Panel 4
Tax-onomy of a restructuring

Copenhagen, October 8, 2026

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Introduction and Overview

- **Financial Restructuring**

  - *Interest Limitation Rules and the Efficiency of Financial Expense*
  - *Transfer Pricing and Debt vs. Equity Recharacterisation*
  - *Debt Push-Down Structures in Acquisition Finance*
  - *Hybrid Instruments and Cross-Border Mismatches*

- **Corporate Restructuring**

  - *Dividend Exemption, Multi-Tier Taxation and Tax-Neutral Mergers as a Remedy*
  - *Accidental Inversions in Distressed Restructurings*

Financial Restructuring

Interest Limitation Rules and the Efficiency of Financial Expense

Thierry Lesage, Luxembourg, Arendt & Medernach SA

Luxembourg application of the Interest limitation rules

1. Deduction denial risks

- Business purpose
- Debt to equity recharacterization
- Transfer pricing adjustments
- Participation exemption
- Hybrid mismatch rules
- Payments to non cooperative jurisdictions

2. Article 168bis ITL

- If otherwise deductible: EBC limited to the higher of **30% tax EBITDA** or **EUR 3m**
- Carry forward of disallowed EBC
- Unused capacity 5 years

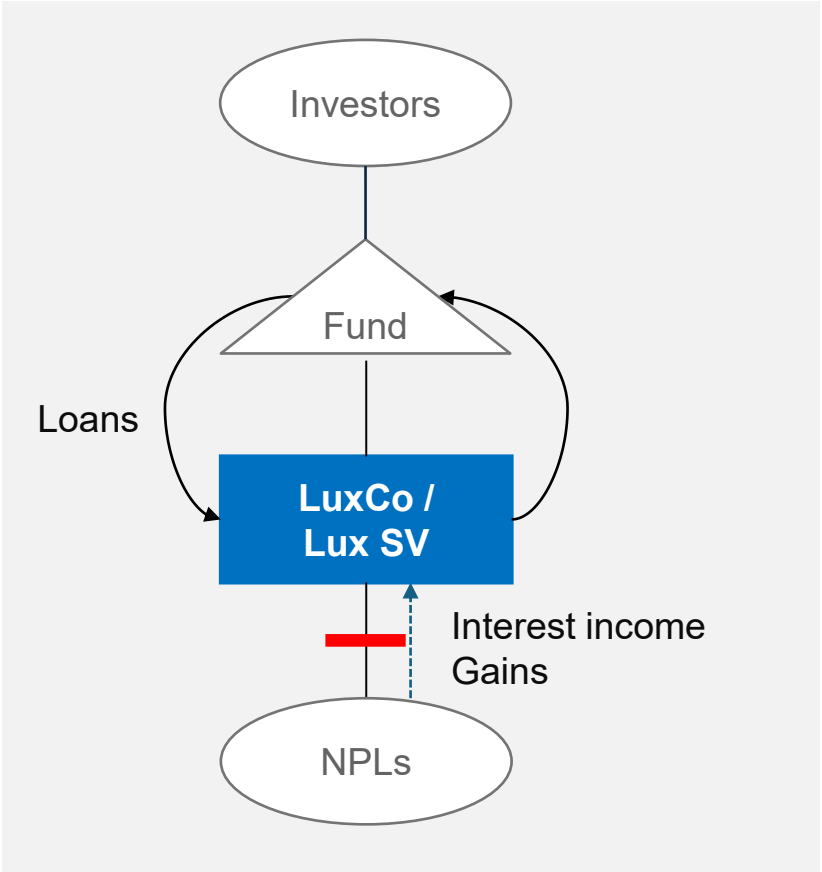
3. Relief / escape

- Standalone entity or financial undertaking (e.g., AIF)
- Grandfathered pre-17 June 2016 loans
- Group equity escape
- Single-entity group from 2024

4. Pillar Two timing effect

- Denial year: higher current tax may lift Luxembourg ETR
- DTA benefit capped at 15%; later reversal may create QDMTT risk near the minimum rate

Financing of non-performing loans



ILR – Impact at LuxCo / Lux SV level

- Back-to-back financing activity (recurring income): no impact
- Interest expenses tracking the gain subject to ILR: EBC limited to the higher of 30% tax EBITDA or EUR 3m

Solutions

- LuxCo / Lux SV set up as an **AIF** (financial undertaking)
- **Accounting treatment** of the gain as interest income
- **Others:** stand-alone entity, equity escape rule, single entity group, SVs under Regulation (EU) 2017/2402

EU Tax Omnibus proposal

- **ATAD / ILR**: AIF & standalone entity no longer exempt; EBC exclusion on low risk third party loans
- **IRD**: new safeguard clause

Lessons from Luxembourg case law

No case law on the application of the interest limitation rules so far; limited challenges from the Luxembourg tax authorities

Increasing number of court decisions on transfer pricing issues / deductibility of financial expenses (pre-ILR analysis) => debt to equity recharacterisation; arm's length rate / debt quantum; recharacterisation into hidden profit distribution / hidden capital contribution

- Court reasoning: application of a holistic substance-over-form approach, including a comprehensive analysis of the legal characteristics of the instrument and of the circumstances.
- 48125C (23 Nov 2023): challenge by the tax authorities of the debt characterisation of an interest-free intra-group loan: limited recourse clause, no guarantees in the case of default, disproportionate debt/equity ratio, no interest rate. The Court however confirmed debt treatment: use of the loan for short-term investments, short-term maturity, actual repayment before maturity; subordination to third party debt not necessarily an equity feature.
- 50602C (17 Apr 2025): the Court confirmed the interest free loans recharacterisation as hidden capital contributions (equity). Loans features & circumstances: long maturity, no formal guarantee, disproportionate debt/equity, loans used to fund long-term assets. Informal market practice of 85/15 debt/equity ratio not legally binding.
- 53194C (22 July 2026): the Court confirmed that a partial waiver of interest on a distressed loan, within a broader restructuring involving an unrelated JV partner (debt-to-equity conversion, new financing at a reduced rate, additional guarantees, reciprocal concessions) is at arm's length - no hidden capital contribution. The Court also confirmed interest deductibility follows the nominal debt amount, unaffected by an accounting write-down absent an actual creditor waiver.

Transfer Pricing and Debt vs. Equity Recharacterisation

Anders Oreby Hansen, Copenhagen, Denmark, Beierholm Tax & Law

The Danish angle in one sentence

In Denmark, the tax risk is usually not the legal label “loan” itself, but whether the taxpayer can show that an independent borrower could and would have assumed the debt on comparable terms.

1. Accurate delineation

Substance over form: what did the parties actually do?

2. Debt capacity

Could a stand-alone borrower service the debt?

3. Pricing and terms

Interest, tenor, security, covenants and options realistically available.

