Jurisdictions of Holding and Financing's SPVs

May 20, 2013

Summary

- *Who's Alter Domus?*
- *General context*
- *General platforms*
  - Luxembourg
  - The Netherlands
- *Regional platforms*
  - Singapore
  - Hong-Kong
  - Mauritius
  - Malta

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Alter Domus at a glance

ALTER DOMUS

- Leading global provider of professional administration services
- Our clients:
  - Alternative investment and private equity firms
  - Real estate funds and other real estate investors
  - Private investors / high net worth individuals
  - Multinationals
- Founded in 2003 in Luxembourg with origins in a Big Four accountancy practice
- 100% management-owned
- 550 professionals including more than 70 chartered accountants
- 15 offices and desks across 4 continents

International network

Our services are provided by local people having local expertise

AMERICAS • New York (U.S. Representative Office)
EUROPE • Belgium • Cyprus • Guernsey • Ireland • Jersey • Luxembourg • Malta • Russia & CIS • The Netherlands • United Kingdom
AFRICA • Mauritius
ASIA • Hong Kong • Singapore • The People’s Republic of China

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General context

Choosing an SPV jurisdiction

- The rational for using an SPV may include:

  - Corporate legal reasons, e.g.:
    - Enforcement of secure joint-venture agreement;
    - Structuring of financing
  - Investor protection reasons, and
  - Tax reasons, e.g.:
    - Access to a large Double Tax Treaty network, which is rare at fund level;
    - Access to European Directives (Parent-Subsidiary and Interest & Royalties) [when applicable] , which is also not possible at fund level;
    - Possibility to repatriate income to investors without tax leakage.

General context

Choosing an SPV jurisdiction

- Main criteria to be analysed from a tax and legal perspective:
  - TAX costs at each steps of the investment cycle:
    - Incorporation: Capital / stamp duty?
    - During the life of the investment: corporate tax rate, participation exemption regime, access to Double Tax Treaties? CFC rules? Thin capitalization rules?
    - Exit: whitholding tax on dividends, interest, royalties, liquidation proceeds, capital decrease and redemption of shares? Taxation of capital gains?
  - LEGAL aspects of the SPV:
    - Timing of establishment
    - Flexibility of the vehicle in terms of capital variations (capital decrease or liquidation)
    - Level of experience of the lawyers in the jurisdiction (qualification of service providers)

General context

Choosing an SPV jurisdiction

- The choice of the SPV jurisdiction will be driven by:
  - overall stability and reliability of the location,
  - a comparison between tax, regulatory and legal treatments and also
  - by the location of the investors and investments:
    - Luxembourg and The Netherlands: general platforms
    - Hong-Kong: platform for investment in/from China
    - Singapore: platform for investment in/from Asia
    - Mauritius: platform for investment in/from Africa/India
    - Malta: platform for HNWI

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General platforms

Luxembourg and The Netherlands: key platforms for international tax planning

- The main reasons for Luxembourg and The Netherlands' popularity as an SPV jurisdiction are:
  - stability
  - long track record
  - "on-shore" jurisdiction
  - flexible legal system
  - professional services available locally
  - a neutral tax regime

Luxembourg

The Luxembourg offering

- Founding member of the EU
- Stable political environment, pro-business oriented
- Macroeconomic stability with successful economic performance
- Multicultural and multilingual environment
- Important financial centre, where investment funds, bank, reinsurance businesses and holding companies have significantly expanded during the last 25 years
- Excellent infrastructure and logistical network (international airport, railway)

Luxembourg

The Luxembourg offering

- Attractive tax regime :
  - Wide Double Tax Treaty Network of more than 60 countries (and 20 additional under negotiation)
  - Specific exemptions applicable for dividends received and capital gains realised on disposal of investment
  - No Luxembourg withholding tax on outbound interest and royalties
  - No CFC rules
  - Possibilities to enter into Advanced Tax Rulings (ATR's) and Advance Pricing Agreements (APA's) with the tax authorities

Luxembourg

Tax System

SOPARFI	
<u>At incorporation:</u> Capital duty	 No
<u>During the life:</u> -Corporate tax rate - Exemption of dividends/liquidation proceeds and capital gains - Net wealth tax rate	 - 29.22% - Yes under the conditions of the participation exemption regime -0.5% on the net assets with exemption on qualifying shareholdings / IP
<u>At exit:</u> -Witholding tax on interest - Withholding tax on dividend -Withholding tax on liquidation proceeds	 -0% (except for individuals falling under Savings' Directive) - 15% (or reduced rate based on DTT or 0% under the conditions of the participation exemption regime) - 0%

