luxembourg (Hybrid) Debt Structure

Problem Lux dividend withholding tax (15%) and fund does not get treaty protection.

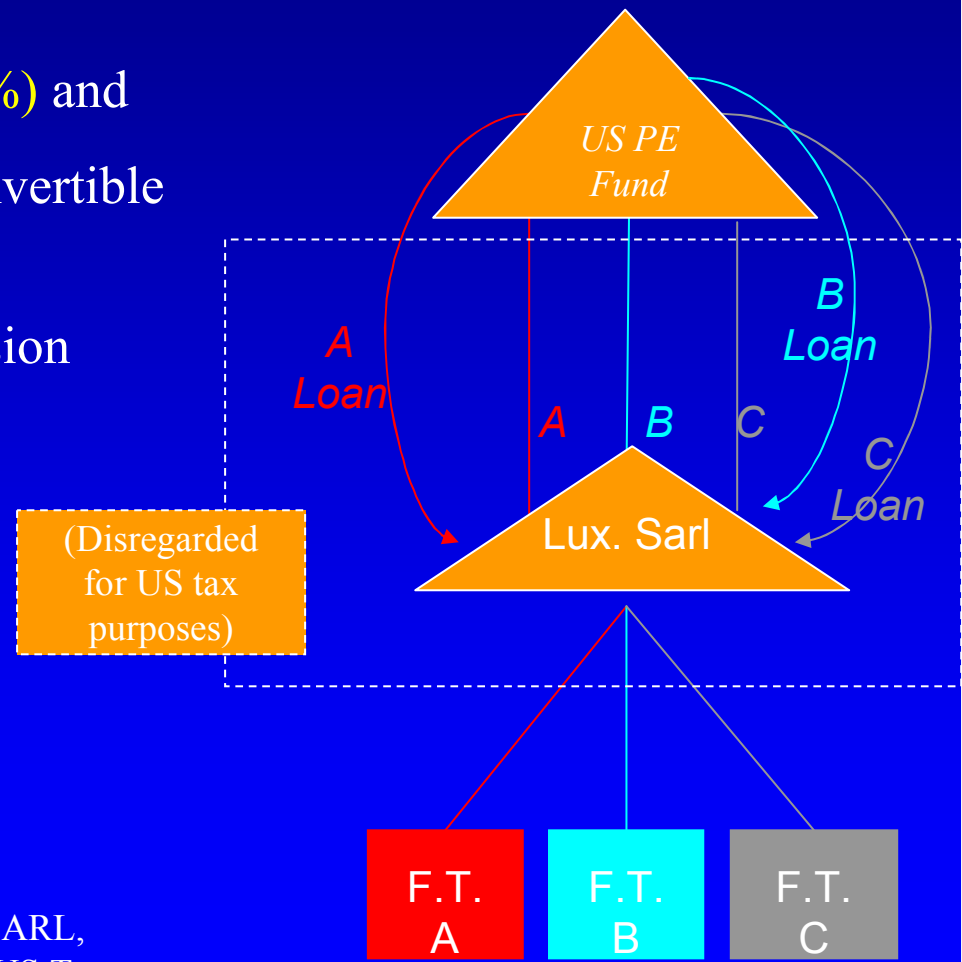
- Solution: No WHT on interest:
minimum capital and maximum leverage with debt:
finance the purchase price with form of debt.
- What is **remuneration** on Loan?
 1. fixed or float rate
(*safe harbour: Euribor + 200*)
 2. Income sharing
(*max. 85% income*)
 3. Convertible (RCB)
e.g. together with separate classes of shares



Luxembourg (Hybrid) Debt Structure (2)

In practice

- Classes of Tracking shares (e.g. 15%) and
- Debt funding with Redeemable Convertible Bonds (RCB) (e.g. 85%)
- No WHT on redemption of Conversion feature
- Distribute any excess proceeds through consecutive redemption and cancellation of series of shares



= Luxembourg SARL,
Disregarded for US Tax
purposes

Luxembourg Hybrid

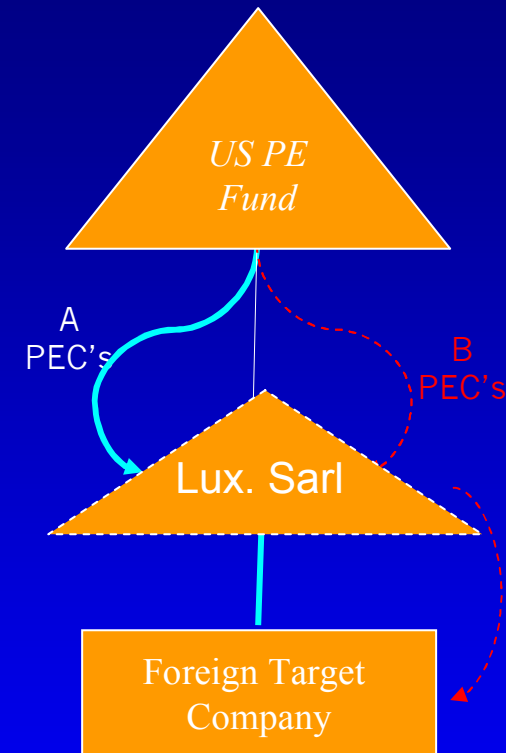
Example: Preferred Equity Certificates (“PECs”)

PEC is a hybrid financing instrument that is regarded as

- (1) **debt** in Luxembourg, and (2) **equity** in the USA.
Deduction in Luxembourg + no withholding tax and favourable treatment in e.g. US

Characteristics:

- Term: 49 years
- Subordinated to other debts
- Payment interest in case (i) sufficient distributable reserves, (ii) declared by board of managers (iii) not insolvent
- Interest can be income sharing / tracking
- No voting power (and other equity characteristics)
- Variation on theme:
 - Possibly convertible into shares (CPECs)
 - Preferred share certificates (PESCs) (Australia and Canada)