4. Evidence and consequences

Contemporaneous documentation, secondary effects and double-taxation management.

From legal form to arm's-length debt

Legal form

Loan agreement, nominal debt, interest clause.

Accurate delineation

Commercial purpose, borrower need, lender conduct, actual risk.

Debt quantum

Would independent lenders provide this amount?

Pricing

Rate, tenor, security, covenants, guarantees, options.

Recognition

Debt accepted, partly adjusted, or recharacterised/equity-like.

Danish audit defence should therefore be built around evidence, not labels:

- borrower forecasts and debt-service capacity
- stand-alone credit rating plus group support analysis
- third-party loan comparables / CUP or alternative pricing method
- board materials and business rationale at inception and renegotiation
- consistency between loan agreement, accounting, cash movements and TP report

Why this is enforcement-relevant now

Mandatory TP filing drives visibility

- Danish TP documentation is submitted annually for in-scope taxpayers
- Master file and local file must support prices and terms
- Failure or inadequate quality can trigger fines and discretionary assessments

2025 relief, but not a free pass

- De minimis relief below DKK 5m controlled transactions
- New small-group thresholds: DKK 391m revenue / DKK 195m balance sheet
- Cross-border receivables/debt can still keep financial transactions in scope

Audit tone: substance and value

- Danish Tax Agency focus includes financial transactions and restructurings
- “Transfer of something of value” remains a broad audit theme
- Financial transaction files need a clear decision trail

Danish practical message: a good loan file looks less like a pricing memo and more like a lender’s credit file plus a tax/legal evidence file.

Existing loan renegotiated: what must be rebuilt?

T0

Original loan

Debt capacity, pricing, purpose, agreement.

Trigger

Commercial stress

Cash constraints, market rates, covenant pressure.

Decision

Independent lender test

Would lender amend, waive, enforce or convert?

T1

Amended terms

New pricing, tenor, security, covenant package.

After

Evidence trail

Monitor performance and consistency.

Evidence to prepare at the time of renegotiation

- Why the borrower needs relief
- What options were realistically available
- What independent lenders would have required
- How the new terms were priced
- Why the amendment is not a disguised dividend

Practical Danish position

An updated benchmark is useful, but rarely enough. The file should also preserve contemporaneous commercial evidence: forecasts, board papers, lender analysis, solvency assessment and actual conduct after amendment.

Recharacterisation creates asymmetric risk



A Danish adjustment may solve the domestic deduction issue, but it does not automatically solve the foreign inclusion or classification issue.

Danish debtor state

Interest deduction denied or reduced
Potential secondary adjustment exposure

Creditor state

May still tax interest income
May not recognise dividend/equity character

Group P&L

Cash tax leakage
Timing and treaty mismatch
Potential penalties/interest

Management tools

Corresponding adjustment request
MAP / competent authority
APA for future structures

Danish borrower in a post-acquisition restructuring

Scenario

A Danish operating company is acquired by a foreign group. Acquisition debt is partly pushed down through an intra-group loan. Two years later, trading weakens and the parent lender agrees to reduce the rate and waive part of accrued interest.

Question 1

Could DKCo realistically have borrowed this amount from a third party?

Question 2

Would an independent lender waive interest or demand security, covenants, equity support or enforcement?

Question 3

Is the amended instrument still debt, or has it become equity-like support?

Question 4

Can the group manage corresponding adjustment and secondary consequences?

Takeaway: if the file is prepared only after the audit letter, the taxpayer has already lost the best evidence.

Five practical takeaways for international groups

1. **Start with debt capacity, not the interest rate**
   The rate matters only after the transaction has been accurately delineated.

2. **Document the commercial story contemporaneously**
   Board papers and forecasts are often more persuasive than after-the-fact tax memos.

3. **Make the legal paper match the economic conduct**
   Loan agreements, accounting, cash flows and TP reports must be coherent.

4. **Treat renegotiation as a new transaction**
   Rate reductions and waivers require a fresh independent-lender analysis.

5. **Plan for mismatch resolution before filing**
   MAP/corresponding adjustment strategy should be considered early.

Closing line

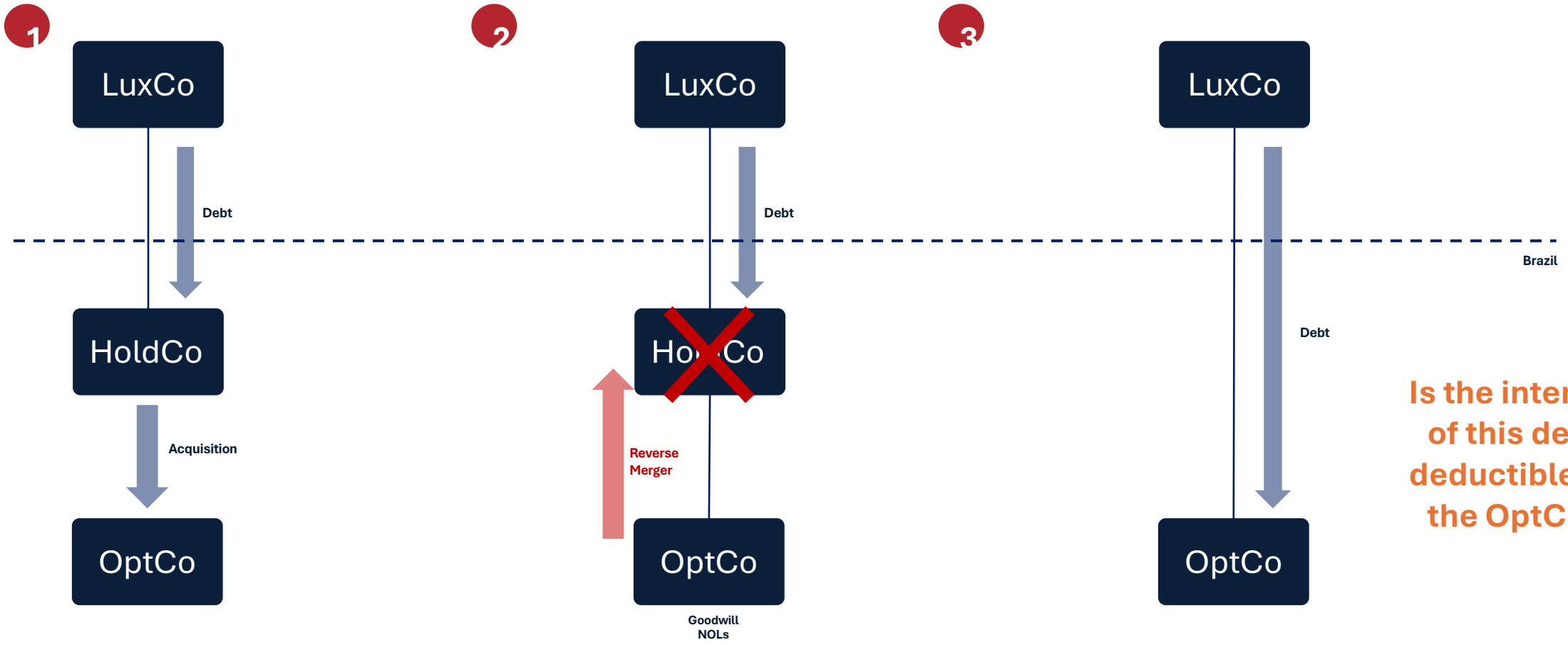
“Debt survives scrutiny when it looks, behaves and is documented like debt at the time the relevant decisions are made.”