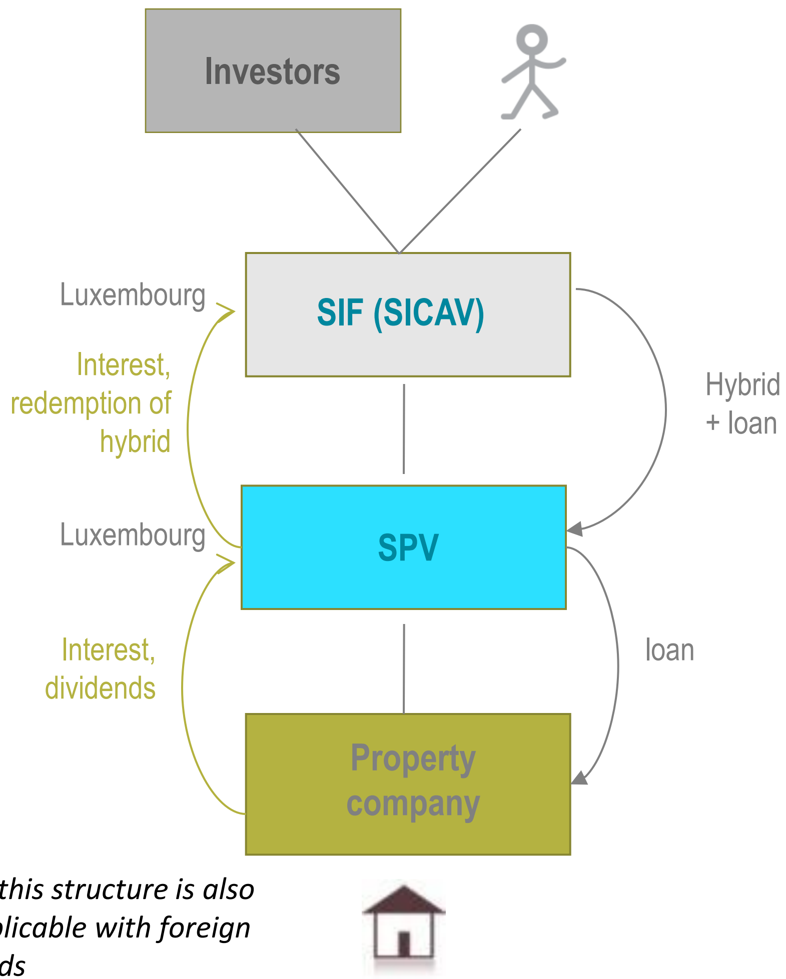
Luxembourg

Legal framework

SOPARFI	
Timing of establishment	3 to 5 business days
Variations of capital: -Capital decrease -Liquidation	 - For Sàrl: no restriction / For SA: 1 month delay - Simplified liquidation process possible under conditions
Type of legal entities available	Very wide
Level of experience of lawyers	High

Typical Luxembourg Tax Structure

Luxembourg Special Investment Fund (SIF) (*)



(*) this structure is also applicable with foreign funds

- The investors in the SIF are well-informed investors, institutional investors or professional investors.
- Taxation is to be analyzed on a case-by-case basis
- The SIF may be structured as a FCP (contractual form-mutual fund), or a SICAV/SICAF.
- The FCP-SIF is transparent for tax purposes whereas the corporate SIF is opaque and may have access to some DTTs.
- At SIF (SICAV) level:
  - no CIT/MBT/NWT but a subscription tax of 0.01% computed on the NAV
  - No WHT on distributions to investors
- At SPV level:
  - Participation exemption regime on dividends and capital gains received
  - Taxation on a margin on the back-to-back activity
  - Interests + proceeds from Hybrid redemption: no WHT in Luxembourg
- At PropCo level:
  - Possibility to apply DTT/P-S Directive to reduce/avoid WHT on distributions
  - Capital gain taxable in Luxembourg based on DTT (unless RE company clause)

The Netherlands

The Netherlands offering

- Founding member of the EU
- Macroeconomic stability with successful economic performance
- Excellent infrastructure :
  - Favourable geographical location
  - High standard of human resources
  - High quality professional services
  - Reliable telecommunication systems and transport connectivity globally
- A stable political environment
- High level financing system