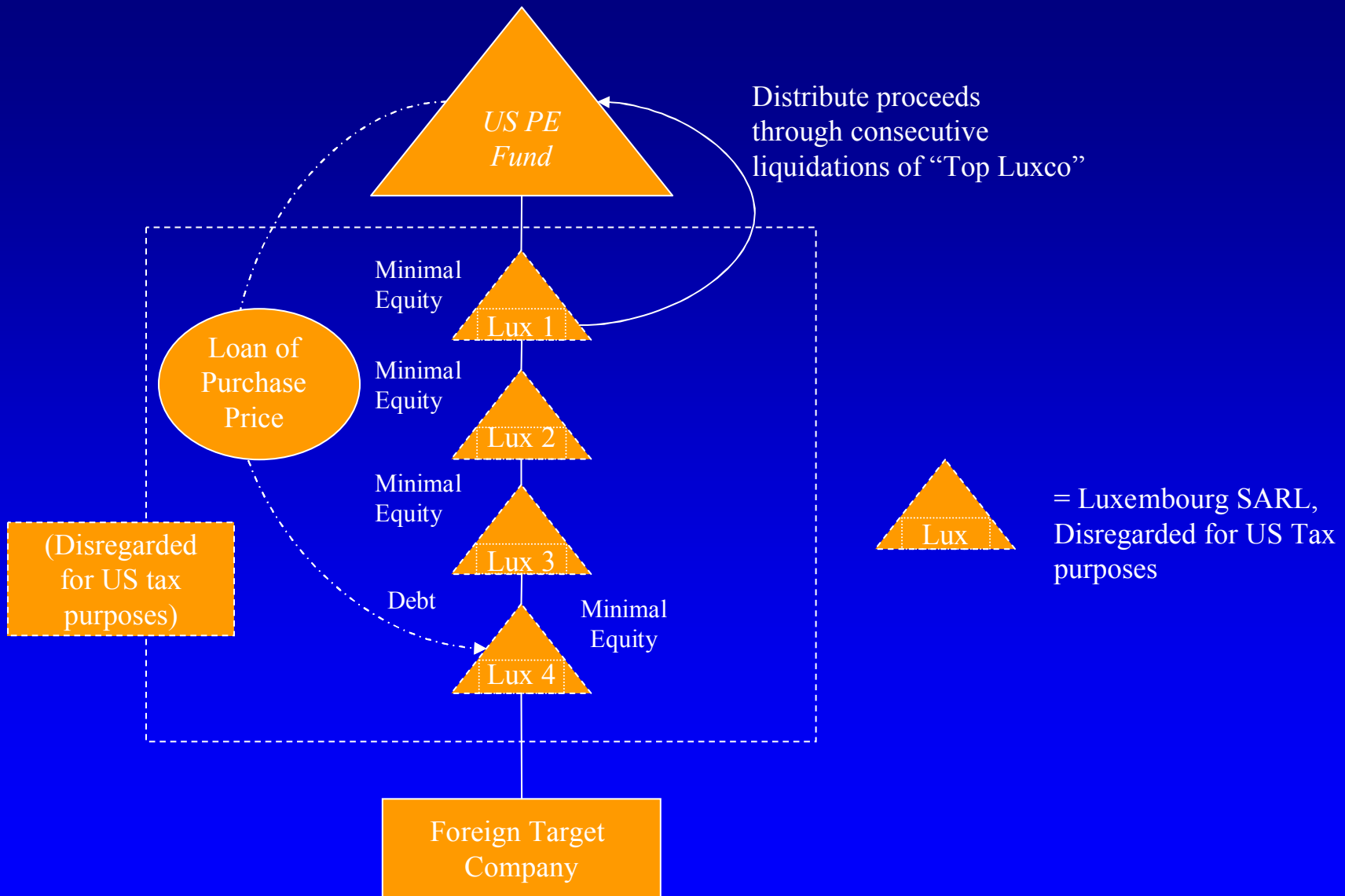


Preferred Equity Stock Certificates *(“PESCs”)*

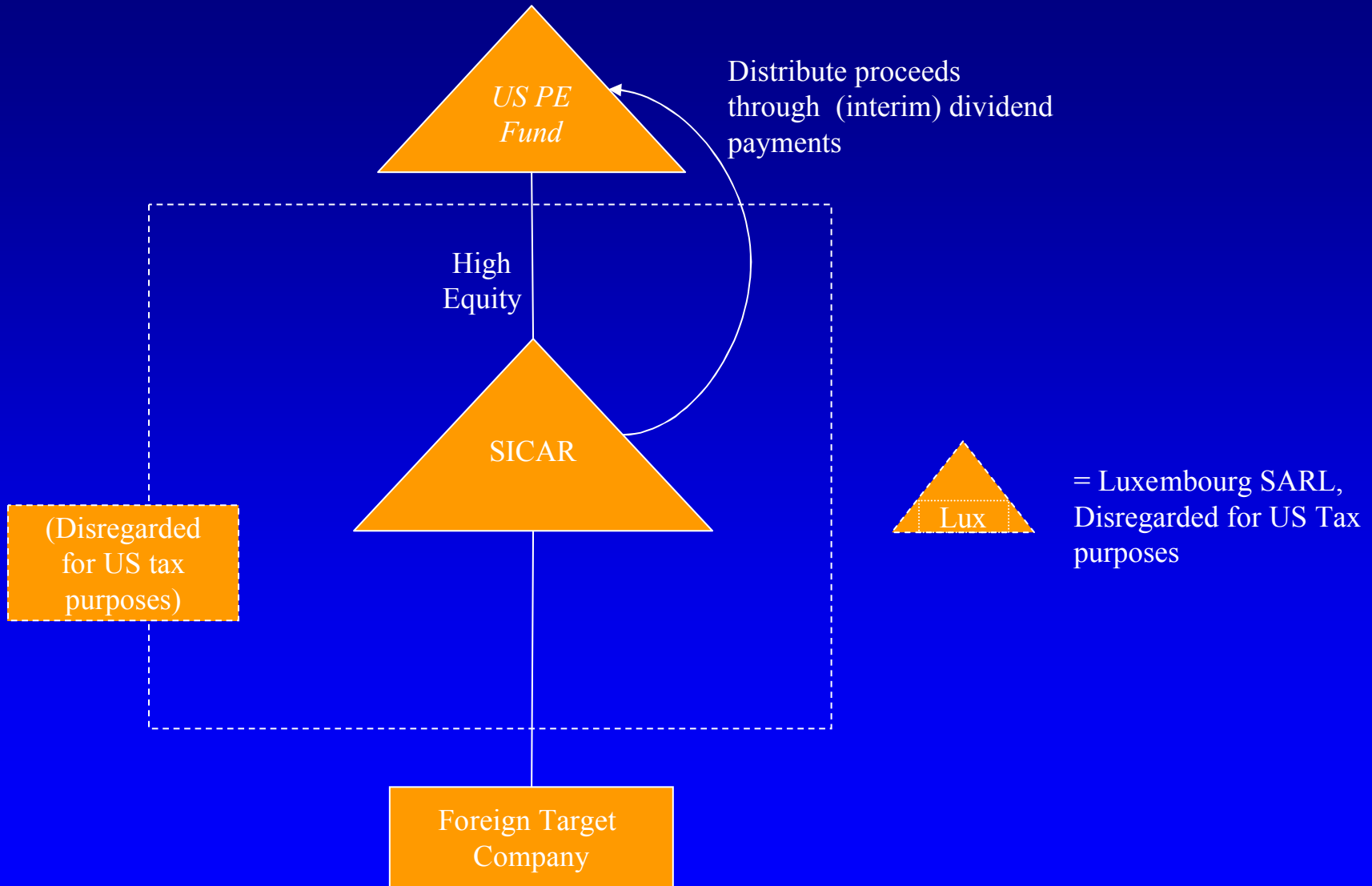
1. PESCs represent the corporate capital and are stated in the articles of association; they have a fixed mandatory redemption date (very long term possible): redemption is only possible to the extent permitted by law (subject to capital reduction limitations)
2. Subordinated to all other debt/senior to ordinary shares
3. Profit sharing return
4. Can carry voting rights and the right to nominate a managing director

PESCs are capital from a Luxembourg corporate law perspective, but debt from a Luxembourg accounting and tax perspective (but not from a Luxembourg capital tax perspective).

Luxembourg “Ladder” Structure



Luxembourg SICAR Structure



SICAR (2)

LEGAL AND REGULATORY FRAMEWORK

- *Société d'investissement en capital à risque*, 2004
- Situated in Luxembourg
- Object to invest in risk bearing capital
- Legal form (S.A., S.à r.l., S.c.p.A., S.c.S, Co-operative company)
- Minimum capital of € 1 million to be paid within 12 months
- Share capital (variable, fully subscribed, 5% paid up, no legal reserve, interim dividends and capital repayment)
- Limited to ‘expert’ investors (professional, institutional, written proof) but no limitation to amount of investors and transferability of shares
- No debt to equity ratio / compartments are expected in 2006
- Liberal towards investments and investment policy
- Supervision / approval / depository / custodian
- Publication prospectus and annual report



SICAR (3)

TAX FRAMEWORK

- Normally taxed (except private partnership)
- Tax treaty and EC Directives available
- Exemption profit (losses) on risk bearing capital
- Exemption net wealth tax
- Domestic participation exemption on SICAR
- No substantial interest taxation
- € 1,250 capital tax



Participating loan

- Hybrid investment for Luxembourg:
a participating loan is granted by Luxembourg company to subsidiary in other country.

Result: equity treatment (and possibly participation exemption) in Luxembourg and debt treatment (thus deduction) in other country.

- Important: stapling / very few creditor's rights / long term.
- Can work with:
France / CH / Belgium / Netherlands / Austria / expanding

Table of Contents

- I. Fund Formation Issues
- II. Deal Structuring Issues for Holding Companies
- III. Case Studies
- IV. Appendices:
 - Luxembourg Holding Companies
 - Irish Holding Companies

Fund Formation for Outbound Investment

- Key factors in deciding form and jurisdiction of a fund
 - Tax transparency
 - Many investors require “look-through” treatment
 - UBTI risk?
 - Tax-free in country of fund formation
 - Access to treaty network
 - Rare at fund level
 - Often need “subsidiaries” to claim treaty
 - VAT-free zone
 - Balanced level of regulation in local country
 - Minimal change of law risk

Private Equity Fund Investment Structures: Deal Structuring Objectives

- Buy-Side Objectives At Acquisition
 - Financing:
 - Cash flow planning to service debt
 - Tax efficient use of interest deductions consistent with bankers' needs
 - Set up for favorable tax on exit and benefit for buyer/IPO investors
 - Structure for recapitalization (dividend) as well as sale/IPO
 - Maximize the deduction for deal-related expenses upon purchase

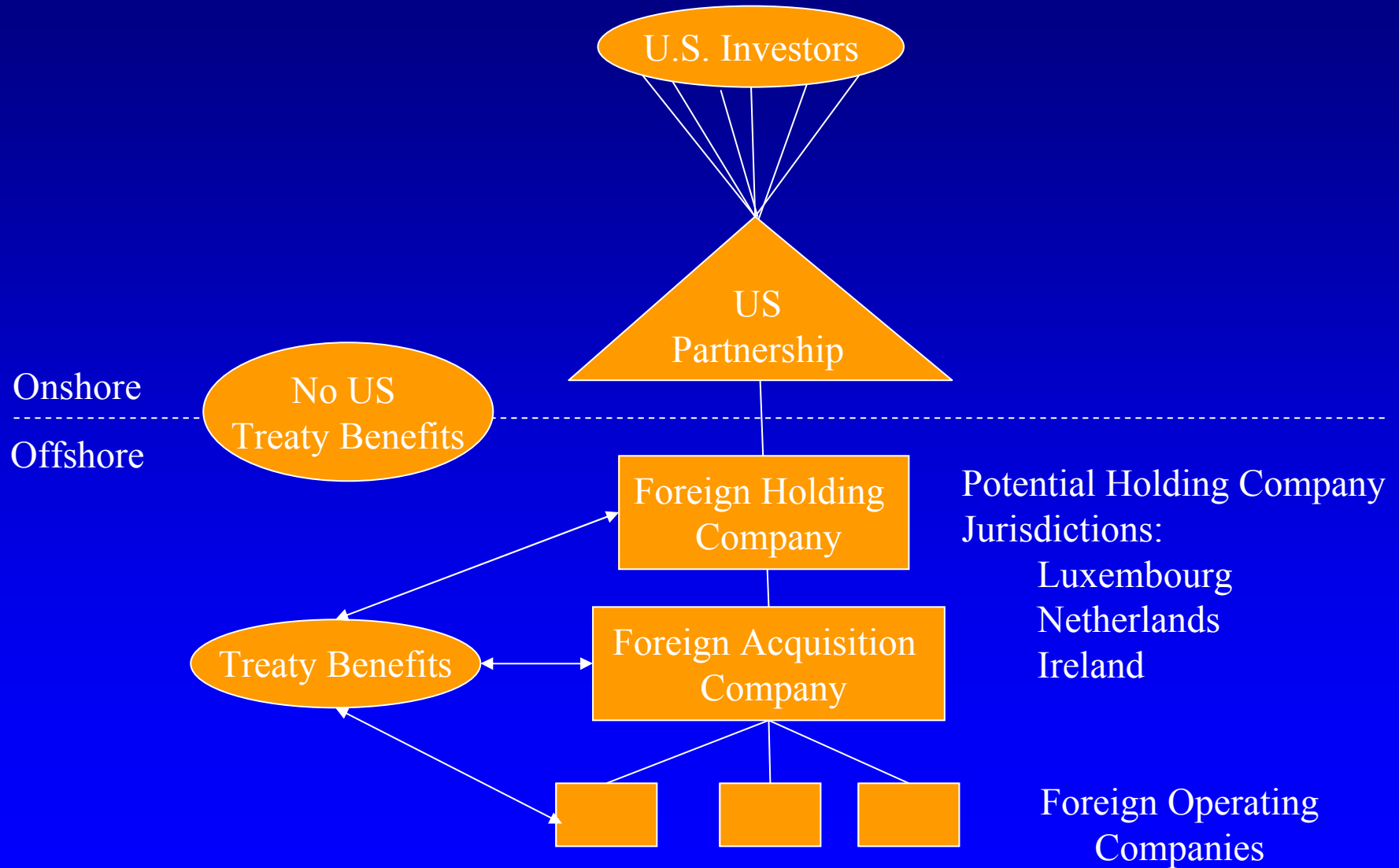
Private Equity Fund Investment Structures: Deal Structuring Objectives