Debt Push-Down Structures in Acquisition Finance

Teresa Novais Correa Meyer, São Paulo, Brazil, Lavez Coutinho

TOPIC 4

Debt Push-Down Structures in Acquisition Finance in Brazil



Is the interest of this debt deductible by the OptCo?

2

LEGAL FRAMEWORK

Interest Deductibility in Brazil

1 General Deductibility Test

Art. 311, RIR/2018 (Decree 9,580/2018)

- Applies to every interest expense, regardless of counterparty or currency
- Expense must be **NECESSARY**, **NORMAL** and **USUAL** ("necessária, normal e usual") for the taxpayer's business
- Must be properly documented, substantiated and accrued in the correct period

2 Thin Capitalization

Law 12,249/2010

- Caps interest deduction based on a debt-to-equity ratio

Regular Jurisdictions

- 2:1 Debt-Equity Ratio
- Only related Parties

Tax Havens (no more than 17% of CIT rate)

- 0.3:1 Debt-Equity Ratio
- Related and Independent Parties

3 Transfer Pricing on Interest

Benchmarks the interest rate itself, on top of tests 1 and 2

OLD *Law 9,430/96 — pre-2024*

- Fixed-spread method: deductible rate capped at a sovereign bond benchmark plus a spread fixed by the Ministry of Finance
- Formulaic and not aligned with OECD guidance

NEW *Law 14,596/2023 — from 2024*

- Full arm's-length principle, aligned with OECD Transfer Pricing Guidelines
- Debt Vs. Equity rule (FX losses and interest could be not deductible)

TAX AUTHORITIES POSITION

Business Purposes, Abuse of Law and Real Acquirer

Tax Authorities in Brazil do challenge those structures on the basis of:

- **Lack of business purposes** → the **HoldCo** is solely or mainly owned by the **LuxCo** and there is no need for debt, but should rather been done through capital increase
- **The real acquirer is the LuxCo** → the **HoldCo** is a shell entity and the LuxCo is the real acquirer, thus, there is abuse of law and the interest expenses are not deductible
- **Sham** → intragroup transactions to generate goodwill (before 2014) and interest expenses are simulated transactions, thus, should be disregarded
- **Not a necessary expense** → The interest expense incurred by **OptCo** to pay the debt of its own acquisition is not a necessary expense to the business activity of the **OptCo** , thus, should not be deductible
- **ThinCap and TP are not normally an issue raised by the tax authorities**

CASE LAW

Business Purposes, Abuse of Law and Real Acquirer

The Administrative Federal Court (CARF) has held different decisions on those cases:

- **Test of deductibility** → if the expense was deductible by HoldCo, it should be deductible by OptCo as its tax successor after the reverse merger

- **TP and ThinCap** → few decisions can be found in the sense that if the expense it is aligned with these rules, it should be deductible.

- **Abuse of Law, business purposes and real acquirer** → Brazil has no GAAR (art. 116 of the Tax Code lacks regulations to be applicable), thus, there are a few decisions that would not entertain these concepts as valid arguments to disregard a structure for tax purposes if no sham could be attributed to the taxpayer. However, most of the decisions would borrow the concept of "abuse of law" of the Civil Code to validate the tax assessment.

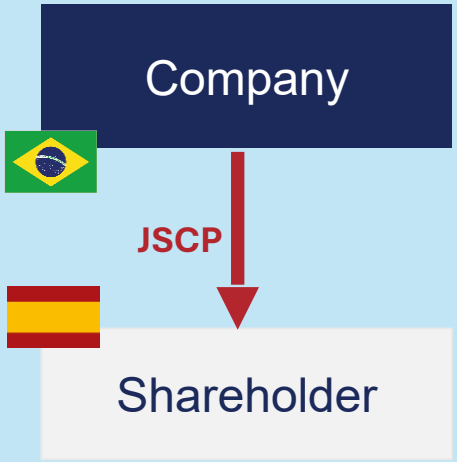
- **Sham** → As it is a hard task to prove the taxpayer unlawful intent, not many cases are ruled on the basis of fraud

Hybrid Instruments and Cross-Border Mismatches

TOPIC 5 · HYBRID INSTRUMENTS

Juros sobre o Capital Próprio (JSCP) under the Spain-Brazil Double Tax Treaty (DTT): dividend or interest?

1 How JSCP works



EQUITY-BASED REMUNERATION

Net equity × TJLP = JSCP

TJLP = long-term interest rate

2 What it is — and why it matters

- **Brazilian equity-remuneration instrument** created by Federal Law 9,249/1995 and paid in proportion to the shareholder's equity stake.
- The amount is calculated by applying TJLP (the long-term interest rate) to the company's net equity.
- Unlike an ordinary dividend, **JSCP is deductible** for Brazilian corporate income tax purposes.
- **Hybrid features**: a debt-like label and deduction; equity-linked profit funding, approval and possible capitalization.
- For a Spanish investor, dividend treatment under the DTT unlocks the **Article 23.3 exemption**; interest treatment does not.
- **Brazil-Netherlands DTT**: For a Dutch investor, dividend treatment under DTT unlocks the **Article 23.4(a) 25% tax sparring credit; interest treatment unlocks the Article 23.4(b) 20% tax sparring credit.**

3 An open classification debate

- Classification under the DTT remains unsettled: dividend or interest?
- Spanish tax authorities historically favored interest: DGT rulings V2960-16/V2962-16 (2016) and TEAC (24 Oct 2022).
- Spanish courts favor dividend treatment: Audiencia Nacional (2014, 2025), the Supreme Court (2016) and a June 2026 order. **The DTT exemption remains available.**
- Brazil recently reversed its prior practice: Receita Federal ADI 3/2026 (9 Mar 2026) treats JSCP as interest under the DTT.
- **Separate MLI risk**: Brazil signed the OECD Multilateral Instrument (MLI) on 20 Oct 2025 but has not ratified it. Once effective, it may replace the DTT's Article 23 exemption with a credit method, raising the Spanish investor's effective tax rate from 15% to 25%.
- Dutch Advocate General issued an advisory opinion, 10 Nov 2025, concluding that JSCP should be classified as dividends, disregarding the MAP concluded in 2022.