The Netherlands

The Netherlands offering

- Beneficial tax possibilities for multinational companies
  - The participation exemption grants an (100%) exemption of Dutch corporate income tax for dividends and capital gains derived from subsidiary companies
  - One of the largest networks of treaties to avoid double taxation (over 80 countries)
  - No Dutch withholding tax on outbound interest and royalties
  - Fiscal unity regime to offset profit and losses amoung group members
  - Possibilities to enter into Advanced Tax Rulings (ATR's) and Advance Pricing Agreements (APA's) with the tax authorities

The Netherlands

The Dutch Tax System

The Dutch BV	
<u>At incorporation:</u> Capital duty	 No
<u>During the life:</u> -Corporate tax rate - Exemption of dividends/liquidation proceeds and capital gains - Net wealth tax rate	 Til eur 200,000 20%, > eur 200,000 25% Yes - under the conditions of the participation exemption regime N/A
<u>At exit:</u> -Witholding tax on interest - Withholding tax on dividend - Withholding tax on liquidation proceeds	 0% 15% (or reduced rate based on DTT or 0% under the conditions of the participation exemption regime) 0%

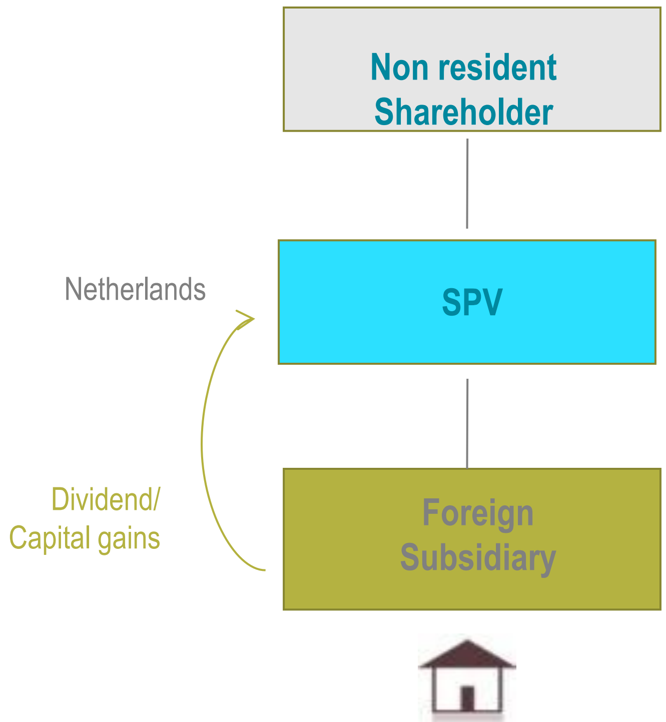
The Netherlands

Legal framework

The Dutch BV	
Timing of establishment	3 to 5 business days
Variations of capital: -Capital decrease -Liquidation	 There are 3 options: 1. Buy-back of shares *2.* Redemption of the shares 3. Reduction of the nominal value of the shares by amendment of the Articles of Association - Simplified liquidation process possible under conditions
Level of expercience of lawyers	Very high

Typical Dutch Tax Structure

Dutch SPV



- The Netherlands maintain a participation exemption exempting 100% of dividends and capital gains derived from qualifying participations.

- The participation exemption is generally applicable to participations of at least 5% of the nominal paid-up capital and <u>if at least one of the following three tests is met</u> (following from article 13 Vpb*):

  - Motive Test; the participation is not held as a passive investment (the investment is considered passive if it is held with the objective to obtain a return that may be expected from normal active asset management).

  - Subject-to-tax Test; the subsidiary is subject to an effective tax rate of at least 10%, determined according to Dutch standards.

  - Asset Test; less than 50% of the direct and indirect assets of the subsidiary consist of passive investments.