- Buy-Side Objectives During Life of Deal
 - Plan for operations during the life of the deal as well as on exit – work with business team
 - Consider step-up in tax basis for life of transaction and for buyer on exit
 - Consider one-time IP and other transfer pricing related structuring only possible at purchase

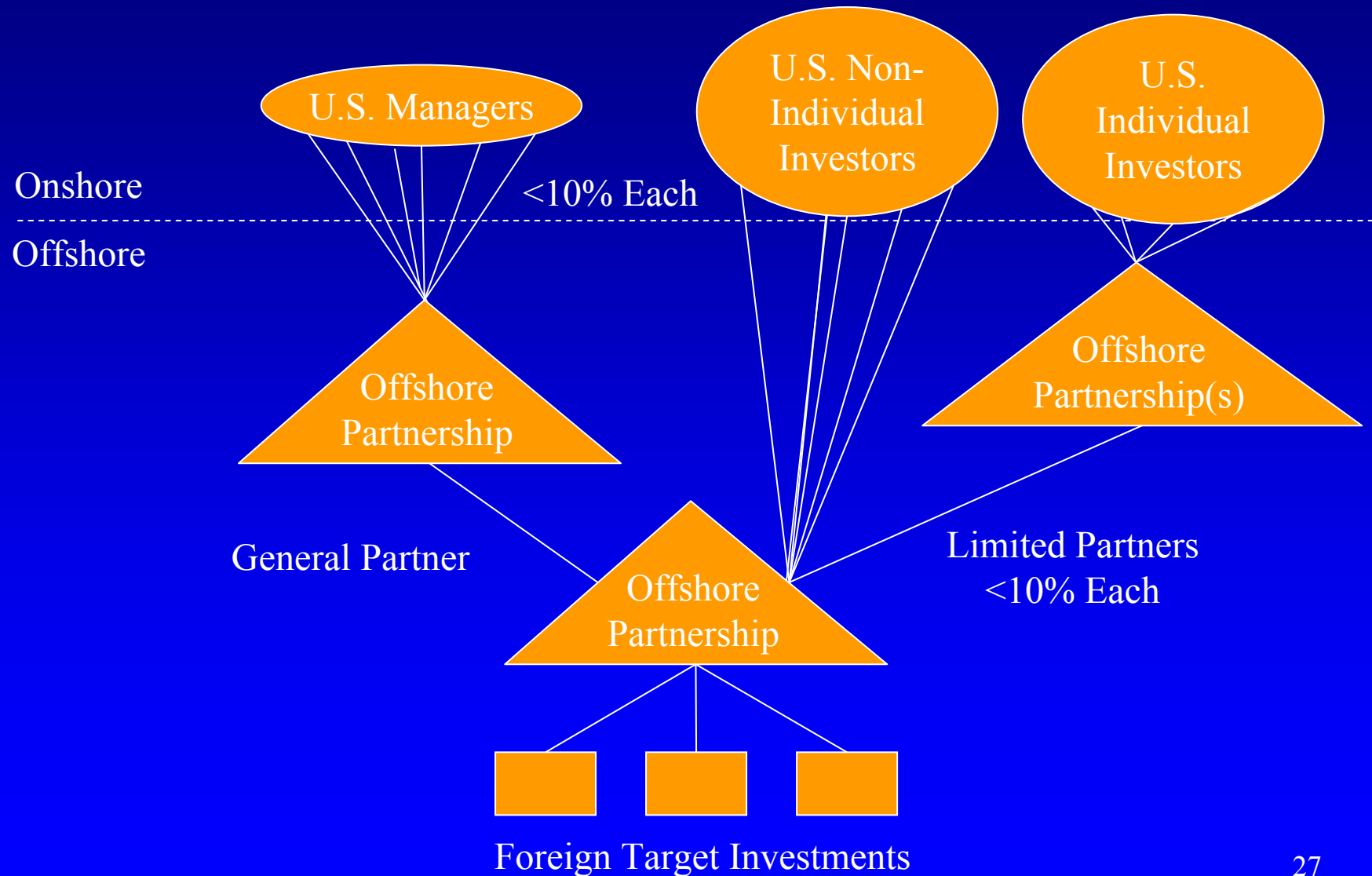
Private Equity Fund Investment Structures: Deal Structuring Objectives

- Buy-Side Objectives for Exit
 - Investor specific exit planning: Taxable investors
 - Capital gain/deferral/exemption opportunities
 - Manage foreign tax credits
 - Maximize “qualified dividends” for distributions
 - Investor specific exit planning: tax-exempt investors
 - Unrelated business tax or its equivalent
 - Maximize tax benefits of deal for buyer and seller

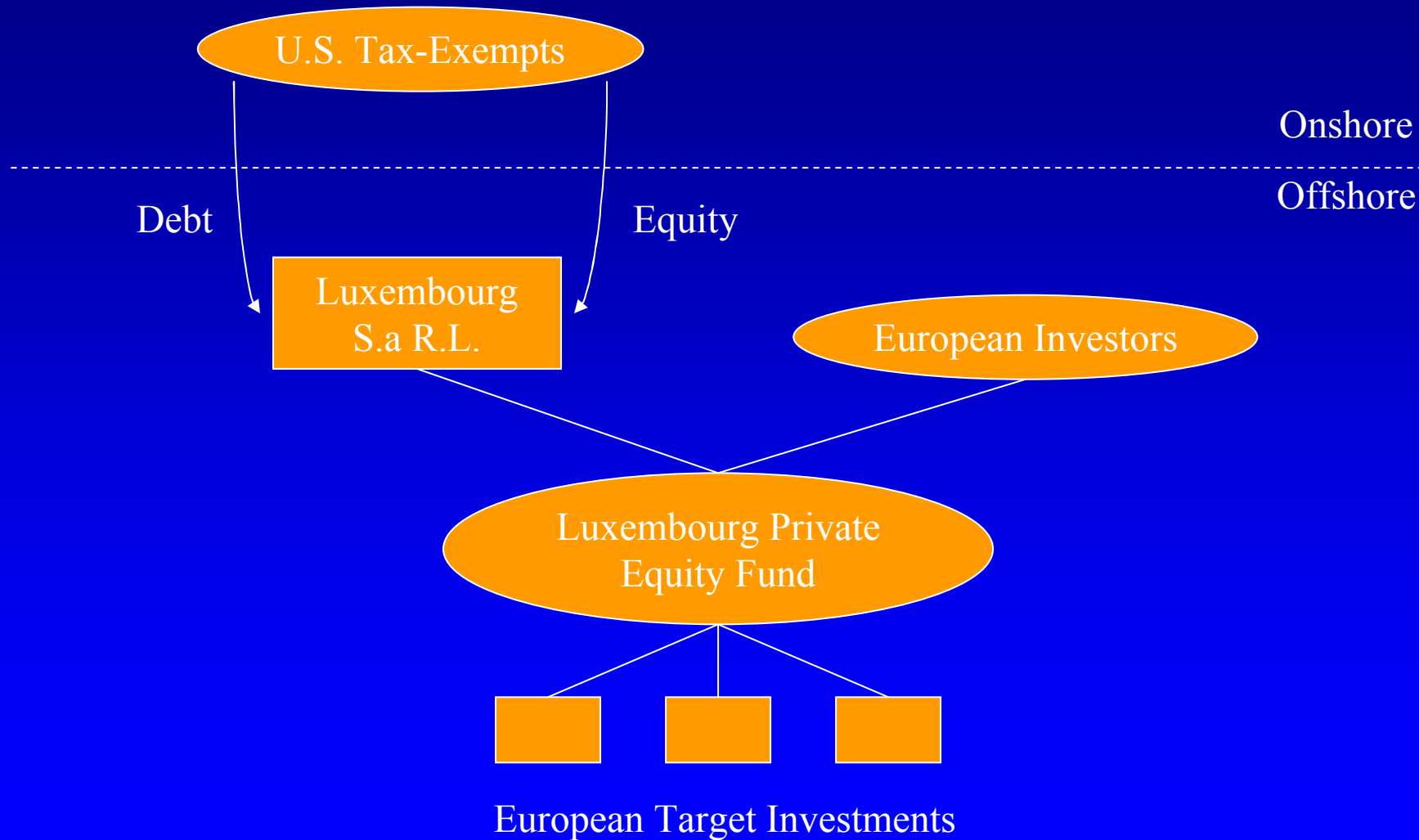
US PE Fund – Eligible for Treaty Benefits?