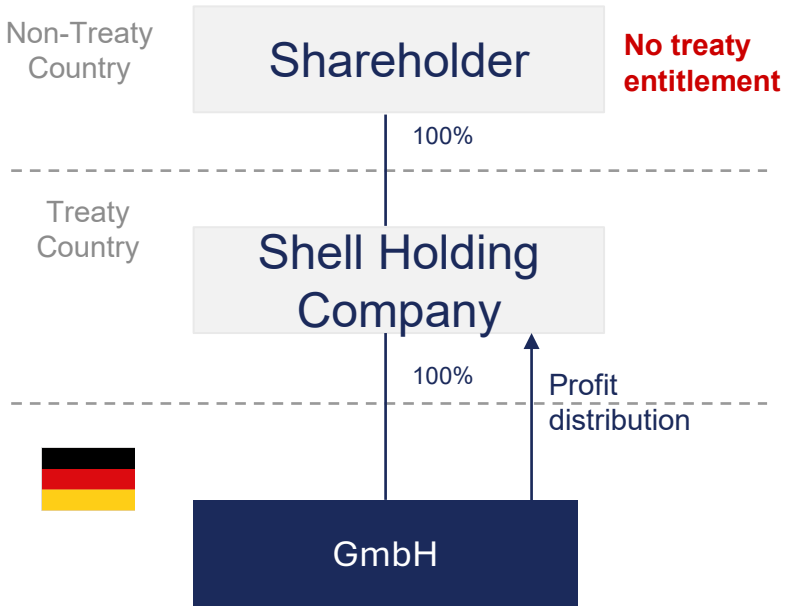
Corporate Restructuring

Dividend Exemption, Multi-Tier Taxation and Tax-Neutral Mergers as a Remedy

Ocka Stumm, Frankfurt, Germany, Gleiss Lutz

No Exemption from Capital Gains Tax for Shell Companies

Treaty shopping through shell holding companies



Treaty Shopping Problem

- A person not entitled to treaty benefits interposes a company in a treaty country to claim benefits
- German law denies tax relief when a foreign intermediary is used solely for treaty access
- Relief is denied when the intermediary lacks substance

Conditions for Denial of Relief

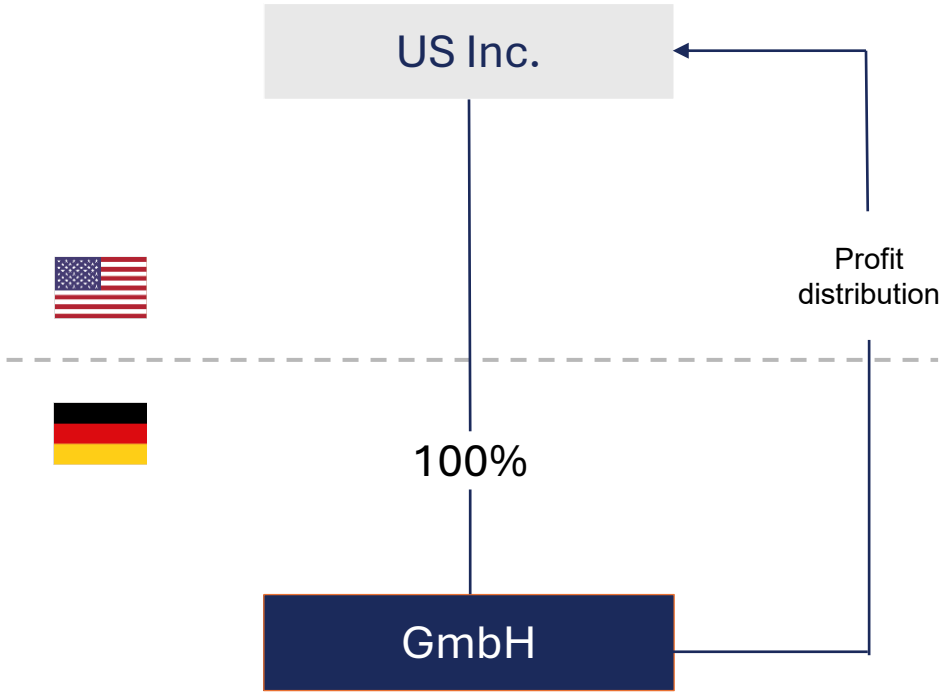
- Relief is denied if two cumulative conditions are met:
  - The persons behind the intermediary would not themselves be entitled to relief
  - The income has no substantial connection to the intermediary's own business activity
- If either condition is not met, the intermediary retains its entitlement

Possible Remedies

- Prove that none of the main purposes of its interposition was to obtain a tax advantage
- Valid business reasons: functioning as a regional or functional holding, or establishing business divisions
- If relief is denied, the definitive tax burden on distributions is 26.375%; restructuring should be considered

Denial of an Exemption from Capital Gains Tax for German Subsidiaries

Subsidiaries treated as transparent for US tax purposes



Facts of the Case

- A publicly listed US Inc. is the sole shareholder of a German GmbH
- The GmbH has elected to be treated as transparent for US tax purposes
- The GmbH distributes profits to the US Inc.
- Under the applicable treaty, the withholding tax rate should be reduced to 0%

Change in Administrative Practice

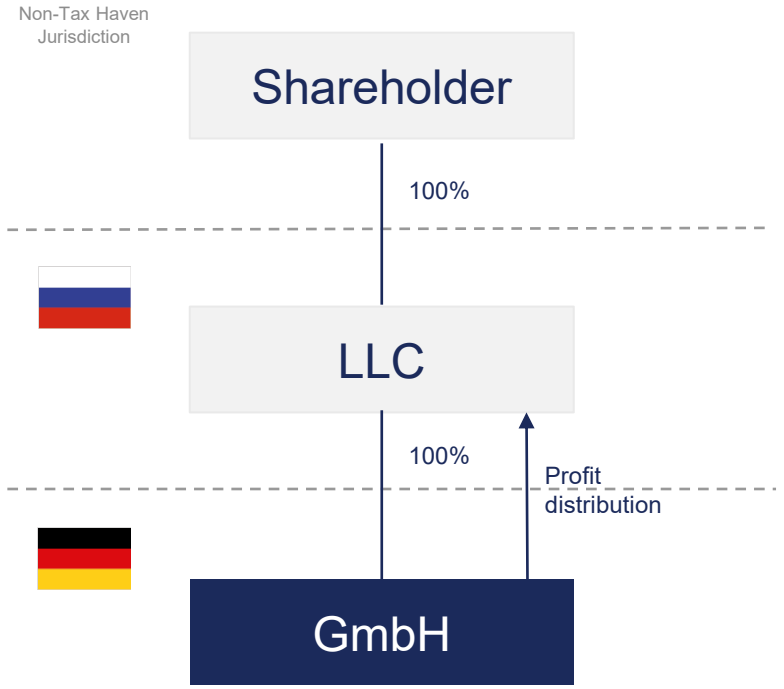
- Previously, the tax classification of the GmbH from a US perspective was irrelevant for the tax relief assessment
- The German Federal Central Tax Office now denies relief in both refund and exemption proceedings
- The denial is based on national provisions and a treaty rule