- As a result the Dutch Company can apply the participation exemption to profits received from low taxed, or tax exempt jurisdictions (conditions apply)

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Regional platforms for SPVs

Singapore: key platform for tax planning in Asia

- The main reasons for Singapore's popularity as an SPV jurisidction for Asia are:
  - Its strategic situation
  - Stable politically and progressive goverment
  - Competitive tax rates
  - Attractive tax treaty network
  - Lack of CFC type legislation
  - No thin capitalization rules
  - Territorial regime

Singapore

The Singapore offering

- Attractive operational advantages
  - English is the official language
  - Highly regulated banks and monetary policies
  - Highly qualified and talented workforce
  - Seen as operational hub for further investments into South East Asia, particularly Indonesia
  - High quality of living
  - Stable climate with no natural disasters
- Excellent infrastructure
  - Latest technology for telecommunications
  - Reliable IT infrasctructure in place
  - Robust and extensive financial services industry

Singapore

The Singapore offering

- Extensive double tax treaties with approximately 76 comprehensive and limited treaties

- Low corporate tax rate

- Newly incorporated companies need not pay tax on first $100k of taxable income for the first 3 years if:
  - Company is a tax resident in Singapore;
  - Has no more than 20 shareholders; and
  - All shareholders are individuals or if not, having no more than 90% of shareholding under a corporate entity.

Singapore

Tax System

The Singapore SPV	
<u>At incorporation:</u> Capital duty	No capital duty but a minimal processing fee payable to the Accounting and Corporate Regulatory Authority (ACRA) of Singapore.
<u>During the life:</u> -Corporate tax rate - Dividends/liquidation proceeds and capital gains	-17% - There are no taxes on capital gains but the Inland Revenue Authority of Singapore (IRAS) takes a very strict view on what is deemed to be capital in nature. Key factors such as intention at point of acquisition and period held will be taken into account.

Singapore

Tax System

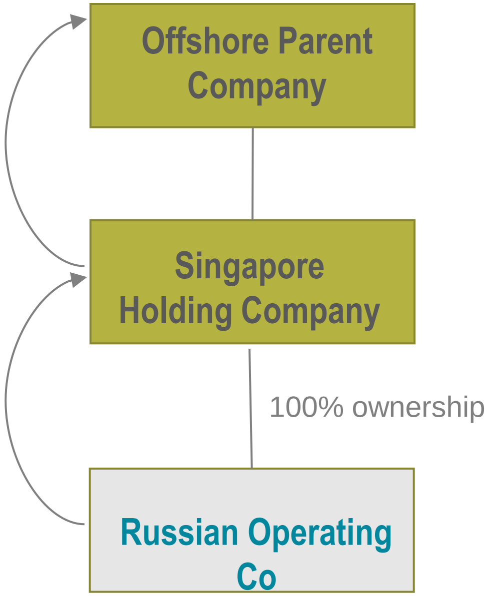
The Singapore SPV	
<u>At exit:</u> -Witholding tax on interest	- 15% on interest, commission or any other payments made in connection with a loan or debt facility in Singapore to a non-resident.
-Withholding tax on dividend	-0%
- Withholding tax on royalties	-10% on royalty payments to non residents.

Singapore

Legal framework

The Singapore SPV	
Timing of establishment	+/- 3 business days
Variations of capital: -Capital decrease -Liquidation	 - Would require Court approval and Directors are required to sign a Certificate of Solvency. - Liquidation on average between 3 to 6 months.
Level of expercience of lawyers	Significant expertise available in Singapore.

Singapore – Russia Structure



By interjecting a Singapore holding company between a structure,

1. Reduced rate on witholding tax paid by Russain OpCo to Singapore HoldCo under the Singapore- Russia double tax treaty. Minimum possible rate would be 5% subject to certain conditions being met.
2. Dividends paid by Singapore HoldCo to Parent Company are exempt from witholding tax.
3. When Singapore HoldCo derives income which may be taxed in Russia, the amount of tax on that income payable in Russia shall be credited against the tax imposed in Singapore.
4. Disposal of Singapore HoldCo by ParentCo is exempt from taxation in Singapore if deemed to be capital in nature.

Regional platforms for SPVs

Hong-Kong: key platform for tax planning in China / South East Asia

- The main reasons for Hong-Kongs' popularity as an investment platform in China /South East Asia are:
  - Its strategic situation
  - Favorable DTT concluded with China offering attractive tax rate on passive income such as dividends, interest and royalties
  - Attractive tax regime
  - Territorial regime

Hong Kong

The Hong Kong offering

- No foreign ownership restrictions
- One of the lowest tax rates in the world : Hong Kong operates a low and simple tax system
- Rule of law upheld by an independent judiciary, and high degree of autonomy from the Mainland China
- Free movement of capital, talent, goods and information and a fully convertible currency
- English and Chinese are the official languages of Hong Kong; business is conducted in English and business contracts are written, reviewed, and executed in English