Foreign Funds Used to Block CFC Status

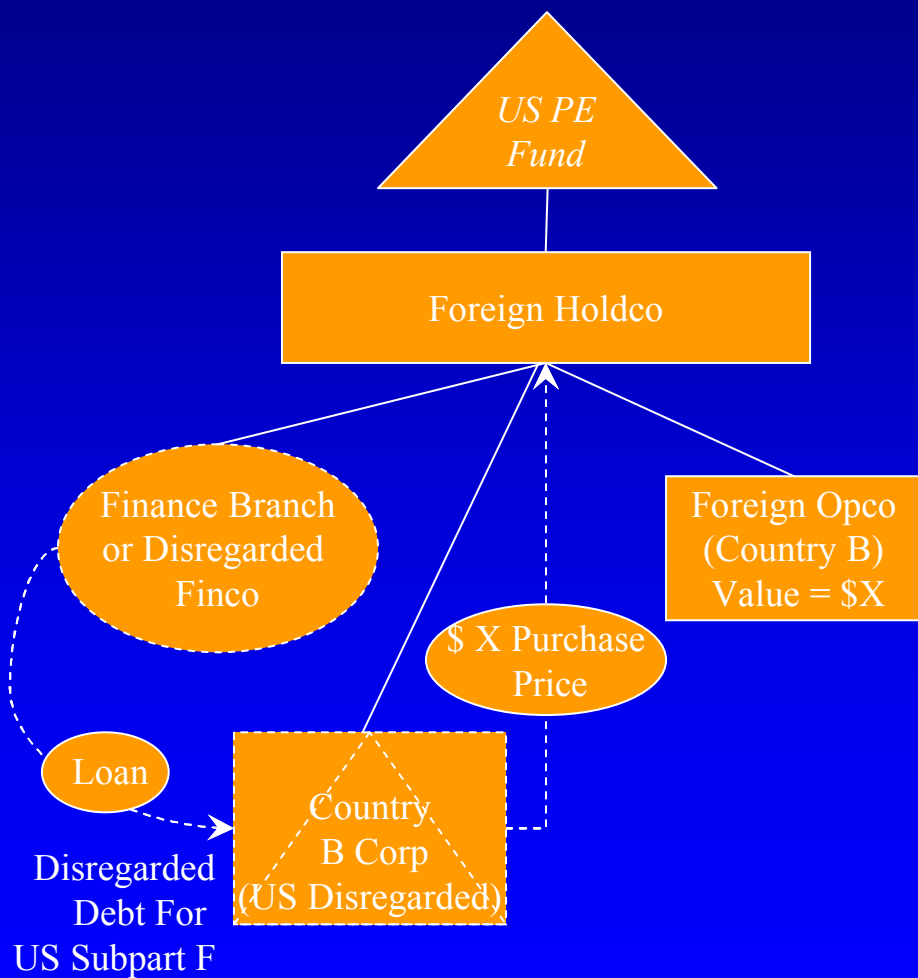


U.S. Tax Exempts—Use of Foreign Blocker

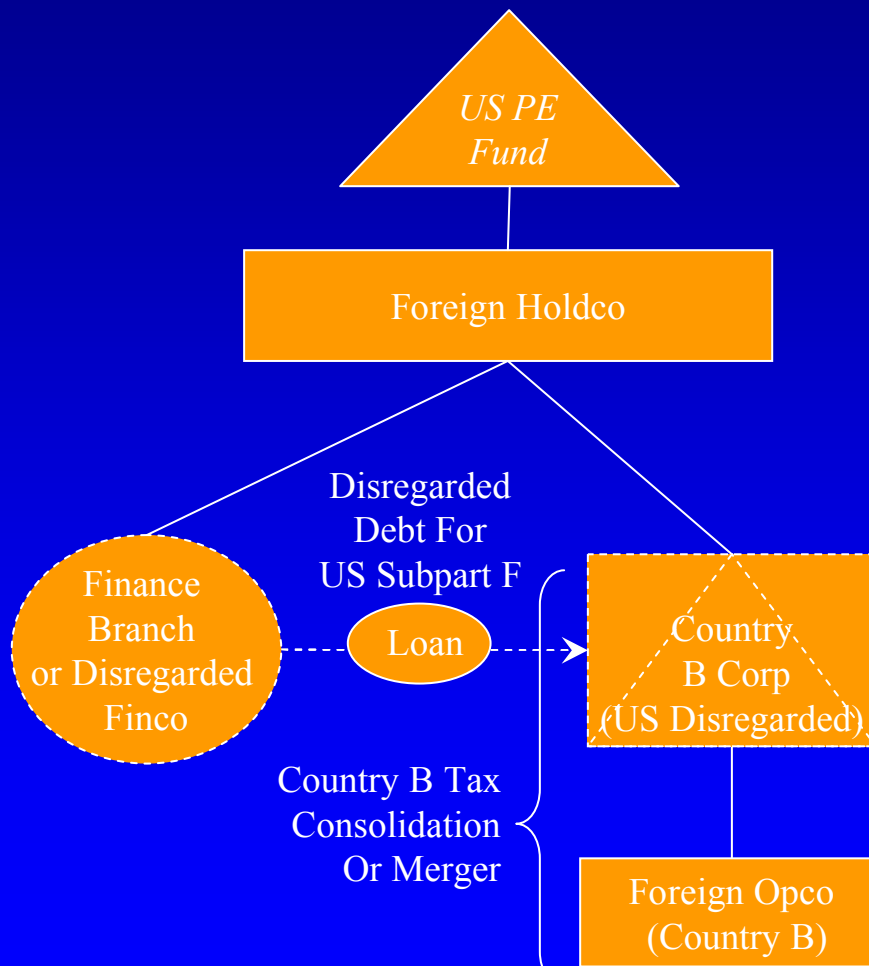


Internal Debt Push Down under Foreign Holding Company

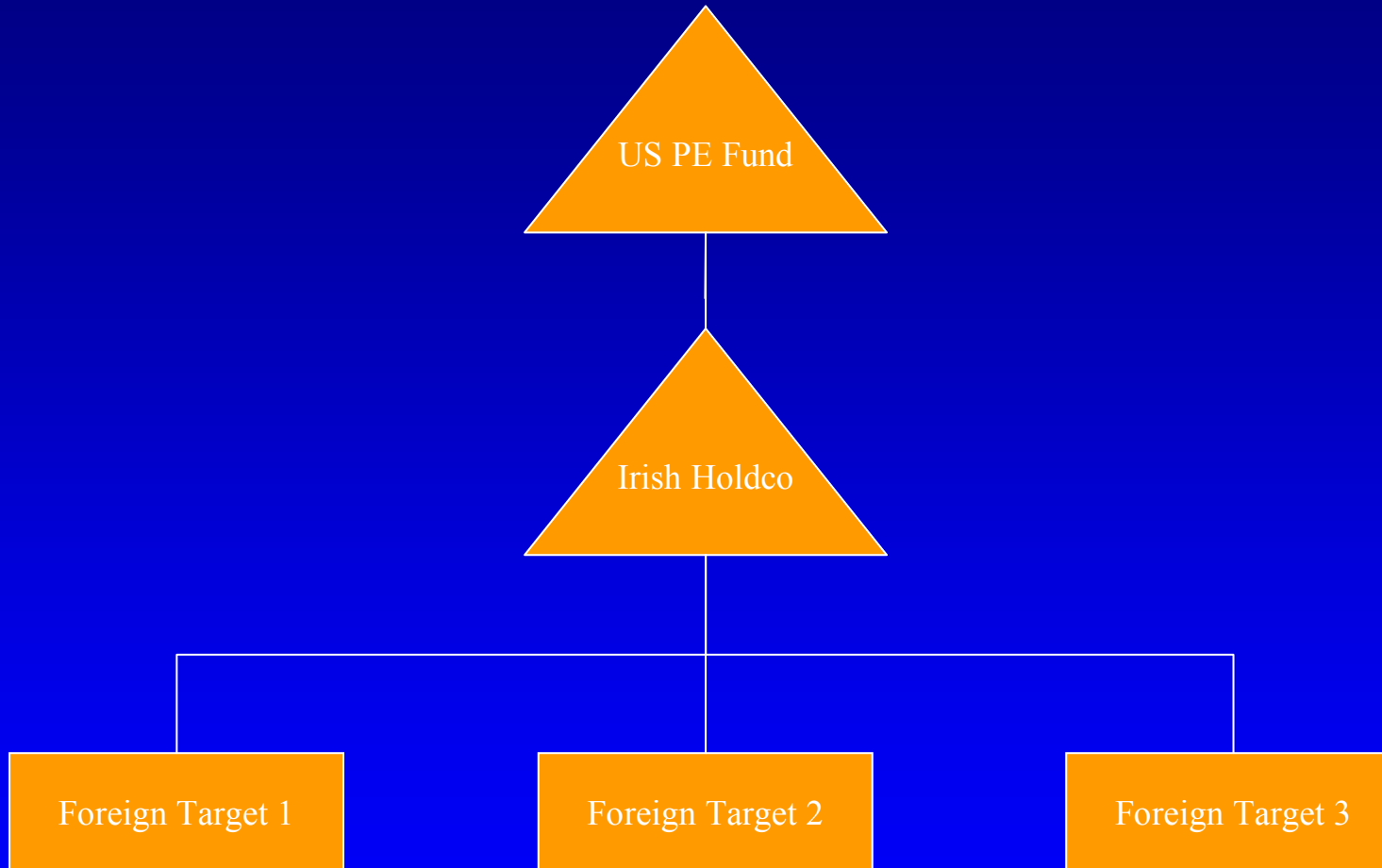
Pre-Acquisition



Post-Acquisition Structure



Irish Holding Company Structure



Holding Company

- Financing the acquisition
- Inbound dividends
 - WHT
 - taxation of
- Taxation of capital gains
- Outbound dividends
- Other features
 - no CFC rules
 - stamp duty
 - corporate law

Financing the Acquisition

- Equity
 - No capital duty
- Debt
 - limited thin capitalization rules
 - interest deductibility rules are strict
- WHT on interest

Holding Company – Inbound Dividends

- Taxable at 25%
- Credit for foreign taxes
 - tax charged on the dividend
 - tax on company profits referable to dividends
 - drill down to lower tier companies
 - excess credit against other foreign dividends, or carry forward
- Treaty network (44)

Taxation of Capital Gains

- Holding company – disposal of shareholdings
 - exemption available
 - holding must be at least 5%
 - 12 month holding period out of previous 24 months
 - investee company resident in EU/ DTA
 - the business of either (i) the investee company or (ii) the parent and its 5% affiliates collectively, consists of trade(s)

Outbound Dividends

- DWT exemptions
 - DTA/ EU tax resident company
 - non-Irish resident company (e.g. in Cayman) controlled by DTA/ EU persons
 - non-Irish resident company whose principal class of shares, or that of 75% parent, are substantially and regularly traded or on RSE in DTA country/ EU
 - “ADR” exemption

Holding Company – Other Features

- No CFC rules
- Stamp duty
 - 1%
 - ADRs
- Corporate laws

Appendix 1

The Netherlands



Belgium



Luxembourg



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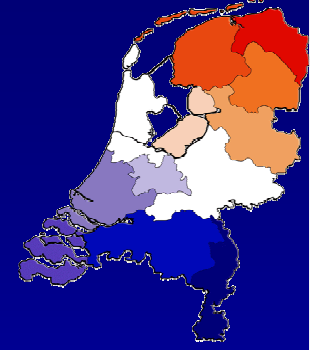
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The Netherlands



New Law (Dutch 2007 Corporate Income Tax reform)

1. Amendments of Participation Exemption
2. Reduction of rate: 25.5% in 2007
3. Introduction group interest/group licensing box.

When to use a Dutch holding company



New regime for CIT 2007.