Possible Remedies

- Strong arguments exist against the new administrative practice; legal proceedings should have good prospects
- To avoid litigation risk, check-the-box elections for German subsidiaries should be avoided where possible
- Currently, tax authorities apply this only to US elections, but may also be relevant for other jurisdictions

No Tax Exemption for Distributions Inbound to Tax Havens

Treaty override for distributions from Germany to tax haven parents



Inbound: Treaty Override

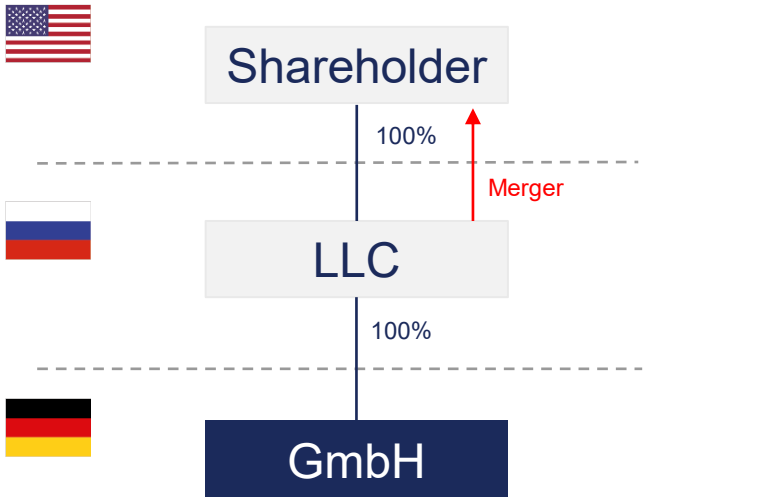
- When a German subsidiary distributes profits to a parent in a “tax haven”, German taxing rights are not limited by the treaty
- Germany has treaties with only a few tax havens; previously only Trinidad and Tobago was affected
- Since Russia was added to the blacklist, the issue has gained practical importance
- Consequence: Withholding taxes of 26.375% are levied on all dividends, refund of 10% withholding taxes to LLC depends on circumstances, no further reduction or refund under DTA

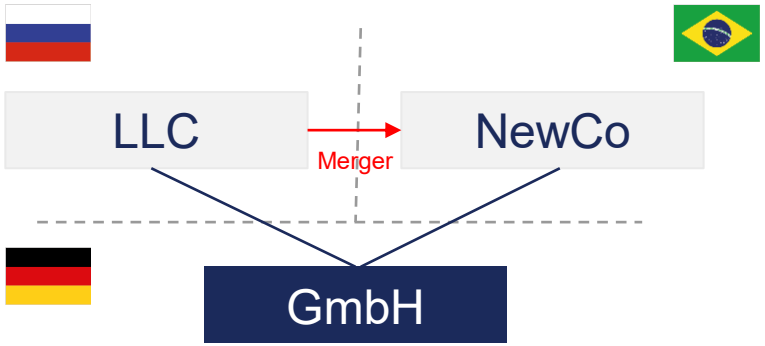
Possible Remedies

- Evaluate whether a holding structure through a tax haven is necessary at all
- Consider a restructuring of the holding structure
- Goal: Ensure that profit distributions from Germany do not flow through a tax haven

No Tax Exemption for Distributions Inbound to Tax Havens

Merger as a Remedy





Upstream-Merger

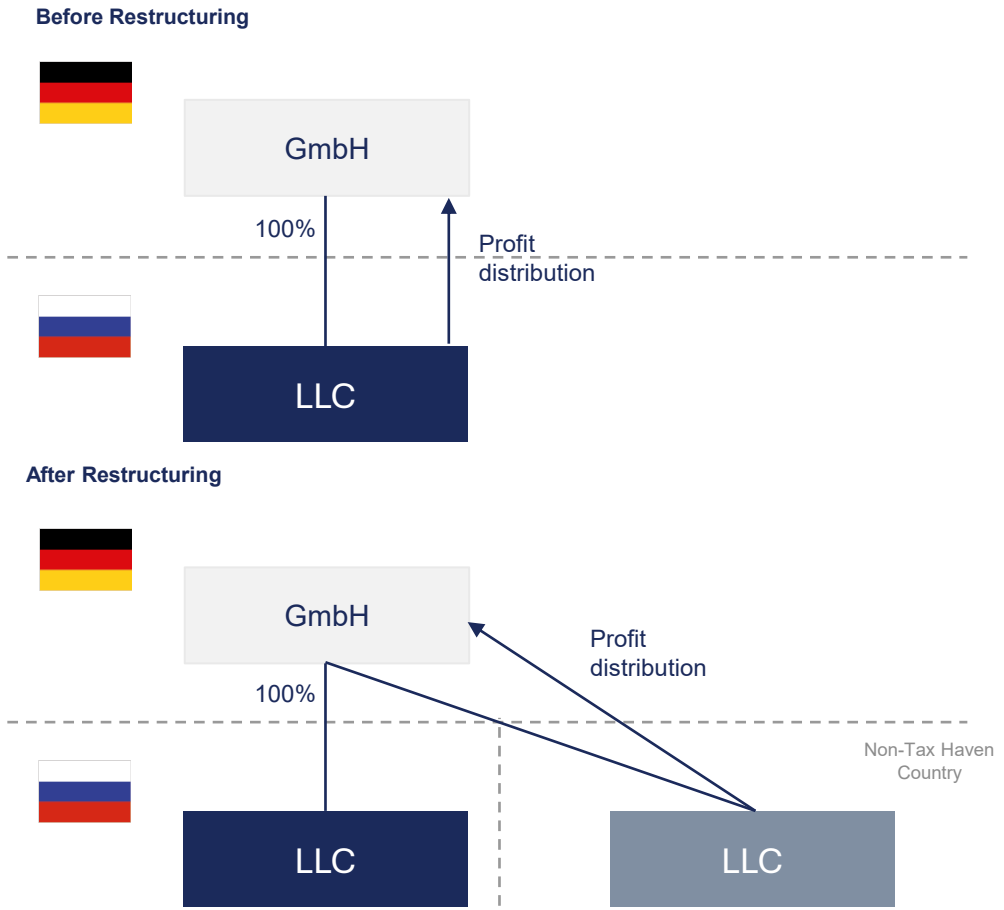
- From a German tax perspective, the transfer of shares does not result in a step up for the transferring entity (LLC), triggering income taxation in Germany, if Germany's right to taxation of gains from the transfer of shares by the acquiring entity (Shareholder) is not excluded
- Exclusion of German taxation rights
  - German right to taxation of the disposal of shares in GmbH is not suspended by DTA Germany-Russia
  - A subsequent merger of LLC with Shareholder should result in a suspension of Germany's right to taxation: Under DTA Germany-US, proceeds from the disposal of shares (that are not attributable to a permanent establishment of the shareholder in Germany) are subject to tax solely in the US
- The Upstream-Merger might nevertheless be tax exempt depending on qualification but to be reviewed in detail