Hong Kong

The Hong Kong offering

- Common Law System - English case law is closely followed
- Macroeconomic stability with successful economic performance
- Excellent infrastructure:
  - High standard of human resources and broad availability of skilled professionals
  - High quality banking system and professional services
  - Reliable telecommunication systems and global transportation connectivity
- Low corporate income tax rate
- Efficient tax regime
- Extensive network of double tax treaties with 25 countries

Hong-Kong

Tax System

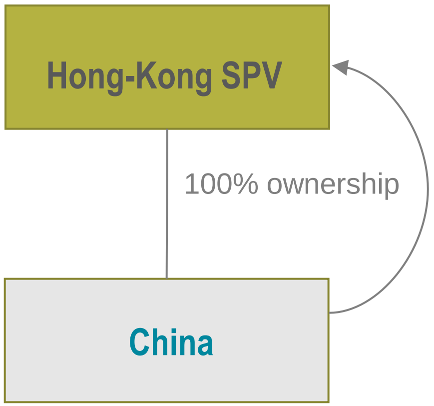
Hong-Kong SPV	
<u>At incorporation:</u> Capital duty	Nil
<u>During the life:</u> -Corporate tax rate - Exemption of dividends/liquidation proceeds and capital gains - Net wealth tax rate	-16.5% - 0% - 0%
<u>At exit:</u> -Witholding tax on interest - Withholding tax on dividend - Withholding tax on liquidation proceeds	- 0% - 0% - 0%

Hong-Kong

Legal framework

Hong-Kong SPV	
Timing of establishment	4-5 business days
Variations of capital: -Capital decrease -Liquidation	 - Would require Court approval (unless certain conditions are met) - On average between 4 to 6 months
Level of expercience of lawyers	Very high

Hong-Kong – China Structure



1. 5% WHT on dividends based on DTT
2. Dividends/capital gains received will be tax-exempt in Hong-Kong
3. No withholding tax on dividend distributed by the Hong-Kong SPV

Regional platforms for SPVs

Mauritius: key platform for tax planning

- The main reasons for Mauritius’ popularity as an SPV jurisidction for Africa/India are:
  - Strategic location and time zone
  - Stable politics and socio-economics
  - Friendly business and legal system
  - Professional services available locally
  - Simple and favourable tax regime
  - Extensive tax treaty network

Mauritius

The Mauritius offering

- Key political and economic ties with the European Union, many African states and rapidly emerging economies such as India and China.
- Mauritius has been chosen as a platform for expansion into the African Continent by China.
- Member of organizations such as:
  - Common Market for Eastern and Southern Africa (COMESA),
  - Southern African Development Community (SADC),
  - Indian Ocean Rim,
  - Association for Regional Cooperation,
  - Indian Ocean Commission (IOC),
  - African Union,
  - Commonwealth
- Mauritius is a signatory to more than 15 multilateral conventions relating to Africa.
- Mauritius has signed Investment Promotion and Reciprocal Protection Agreements (IPPAs) with 15 African nations.
- Well-regarded by international organizations and investors from a corporate governance and compliance perspective:
  - Ranked 1st on the Ibrahim Index of African Governance for last 6 years; from 2007 to 2012.
  - Ranked 1st in the category “Ease of Doing Business” for the region of Africa in 2009 (24th globally), in 2010 (17th globally), and in 2011 (20th globally).

Mauritius

The Mauritius offering

- Extensive double tax treaty network of 36 countries
- Favourable and simplified tax regime.
- No exchange controls.
- No requirements regarding percentage ownership and minimal holding period.
- No minimum capital requirement, no thin capitalization rules.
- No obligation to be VAT registered.
- Free repatriation of profits, capital and income.