Subsidiary is : * active and subject to tax
* not subject to tax but active
* passive but subject to tax

If the subsidiary is resident in country with a favorable treaty with the Netherlands

If the ownership percentage is less than 10%, but more than 5% (or other than as a portfolio investment) and less than 1.2/6 million Euro

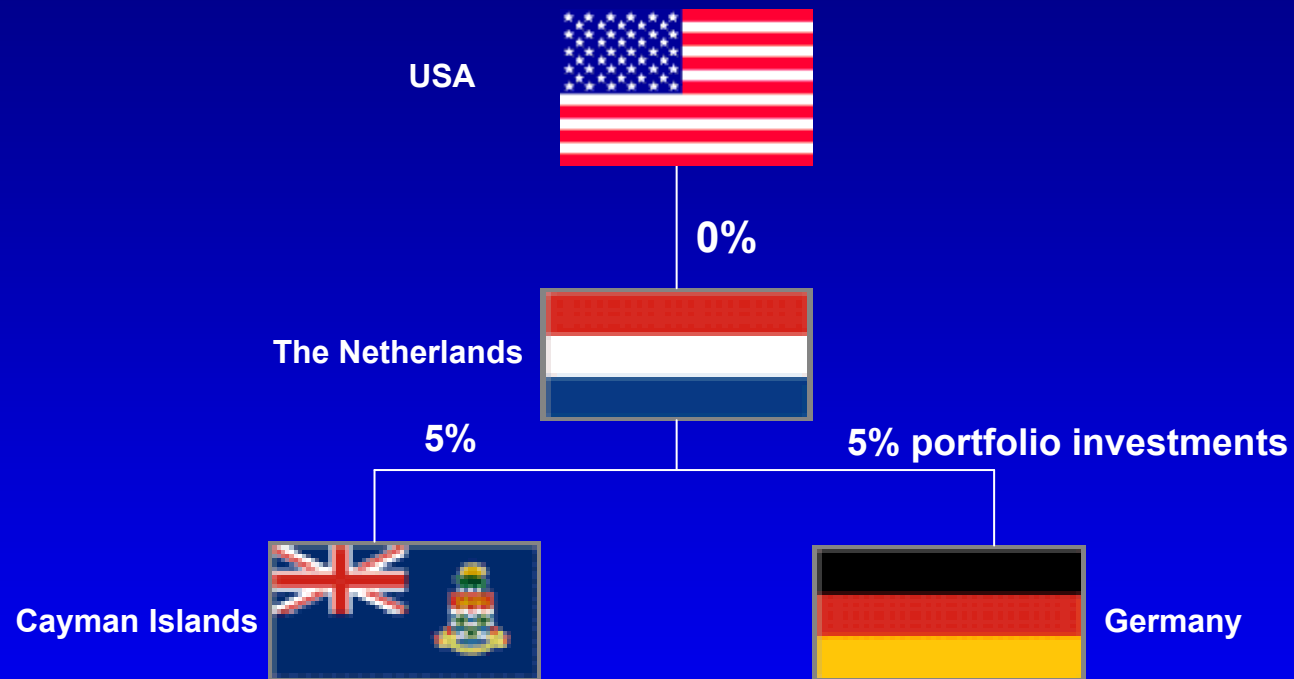
If holding period will be less than one year.

Participation exemption (1)

- Abolished:
 - the ‘non-portfolio investment’-test for foreign shares
 - the ‘subject to tax’-test
- Remaining condition:
 - ownership of an interest of 5% (or more), so no longer possibility to claim participation exemption for less than 5% shareholdings
- BUT: Passive subsidiaries must be adequately taxed (if not: credit instead of exemption)



Participation exemption (2)



But: Subs must be active!

Favorable treaties

Netherlands have tax treaties with over 75 countries.

- Korea
- Taiwan
- China
- Mexico
- Indonesia
- Thailand
- USA



Holding should not trigger additional taxes

- No capital duty
- Good participation exemption
- Dividend withholding tax in principle 15% (25% 2006), but
 - Often reduced under tax treaties
 - No withholding tax under parent subsidiary directive
 - Exit to the USA 0% under conditions
 - Coop, and other alternatives

Article 10 – Dividend Withholding Tax



2004 Protocol US - Netherlands:

0% for qualifying dividends (*Art. 10(3)*) if:

- **Beneficial owner controls directly at least 80% of the voting power during at least 12 months preceding the declaration of the dividend**
- *and one of the following four tests:*
 - a. Ownership, directly or indirectly, of at least 80% of the votes prior to October 1, 1998
 - b. Direct or indirect stock exchange test
 - c. Derivative benefits test, or
 - d. Competent authority relief

Optional Intercompany Interest Box

- Rate: 5%
- Applicable insofar the balance of the intercompany interest exceeds the balance of third party interest.
- But capped.

Summary the Netherlands

1. Reduction of source country taxation for the operational subsidiaries, through many treaties
2. No or only small amount of additional taxation in the Netherlands:
 - (i) No capital duty,
 - (ii) Participation exemption
 - (iii) avoiding withholding taxes possible
3. Flexible as holding, but also financing and head quarters or operational activities
4. Other:
 - (i) advance certainty
 - (ii) corporate law system is flexible
 - (iii) political and economical stability is good
 - (iv) infrastructure of service providers is very good
 - (v) protection under BIT treaties



Belgium



When use BelCo?

If the Subsidiary is resident of certain countries that have a favorable treaty with Belgium: (i.a.)

- Mexico (capital gains article real estate)
- Japan (capital gains)
- Australia
- Hong Kong (route)



Exit

- Withholding tax reduced under treaties and reduced to 10% in case of liquidation
- Dividend from Belgium to exempt entities (e.g. Canadian pension funds) is exempt.
- EC parent subsidiary exemptions
- EC parent subsidiary exemption rules are applicable to treaty countries as of 2007.



Recent developments

- No capital duty
- Notional interest deduction:
Deduction for equity: 3,442% next year 3.9 or even 4%.
- Useful for structure involving royalty or financing activities, or in case of operation activities, some real estate planning and non-qualifying participations.
- Foreign tax credit as if 15% WHT was paid.
So even in case of case 1% was paid, a credit of 15% can be obtained. Notional interest deduction can be used for other activities.

Summary Belgium



1. Reduction of source country taxation for the operational subsidiaries, through many treaties
2. No or only small amount of additional taxation in Belgium:
 - (i) No duty planning,
 - (ii) Participation exemption
 - (iii) reducing withholding taxes possible
3. Flexible as holding, but also operational activities
4. Other:
 - (i) advance certainty
 - (ii) corporate law system is relatively flexible
 - (iii) political and economical stability is good
 - (iv) infrastructure of service providers is very good
 - (v) protection under BIT treaties (same as Luxembourg)

Luxembourg



When to use a Luxembourg holding company ?

1. If there is a tax haven on top
2. If the Subsidiary is passive
3. If the participation is smaller than 10% (or 5%), but with an acquisition value of at least 1.2/6 million Euro
4. In general: if withholding tax (exit) tax planning is involved.



Luxemburg general: an overview

- Access to a market of 100 million consumers within a 250 km radius
- Ranked 1st in terms of country risk in 2003 (out of 186 countries)
- Ranked 1st in international labour productivity in 2003
- Ranked 9th in terms of worldwide competitiveness in 2004
- World safest city in 2004
- Aaa and AAA rating by Moody's and S&P
- Lowest VAT rate in Europe
- 7th largest financial centre and 3rd investment fund centre in the world
- Bank secrecy
- Unique private equity / venture capital investment schemes



Introduction



EXISTING INVESTMENT

PLATFORMS:

a) regulated undertakings for collective investment (SICAV/F - FCP) :

- 8,200 funds and sub-funds
- 672 fund promoters from 43 countries
- EUR 1,613.1 billion in assets under management
- an 76% market share of cross-border UCITS distribution in Europe
- investment funds distributed in more than 150 countries round the world

b) unregulated ordinary commercial companies (Soparfi)

c) SICAR

Introduction (2) NEW QIF REGIME

- DRAFT PROPOSAL (discussed with CSSF right now)
 - creation of a qualified investor fund regime as a replacement of the 1991 institutional investment fund law
- 1991 UCI Act merely refers to 1988 UCI Act
- 1988 UCI Act expires however in February 2007
- Fund industry initiative to replace and modernise 1991 UCI Act
- Proposed QIF regime will cure deficiencies of current patchwork legislation and modernise it

Introduction (3)

- QIF regime will replace 1991 regime
- QIF regime is designed for alternative fund products (f.ex. hedge funds, real estate funds, private equity funds)
- QIF combines the most attractive features of the existing SICAV and SICAR regimes
- Similar to anglo-saxon QIF structures
- Lower the entry-level threshold
- Provide for maximal operational flexibility
- Maintain attractive fiscal regime

Introduction (4)

QIF

Approval by CSSF: May

Filing with Parliament: June/July

Approval by Parliament: December

Entry into force: January 2007



Introduction (5) Securitization vehicle

TAX TREATMENT

- Normally taxed
- Tax deductible dividends (assimilated to interest)
- No minimum income requirement
- No withholding tax on dividends
- Exemption from net wealth tax
- €1,250 capital tax
- Tax treaty and EU Parent Subsidiary Directive available
- No domestic participation on dividend (assimilated to interest)
- Foreign participation on (tax deductible) dividends
- EU Savings Directive