Sidestream-Merger

- If Germany's right to taxation of gains from the disposal of shares in GmbH is not excluded, a Sidestream-Merger "out of a tax haven" should not trigger German income tax
- Since there is no DTA Brazil-Germany, Germany's right to taxation should remain and not constitute a "merger-obstacle", however dividends paid to the new Brazil shareholder would again be subject to capital gains tax of 15.825%

No Tax Exemption for Distributions Outbound from Tax Havens

Denial of participation exemption and spin-off as remedy



Outbound: Denial of Participation Exemption

- For distributions from a tax haven to GmbH, the participation exemption does not apply
- The rule takes effect from the third year following continuous listing as a tax haven
- Consequence: Dividends are fully subject to German corporate income tax
- For trade tax, dividends are still exempted if the participation is at least 15%
- Foreign withholding tax can be credited but is limited to the treaty rate

Remedy: Spin-off out of the Tax Haven

- The profitable business of the tax haven entity can be spun off to an entity in a non-tax-haven jurisdiction
- If comparable to a German-law demerger, the spin-off can be tax-neutral for the German parent
- Book value carryover is possible if certain conditions are met

Pitfalls of the Spin-off

- Assets remaining with the transferring entity that cannot be allocated to a qualifying unit may trigger a step-up
- Participations acquired or increased within three years before transfer through non-qualifying transfers cannot be spun off at book value
- If shares representing more than 20% of the value are sold to outside parties within five years, the spin-off is presumed to have prepared a sale and may therefore trigger a step-up
- Restrictive share transfer clauses in the demerger agreement may help avoid this

Accidental Inversions in Distressed Restructurings

Jodi Schwartz, New York, US, Wachtell

Overview of "Inversion" Transactions

- Section 7874 was added to the Internal Revenue Code to protect the U.S. tax base from expatriations through "inversions"
  - An "inversion" is a business combination transaction between a U.S. parented group and a non-U.S. parented group, as a result of which the combined group will be owned by a non-U.S. parent company
    - An inversion can also occur if a non-U.S. corporation acquires substantially all of the assets of a U.S corporation or substantially all of the properties constituting a trade or business of a U.S. partnership
  - Historically, there were no restrictions on inversions other than shareholder tax on the actual transaction
    - A frequent objective of inversion transactions was to reduce the U.S. taxes of the combined group relative to a combined group with a U.S. parent. This usually took the form of post-acquisition restructurings and interest stripping to remove income from the US tax base
    - In response, Congress enacted "anti-inversion" rules in 2004 that eliminate some or all of the U.S. tax benefits of inversion, unless certain conditions are met

Overview of "Inversion" Transactions (cont.)

- **Typical transaction**: A U.S. corporation ("**USCo**") and a non-U.S. corporation ("**Non-USCo**") combine, and the parent of the combined group ("**Non-US Parent**") is organized outside of the U.S. (often, but not always, in the jurisdiction of incorporation of Non-USCo)
  - Non-US Parent may be a newly formed foreign corporation or the existing foreign merger partner (i.e., Non-USCo)
  - The inversion rules will apply when the US shareholders have too large an investment in Non-US Parent relative to the Non USCo
  - However, post-inversion ownership percentages are determined under complex computational rules
  - For example, for purposes of satisfying the ownership tests, USCo generally will not be able to "right-size" through an extraordinary dividend, spin-off or buyback, and Non-USCo generally will not be able to "inflate" its size by acquiring assets with a view to avoid application of the anti-inversion rules

Overview of "Inversion" Transactions (cont.)

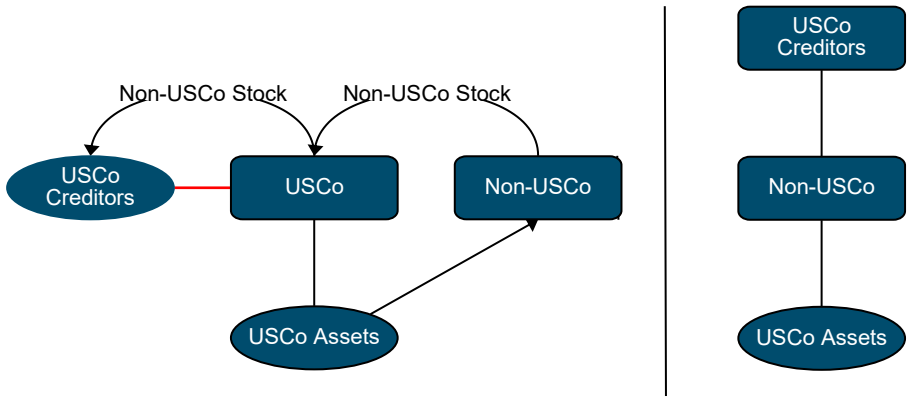
- **<u>Effects of an inversion transaction:</u>**
  - Where former USCo shareholders own at least 80% of Non-US Parent, Non-US Parent is treated as a domestic company for all U.S. federal income tax purposes
  - Where former USCo shareholders own at least 60% but less than 80% of Non-US Parent, certain unfavorable tax rules will apply:
    - Limitations on the ability of the group to utilize certain U.S. tax attributes or effect certain restructuring transactions without U.S. tax cost
    - 20% excise tax on the value of certain stock-based compensation held by certain insiders of USCo
    - One-time deemed repatriation tax applies to historic earnings of foreign subsidiaries at full 35% rate (rather than reduced rate)
    - Dividends paid to non-corporate U.S. shareholders taxed as ordinary income (i.e., not eligible for preferential capital gains rate)