Mauritius

Tax System

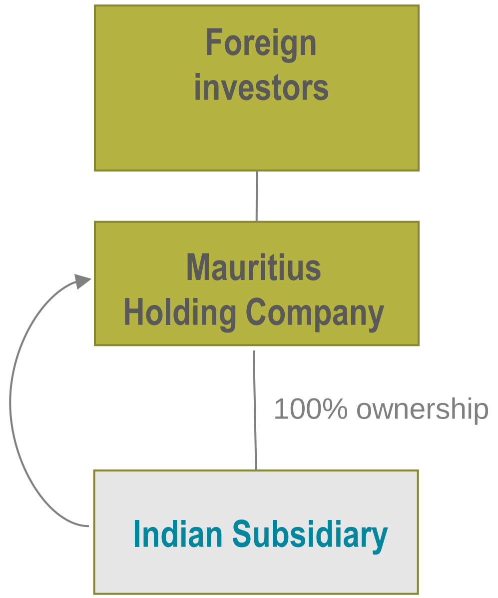
Mauritius SPV	
At incorporation: Capital /stamp duty	 N/A
During the life: -Corporate tax rate - Exemption of dividends/liquidation proceeds and capital gains - Net wealth tax rate	 - 15%, however, a GBL 1 is eligible to claim a deemed tax credit of 80% resulting in a maximum tax of 3% or foreign tax credit suffered resulting in zero tax in Mauritius. -Foreign tax credit can be claimed on foreign source income. No Capital Gains tax. -N/A
At exit: -Witholding tax on interest - Withholding tax on dividend - Withholding tax on liquidation proceeds	 -N/A -N/A -N/A

Mauritius

Legal framework

Mauritius SPV	
Timing of establishment	3 to 5 days
Variations of capital: -Capital decrease -Liquidation	 - No restriction, the SPV should satisfy Solvency Test. - Simple process
Level of expercience of lawyers	High

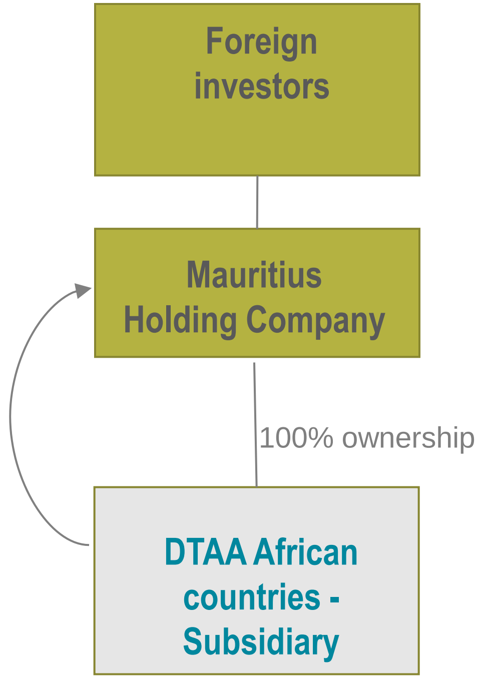
Mauritius – India Structure



Benefits for setting-up an intermediate Mauritius holding company between the Investor- India structure:

1. Mauritius has no Capital Gains tax.
2. According to the treaty between Mauritius & India, the country of resident of the seller(Mauritius) has the right to tax capital gain.
3. Foreign tax credit can be claimed on tax suffered in India, resulting in zero to a maximum of 3% tax in Mauritius.
4. No withholding tax in Mauritius on distribution.

Mauritius – Africa Structure



Benefits for setting-up an intermediate Mauritius holding company between the Investor- tax treaty country in Africa

1. Mauritius has no Capital Gains tax.
2. According to the treaty between Mauritius & most African nations, the country of resident of the seller (Mauritius) has the right to tax capital gain.
3. Limitation of withholding tax on dividend with treaty countries.
3. Foreign tax credit can be claimed on tax suffered in Africa, resulting in zero to a maximum of 3% tax in Mauritius.
4. No withholding tax in Mauritius on distribution.

Regional platforms for SPVs

Malta: key platform for tax planning

- The main reasons for Malta's popularity as an SPV jurisidction are:
  - Stable economy and political environment
  - A robust but flexible regulatory framework
  - Good location and infrastructure
  - Attractive tax regime (full imputation system)
  - No CFC legislation, no thin cap rules and no sophisticated transfer pricing rules

Malta

The Malta offering

- Attractive operational advantages
  - English is the official language
  - Operating costs significantly lower than EU 27 average
  - Qualified and professional workforce
  - Dynamic and responsive policy makers
  - Very good quality of life
  - Gateway to North Africa and the Middle East

- Excellent infrastructure
  - Latest technology for telecommunications
  - Reliable IT infrasctructure in place
  - Good connectivity to mainland Europe with very regular flights to the main cities in Europe, Africa and the Middle East