Comparison of regimes

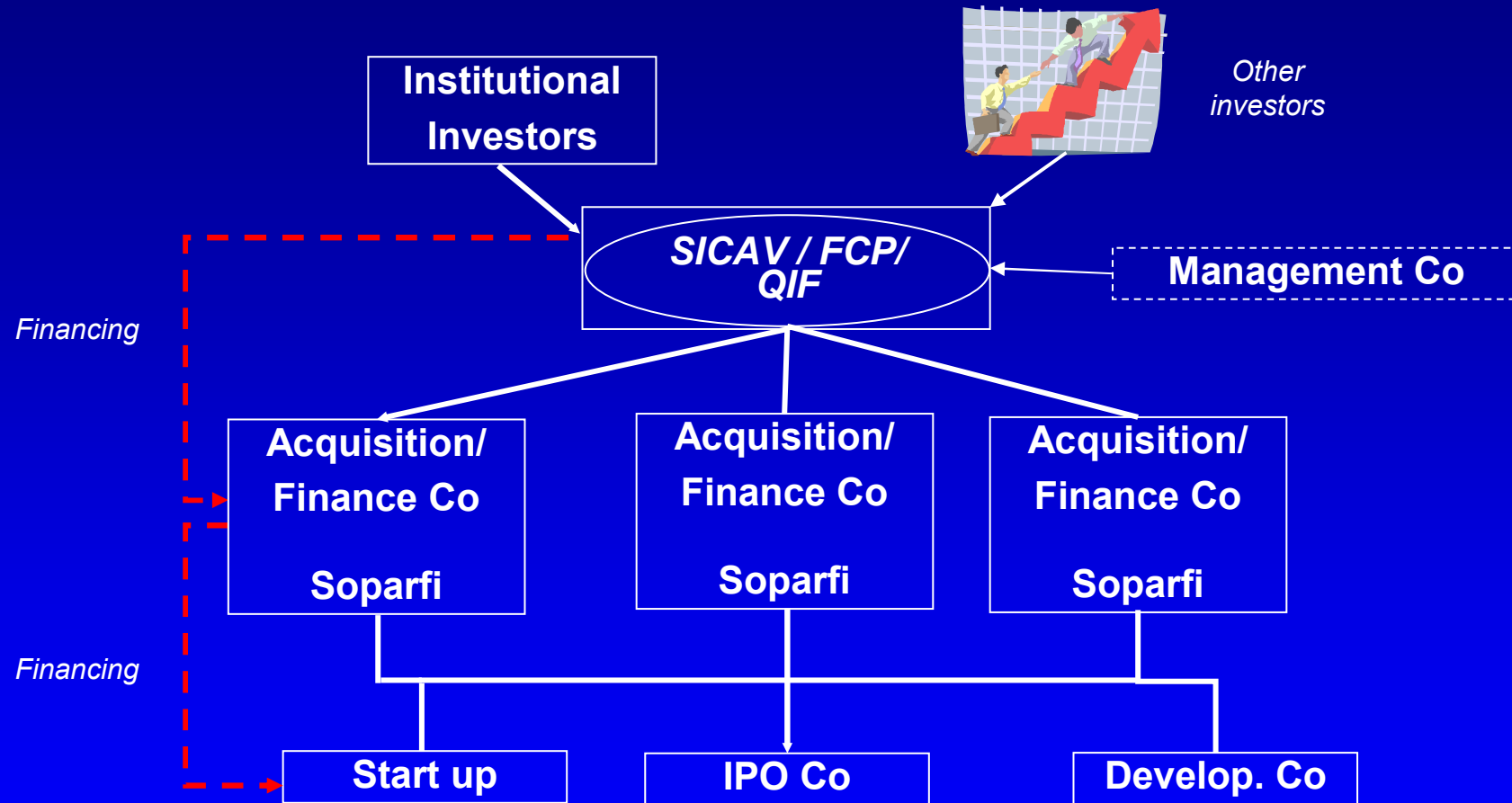


Comparison of four regimes

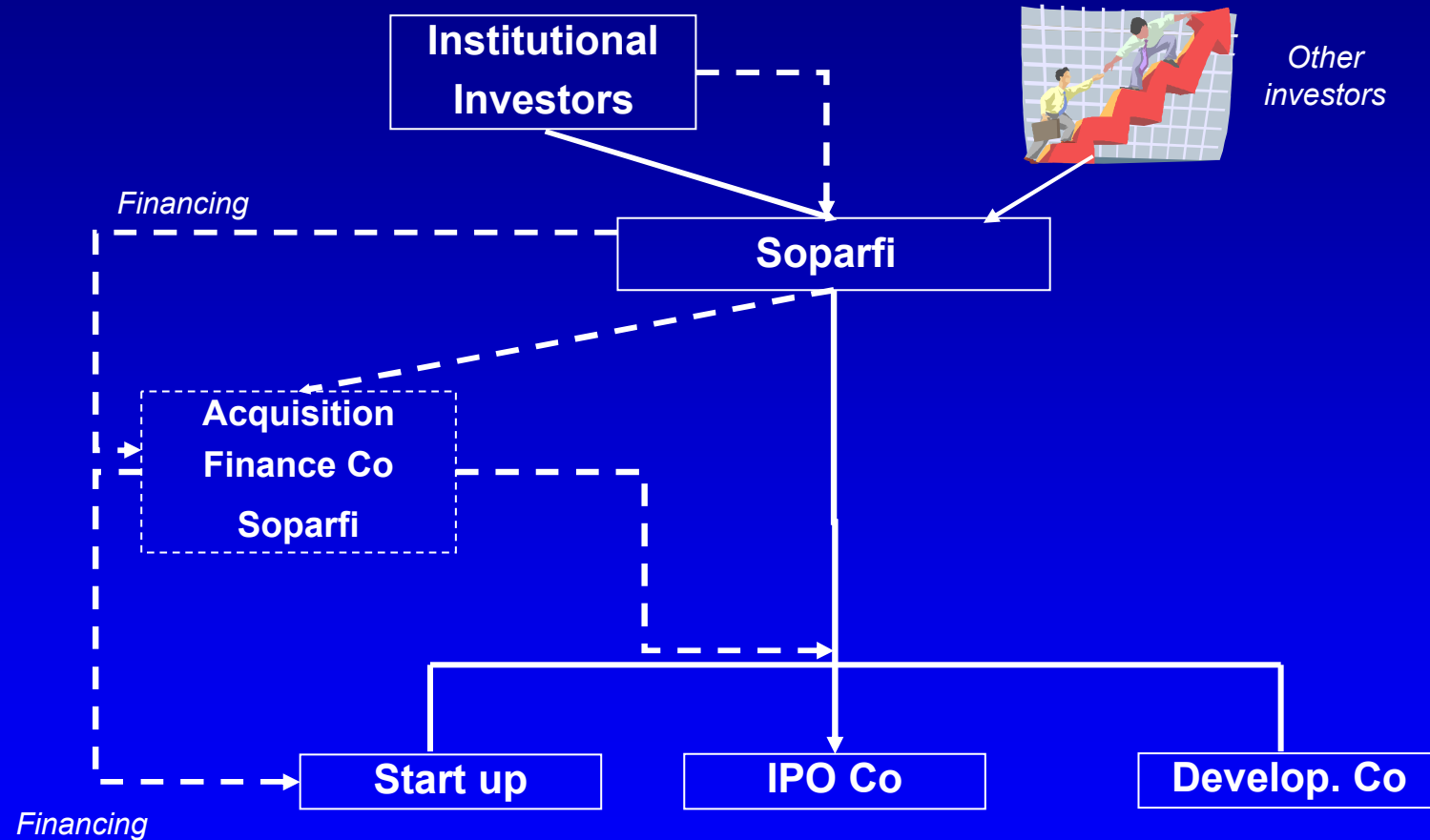
2 EXISTING REGIMES – 1 NEW REGIME – 1 PROPOSED

- **REGULATED SCHEME:** venture capital investment fund subject to the 2002 UCI Act (VCF)
- **UNREGULATED SCHEME:** the private/public limited companies (S.A. / S.à r.l.) or partnership limited by shares (SCA) subject to the 1915 Companies' Act (SOPARFI)
- **NEW INTERMEDIATE REGULATED SCHEME:** the investment company in risk capital (SICAR)
- **QUALIFIED INVESTOR SCHEME:** the investment fund for alternative investments