Ownership Fraction – Creditor Rule

- Because of the application of the "Creditor Rule" and the "Disqualified Stock Rules", certain restructurings involving non-US parented companies can cause an inversion
- Obviously to successfully emerge from bankruptcy the last thing a troubled company needs is an accidental inversion transaction increasing the tax burden on the newly emerged company
- Generally, only stock owned by persons who were shareholders in USCo prior to the potential inversion transaction are included in the numerator of the 80% and 60% ownership tests
- **Creditor Rule**: The U.S. tax law, based upon a 1942 Supreme Court case, known as *Alabama Asphaltic*, views creditors of a U.S. corporation in a US bankruptcy proceeding as, in substance, the equity owners of the U.S. corporation at the time of the proceeding for purposes of determining if an inversion has occurred
  - Under the "Creditor Rule", creditors of USCo will be treated as shareholders in USCo and any claim of such creditor will be treated as stock of the USCo if the creditor receives stock in Non-USCo in exchange for the creditor's claims
    - USCo must either be in a "Title 11 or similar case" or insolvent in order for the Creditor Rule to apply
    - Any stock received by the creditor in satisfaction of its claims against USCo are generally included in the ownership fraction as if the creditor were a shareholder

Ownership Fraction – Creditor Rule

- The Treasury Regulations provide the following example of the Creditor Rule:
  - USCo is insolvent. Pursuant to a plan, Non-USCo (a newly formed entity) acquires all of the assets of USCo in exchange for Non-USCo stock. USCo delivers the Non-USCo stock to USCo Creditors in satisfaction of their claims against USCo
  - Applying the Creditor Rule, USCo Creditors are deemed to be shareholders of USCo prior to the transaction. After the transaction, 100% of Non-USCo's shareholders are former shareholders (creditors) of USCo (i.e., the ownership fraction is 100%)
  - As a result, Non-USCo has inverted and is treated for all U.S. federal income tax purposes as a U.S. corporation



Ownership Fraction – Creditor Rule Example

- While the Creditor Rule adds "bad" shares to the ownership fraction, another important rule – the "Disqualified Stock Rule"- removes potentially "good" shares from the ownership fraction denominator, again making an inversion more likely
- In general, the Disqualified Stock Rule results in the former owners of USCo as owning a higher percentage of Non-USCo for purposes of the ownership fraction
- Under the Disqualified Stock Rule, certain shares of Non-USCo are disregarded if such shares are transferred in exchange for "nonqualified property"
  - "Nonqualified property" includes third party obligations owed by a affiliates of the potentially inverted USCo
  - The creditors of foreign affiliates of Non-USCo who receive stock in a bankruptcy restructuring are thus treated as in receipt of disqualified stock

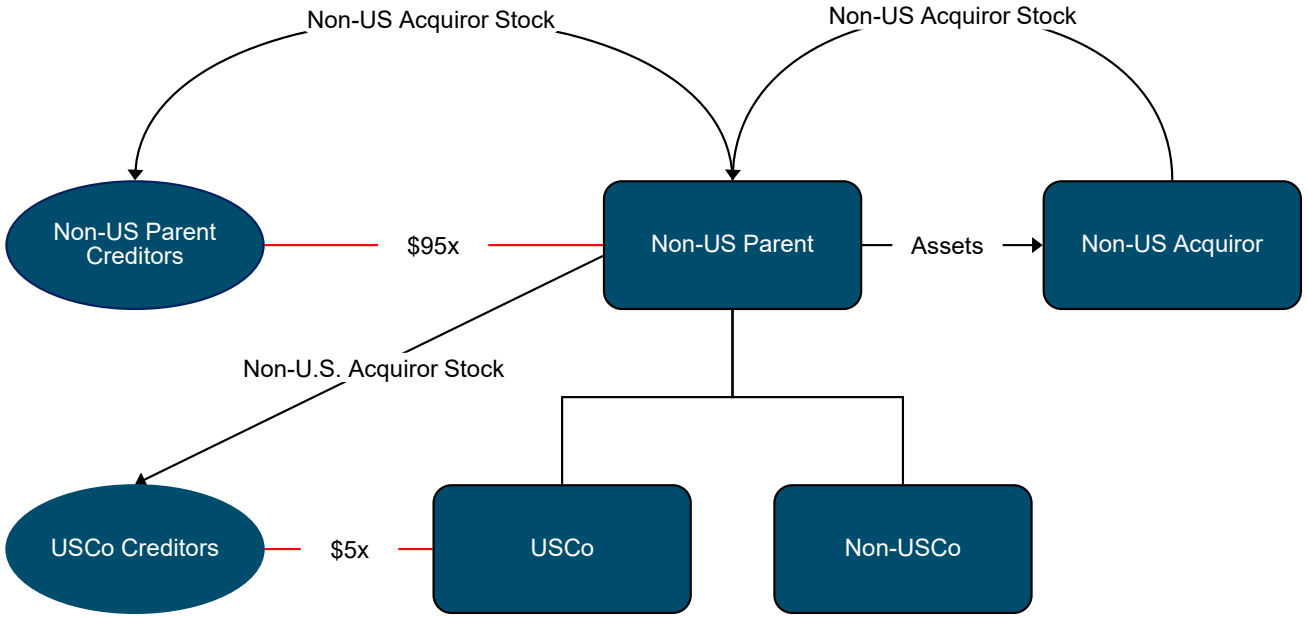
Ownership Fraction – Disqualified Stock Rule

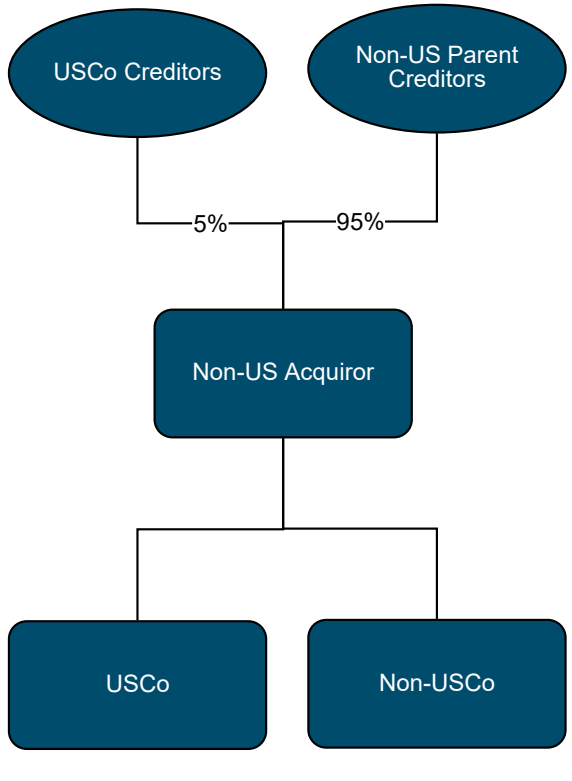
- Under the Disqualified Stock Rule, certain other shares of Non-USCo are disregarded if such shares are exchanged for property with "associated obligations" to the extent it increases the fair market value of the assets of Non-USCo
  - Non-USCo stock that is exchanged for property with "associated obligations" includes situations where the stock is transferred from one person to another person in exchange for property and the transferee uses that stock to satisfy an obligation of the transferee or a related person
  - This rule is attempting to backstop the other disqualified stock rule by treating Non-USCo shares issued for cash which cash is then used to pay creditors of Non-USCo in the same way as shares transferred to creditors of Non-USCo
- An "obligation" is broadly defined but does not include any obligation treated as stock for Section 7874 purposes
  - Applying the Creditor Rule, this means that creditor obligations of USCo are not obligations because they are treated as stock in USCo – and thus the Non-USCo stock received in satisfaction for such creditor obligations is not disqualified stock