Malta

The Malta offering

- The only state in Europe which uses the full imputation system
- Look-through treatment for trusts earning foreign source income and having non-resident beneficiaries such that effectively no Maltese tax would arise on such income
- Tax neutrality in respect of non-resident-owned funds investing outside Malta
- 15% flat tax rate applicable on Malta-source chargeable income and capital gains and on foreign source income received in Malta by expatriates taking up residence in Malta under a residence scheme. Foreign source capital gains are not taxed even if received in Malta.
- Revenue Rulings on international transactions – issued even prior to setting up of structures
- Three main types of tax relief:
  - Treaty Relief – over 60 treaties in place
  - Unilateral Relief
  - Flat Rate Foreign Tax Credit

Malta

Tax System

Malta SPV	
At incorporation: Capital /stamp duty	 No
During the life: -Corporate tax rate - Exemption of dividends/liquidation proceeds and capital gains - Net wealth tax rate	 - 5% (net) - Participation exemption regime applicable under conditions - N/A
At exit: -Witholding tax on interest - Withholding tax on dividend - Withholding tax on liquidation proceeds	 0% 0% 0%

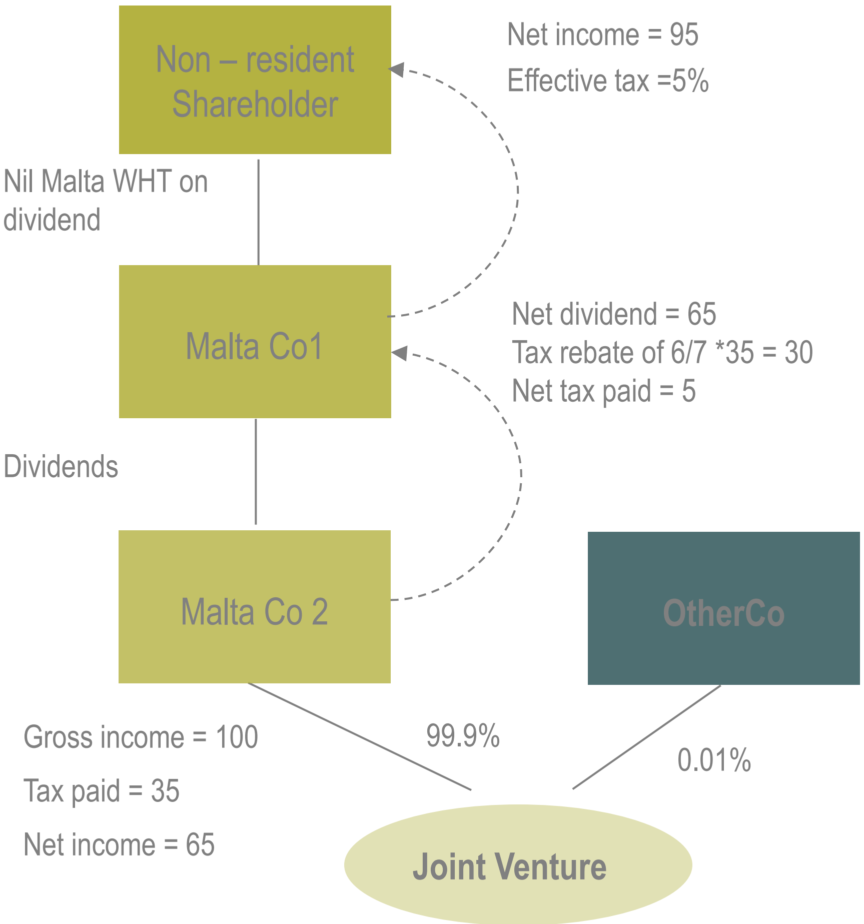
Malta

Legal framework

Malta SPV	
Timing of establishment	24 hours
Variations of capital: -Capital decrease -Liquidation	24 hours
Level of expercience of lawyers	Highly experienced, trained most of the time in the UK

Typical Malta Tax Structure

Tax refund system – trading through interests in partnerships



- Malta Co. acquires interest in a foreign registered partnership which carries out trading activities (and is not generating income from a PE outside Malta)
- The income of the partnership is deemed to be that of MaltaCo. – as if MaltaCo. is carrying on the business itself
- MaltaCo. is taxed at 35%
- But upon distribution of dividends to Malta HoldCo, tax refunds push down overall effective Malta tax burden to a maximum of 5% - a refund of 6/7ths
- No further tax payable upon distribution of dividends from Malta HoldCo to non-resident shareholders

ALTER DOMUS

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Jurisdictions of Holding and Financing's SPVs held by funds

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