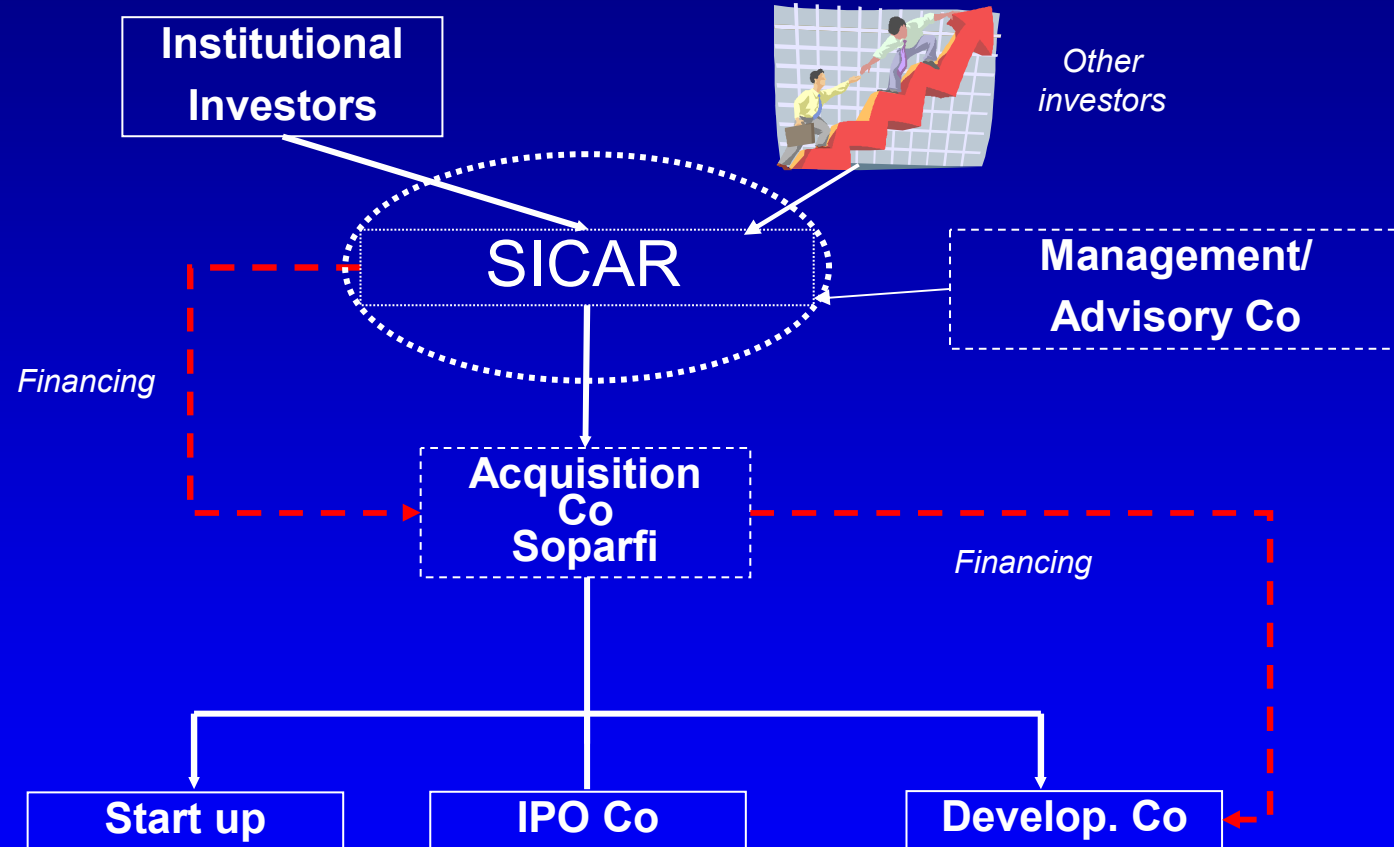
SICAV / FCP / QIF

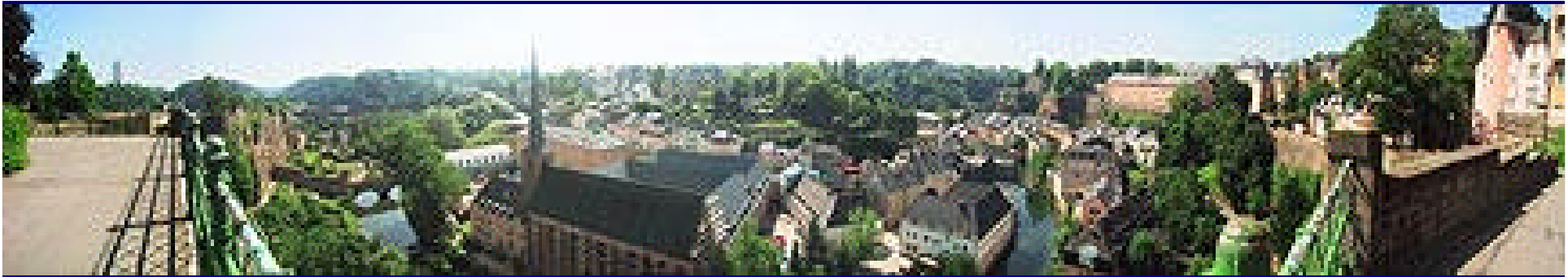


Soparfi (ordinary)



SICAR





LEGAL AND REGULATORY ASPECTS

VCF	SOPARFI	SICAR	QIF
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<i>Autorisation & Supervision</i>			
Subject to prior autorisation (promoter and management) and prudential supervision	N/A	Subject to prior autorisation (management only) and prudential supervision	N/A
Central administration must be in Luxembourg	Place of effective management and central adm. must be in Luxembourg	Central administration must be in Luxembourg	Central administration must be in Luxembourg

VCF	SOPARFI	SICAR	QIF
-----	---------	-------	-----

<i>Quality Control</i>			
Representatives of management body must prove specific expertise	N/A	Representatives of management body must prove specific expertise	Representatives of management body must prove specific expertise
Special risk disclosure rules (prospectus)	N/A	Special risk disclosure rules (prospectus)	Special risk disclosure rules (prospectus)
Assets are safeguarded by Luxembourg custodian bank	N/A	Assets are safeguarded by Luxembourg custodian bank	Possible exemption

VCF	SOPARFI	SICAR	QIF
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Detailed annual and semi-annual reporting (developments of the companies invested in, and individual reports upon sale of securities)	Annual reporting (no special disclosures rules)	Annual reporting NAV reporting upon special (investor) request	Annual reporting NAV reporting upon special (investor) request
External audit	Internal audit (not for Sarl)	External audit	External audit

VCF	SOPARFI	SICAR	QIF
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Investment policy overview : Flexibility

<u>Strict investment restrictions and risk diversification rules</u> – no more than 20% of net assets onto single target	N/A	Principal object: investments in unlisted companies for start-up, development and/or listing puposes. <u>No diversification needed</u>	Diversification needed but flexible
Borrowing limits apply	85/15 debt/equity ratio	No borrowing limits	No borrowing limits

VCF	SOPARFI	SICAR	QIF
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Corporate Governance and Capital Structure

<p>FCP Management company or self-managed SICAV/F :</p> <p>Delegation of investment management functions possible</p>	<p>SARL : single manager or board of managers;</p> <p>SA : board of directors</p> <p>SCA : general partner typically incorporated as an SARL – no general delegation possible</p>	<p>Management subject to choice of corporate form (i.e., <u>S.A</u>, <u>Sà r.l.</u>, <u>S.C.A.</u>, <u>SCS</u>, <u>S.C.S.A.</u>):</p> <p>Delegation of investment management functions possible</p>	<p>Management subject to choice of corporate form (i.e., <u>S.A</u>, <u>Sà r.l.</u>, <u>S.C.A.</u>, <u>SCS</u>, <u>S.C.S.A.</u>):</p> <p>Delegation of investment management functions possible</p>
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VCF	SOPARFI	SICAR	QIF
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Minimum capital EUR 1,25 million within 12 months PAID UP 100%	Minimum capital SARL: EUR 12,500 SA/SCA: EUR 31,000 PAID UP 25% TO 100%	Minimum capital EUR 1 million within 12 months PAID UP 5%	Minimum capital EUR 1,25 million within 12 months PAID UP 100%
Variable capital	N/A	Variable capital (upon election)	Variable capital (upon election)
Registered or bearer shares / units	Bearer or registered shares except for SARL and general partner of SCA (only registered)	Registered or bearer shares (except for SCS with limited transferability of partnership interest)	Registered or bearer shares (except for SCS with limited transferability of partnership interest)

VCF	SOPARFI	SICAR	QIF
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No specific Investor qualification BUT Minimum investment EUR 12,399	No investor qualification and No minimum investment	Expert Investor Status OR Minimum investment of EUR 125,000	Expert Investor Status OR Minimum investment of EUR 125,000
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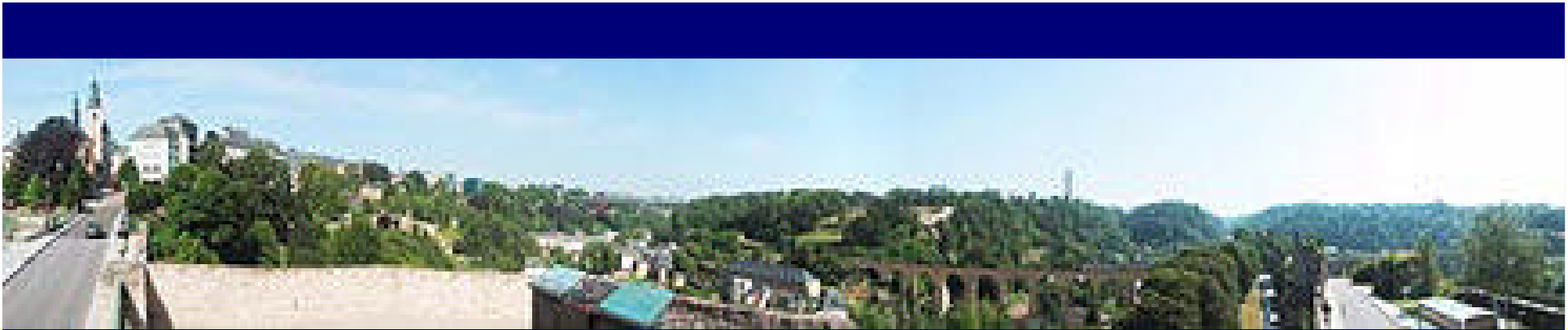
VCF	SOPARFI	SICAR	QIF
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Profit extraction and Exits

Repurchase restrictions for shares/units possible	Statutory repurchase restrictions apply	Repurchase restrictions possible	Repurchase restrictions possible
Dividend policy determined by board / in prospectus	Statutory dividend policy	Dividend policy determined by board / in prospectus	Dividend policy determined by board / in prospectus
Automatically qualified for public offering	Public listing upon request	Automatically qualified for public offering (subject to conditions)	Automatically qualified for public offering (subject to conditions)

VCF	SOPARFI	SICAR	QIF
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<i>Limited liability</i>			
Transparent or opaque	Opaque	Transparent or opaque	Transparent or opaque
Multi-comparent	N/A	Late 2006 multi comparent.	Multi-comparent



TAX ASPECTS

VCF	SOPARFI	SICAR	QIF
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Capital duty EUR 1,200	1% capital duty without limitation (special exemptions apply)	Capital duty of EUR 1,250	Capital duty of EUR 1,250
Not subject to tax: annual subscription tax of 0.05% of net assets; (0.01%) for institutional and monetary funds)	Fully subject to corporation tax at marginal rate of 29,63%	Fully subject to corporation tax at marginal rate of 29,63%, but specific income is exempt	Not subject to tax: annual subscription tax of 0.01% of net assets (possible increase to 0.05%)

VCF	SOPARFI	SICAR	QIF
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Not subject to net worth tax	Subject to annual 0.5% net worth tax – special exemptions apply	Not subject to net worth tax	Not subject to net worth tax
No participation exemption regime	Participation exemption regime	Risk capital exemption and participation exemption	No participation exemption regime

VCF	SOPARFI	SICAR	QIF
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Limited DTA benefits (FCP always excluded)	Full DTA benefits	Full DTA benefits (except SCS)	Limited DTA benefits
No dividend withholding tax	Subject to 15% dividend withholding tax subject to DTA reduction of particip. exemp. regime	No dividend withholding tax	No dividend withholding tax
No interest withholding tax (except if Savings Tax Directive)	No interest withholding tax (except if Savings Tax Directive or PSL)	No interest withholding tax (except if Savings Tax Directive)	No interest withholding tax (except if Savings Tax Directive)

VCF	SOPARFI	SICAR	QIF
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Foreign tax credit is a cost	Foreign tax credit may in certain circumstances be credited	Foreign tax credit is a cost except for SCS (look-through)	Foreign tax credit is a cost
Management services not subject to VAT	Normal VAT rules apply	Management services not subject to VAT	Management services not subject to VAT
Liquidation surplus not subject to tax (for non resident investor)	Liquidation surplus not subject to tax (for non resident investor)	Liquidation surplus not subject to tax (for non resident investor)	Liquidation surplus not subject to tax (for non resident investor)

General



SOPARFI

- Société de participation financière (SOPARFI)
 - Subject to corporation taxes
 - Participation exemption regime
 - No limitation regarding activities
 - Treaty protection and EU directives

Entities

- Public limited liability company
(SA; société anonyme)
- Private limited liability company
(Sarl; société à responsabilité limitée)
- Limited partnership divided by shares
(SCA; société en commandite par actions)
- Limited partnership
(SCS; société en commandite simple)
- Cooperation
(Coöp; société coopérative)

SARL versus SA

- S.à r.l.