Ownership Fraction – Disqualified Stock Rule Example

- **Facts**:
  - Assume Non-US Parent owns USCo and Non-USCo Sub. Non-US Parent and USCo are in a Title 11 or similar case
  - Under the reorganization laws in Non-US Parent's jurisdiction, Non-US Parent will transfer all its assets to Non-US Acquiror in connection with the bankruptcy proceeding
  - Non-US Parent uses the Non-US Acquiror stock to satisfy creditor claims against Non-USCo Sub (worth $95x) and USCo (worth $5x)
- **Analysis**:
  - Pursuant to the Creditor Rule, the USCo Creditors are treated as shareholders of USCo prior to the transaction such that they are treated as owning $5x worth of Non-US Acquiror after the transaction by reason of their ownership of USCo
  - The Disqualified Stock Rule disregards all of the Non-US Acquiror stock transferred to Non-USCo Sub's creditors
  - Thus, the ownership percentage is $5x/$5x = 100%
  - As a result, even though Non-USCo's historic creditors own 95% of Non-US Acquiror, Non-US Acquiror is nevertheless treated as a U.S. corporation for U.S. federal income tax purposes

Ownership Fraction – Disqualified Stock Rule Example

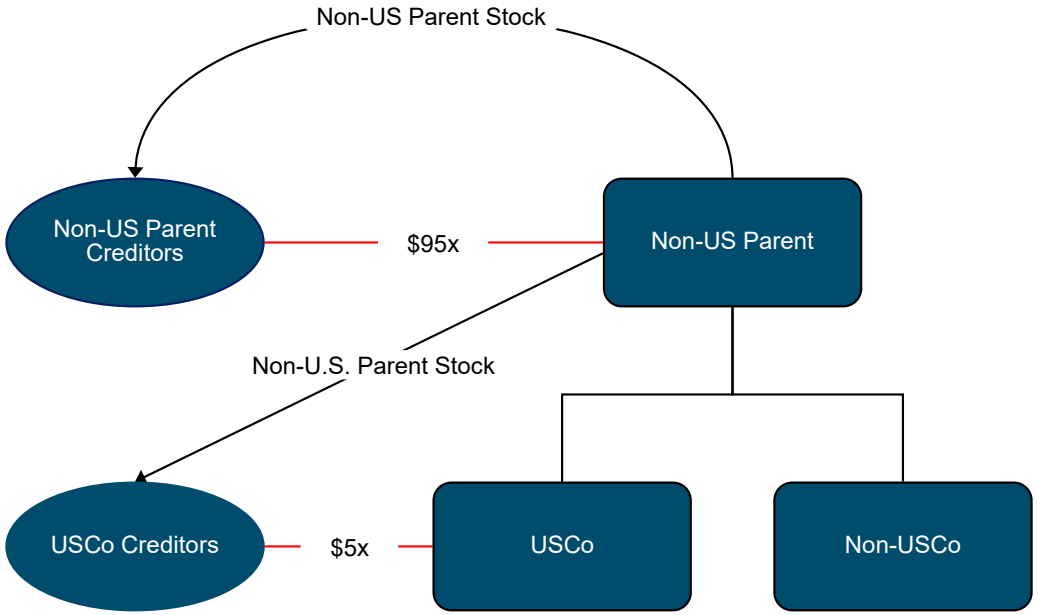


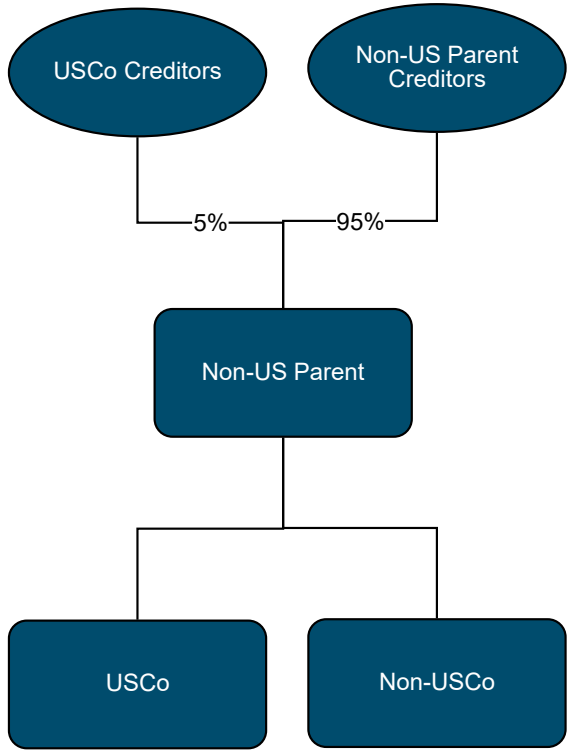


Domestic Entity Acquisitions

- In order for there to be an inversion, there must first be a "domestic entity acquisition"
  In our first two examples there has been a domestic entity acquisition by a new foreign corporation
- A domestic entity acquisition occurs when a non-U.S. corporation completes a direct or indirect acquisition of either the U.S. corporation or substantially all of the U.S. corporation's assets
  - A restructuring-in-place of a non-U.S. parented group where creditors of a U.S. corporation receive stock in the historic non-U.S. parent SHOULD not cause inversion risk, but unfortunately the interaction between the creditor rule and the requirement for a domestic entity acquisition is unclear.
  - Note, in general, a non-U.S. corporation may acquire the stock of another non-U.S. corporation that owns a U.S. corporation without causing a domestic entity acquisition
- The question in the bankruptcy is whether the Creditor Rule causes a restructuring in place--not involving the formation of new entities or a transfer of assets--where some or all of the outstanding debt of a US debtor is converted into equity to result in a "domestic entity acquisition".
- The theory would be that the creditors, and not Non-USCo own USCo immediately prior to the restructure and therefore the issuance of stock for debt results in an acquistion, which like the prior example results in an ownership percentage of $5x/$5x = 100%.

Ownership Fraction – No new Parent





Questions?

Thank you

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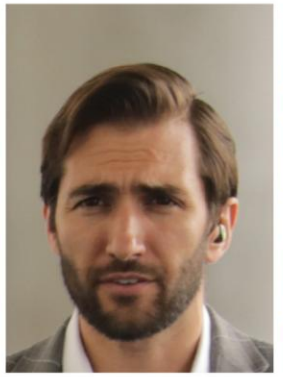
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