- Limited liability
- 1 to 40 partners
- 1 founder
- Min. capital € 12,500, to be fully subscribed
- Min. share value € 25
- Capital to be paid-in fully
- One manager
- Internal auditor if more than 25 shareholders
- Limited transferability of shares
- Shares in registered form

- S.A.

- Limited liability
- Minimum of 2 shareholders
- 1 founder
- Min. capital € 31,000, to be fully subscribed
- Min. share value € 1.25
- Capital paid-in for 25%
- 3 directors
- Internal auditor
- Shares fully transferable
- Shares in registered form or to the bearer

SARL versus SA (2)

S.à r.l.

- Capital
 - Subscribed
 - Paid-in
 - Contribution in kind
- Shares
 - Ordinary
 - Preferred
 - Non-voting: no
- Warrants
- Bonds (no public offer)
- Profit shares
- Preferred Equity Certificates
- Public subscription: no

S.A.

- Capital
 - Subscribed
 - Paid-in min. 25%
 - Authorized
 - Contribution in kind
- Shares
 - Ordinary
 - Preferred
 - Non-voting
 - Redeemable
- Warrants
- Bonds
- Profit shares
- Preferred Equity Certificates
- Public subscription

Capital Duty

- Rate and basis
 - 1%
 - basis = higher of nominal value (+ share premium) and fair market value
 - no debt/equity ratio (however 85/15 for income tax purposes for financing of participations)

Capital Duty Exemptions

- “Business merger”:
 - all assets and liabilities or separate business unit by an EU company in exchange for shares (cash \leq 10%)
- “Share merger”:
 - contribution \geq 65% of participation in an EU capital company; or
 - contribution increasing existing participation to 65% or more – in exchange for shares (cash \leq 10%); – recapture if alienation within 5 years
- “Migration”:
 - transfer of statutory seat and/or effective management of a company to Luxembourg, provided already been subject to capital tax within the EU
- Capital tax planning
 - loans, PECs (but not PESCs)

Corporate Income Tax Aspects

- General
 - general (IRC) and municipal income tax (ICC)
 - rate = 29.63% (including ICC of Luxembourg)
- Participation exemption
 - slight difference between capital gains and dividends
 - both 100% exemption

Corporate Income Tax Aspects - Participation Exemption

- Participation exemption on dividends
 - parent subject to LIR
 - the participation/subsidiary:
 - resident of Luxembourg and subject to LIR; or
 - resident of an EU member state and qualifies under the EU Parent-Subsidiary Directive; or
 - a non-resident capital company subject in its country of residence to a “comparable income tax” (= rate $\geq 11\%$ + comparable tax basis)
 - held by the parent for at least 12 months (or the parent commits to hold until the end of the 12 month period) and represents during such period a participation of at least 10% or € 1.2 million

Corporate Income Tax Aspects - Participation Exemption

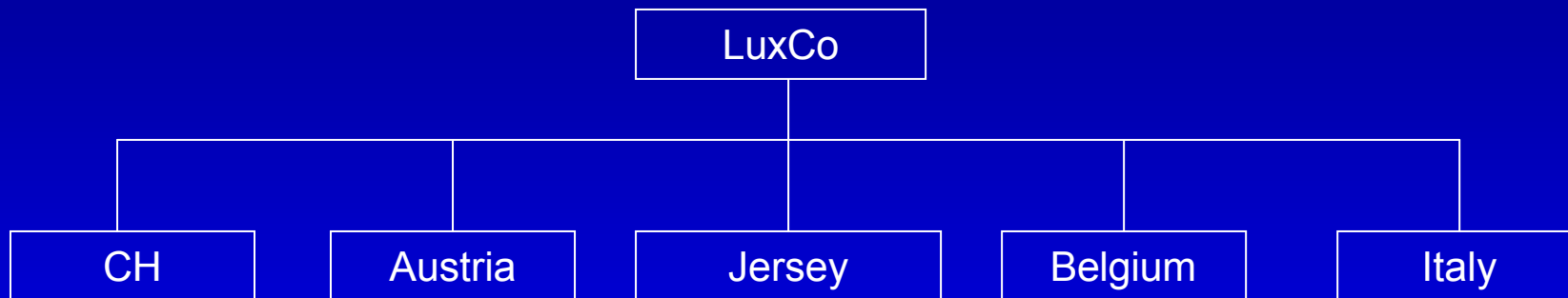
- Participation exemption on dividends
 - Lux. branch of EU company or treaty company also eligible;
 - conditions in tax treaties often more lenient than domestic participation exemption:
 - reduced holding period
 - no “comparable tax” test
 - definition “dividends” :
 - “revenu de la participation”
 - liquidation-distributions included
 - deductible write-down, but: “recapture”
 - in principle direct participation (but (Luxembourg) transparent entities)

Corporate Income Tax Aspects - Participation Exemption

- Participation exemption on dividends
 - exclusion of dividends from a qualifying participation acquired via a tax neutral exchange of a non-qualifying participation for a period of 5 years
 - no exemption to the extent of tax deductible expenses related to the participation

Corporate Income Tax Aspects - Participation Exemption

- Example participation exemption on dividends



- CH: on the basis of the treaty (dividends)
- Austria: qualifying under EU Parent-Subsidiary Directive or under the treaty
- Jersey: no participation exemption
- Belgium: qualifying for the EU Parent-Subsidiary Directive or under treaty
- Italy: qualifying for the EU Parent-Subsidiary Directive

Corporate Income Tax Aspects - Participation Exemption

- **Participation exemption on capital gains**
 - conditions :
 - the parent is subject to LIR
 - the participation / subsidiary is:
 - a resident of Luxembourg and subject to LIR;
 - a resident of an EU Member State and qualifies under the EU Parent - Subsidiary Directive; or
 - a non-resident capital company subject in its country of residence to a comparable tax (rate $\geq 11\%$ + comparable basis).
 - held by parent for at least 12 months (or the parent commits to hold until the end of 12 month period qualifying interest) and represents during such period a participation of at least 10% or EUR 6 million

Corporate Income Tax Aspects - Participation Exemption

- Participation exemption on capital gains
 - no participation exemption for capital gains in tax treaties
 - Lux branch of EU / treaty company also eligible for participation exemption on capital gains
 - definition “capital gain”:
 - exemption only applies in case of “cession”, i.e., alienation
 - capital gains on own shares do not qualify
 - in principle “direct” participation (but (Luxembourg) transparent entities)
 - options + (convertible) loans: “roll-over” facility

Corporate Income Tax Aspects - Participation Exemption

- Participation exemption on capital gains
 - capital losses or write downs are deductible, but recapture applies in case of later capital gain or increase in value
 - exclusion of capital gains realised on a qualifying participation acquired via a tax neutral exchange of a non-qualifying participation for a period of 5 years

Corporate Income Tax Aspects - Participation Exemption

- Deductibility of expenses related to participation
 - expenses related to participation deductible, but dividend not exempt to extent of expenses
 - no exemption of later capital gains to extent of effectively deducted expenses (“recapture”)
 - financing expenses: 85/15 d/e ratio excess non-deductible / dividend (dividend WHT!)
 - capital loss / write-down: deductible (but: “recapture”)
 - F/X loss related to financing participation deductible

Corporate Income Tax Aspects

- Dividends
 - received from non-qualifying participation (also a non-qualifying participation in EU company or treaty company in a Luxembourg company), which are subject to a comparable tax on profits, are exempt for 50%
- Capital gains
 - roll-over available if shares were held for at least 5 years and provided the proceeds are re-invested in similar assets within 2 years
 - “like-kind-exchange”?

Luxembourg Net Wealth Tax

- 0,5% on world-wide net wealth (as per 1/1/x)
- A.o. exemption for qualifying participations:
 - participation of at least 10% or with an acquisition value of at least € 1.2 million
 - participation / subsidiary is:
 - a company resident of Luxembourg and subject to Luxembourg CIT
 - a company qualifying for the EU Parent-Subsidiary Directive
 - a non-resident company subject in its country of residence to a comparable tax (rate \geq 15% + comparable basis)



Luxembourg Withholding Tax

- Dividends:
 - rate: - 15%
 - 5%-15% under most treaties
 - Exemptions:
 - (i) – dividends under the EU Parent-Subsidiary Directive conditions:
 - parent qualifies under article 2 of the EU Parent-Subsidiary Directive, or a Lux.p.e. of such company; or a Lux. p.e. of a treaty company
 - parent holds directly a participation of $\geq 10\%$ or € 1.2 mio for at least 12 months preceding the distribution or commits itself to hold for at least 12 months
 - (ii) – (partial) liquidation
- Definition dividends:
- including repayment of share capital (and share premium) if no economic reasons
 - non at-arm's-length/profit sharing interest

Luxembourg Withholding Tax

- Interest
 - no withholding tax on at-arm's-length interest
 - however: profit sharing bonds
 - EU savings directive
 - Payments to Lux resident individuals
- Royalties
 - Interest & royalty NEW LAW!!
 - *Old Netherlands Royalty structure (ending in 2006 !)*
 - *Possibly reduced to 0% under tax treaties signed by Luxembourg*

Substantial Interest Taxation

- Capital gains (including liquidation distributions and partial liquidation distributions) realised on shares of Luxco are taxable in the hands of non-resident shareholders holding (solely or together with close relatives) more than 10% in the Luxco if:
 - such gains are realised within 6 months of acquisition of Luxco; or
 - such shareholders have been residents of Luxembourg for more than 15 years and have left Luxembourg less than 5 years on the moment the capital gain is realised
- Most tax treaties signed by Luxembourg provide protection

Thank you very much for your attention

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