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KPMG Tax and VAT Update

25 January 2012



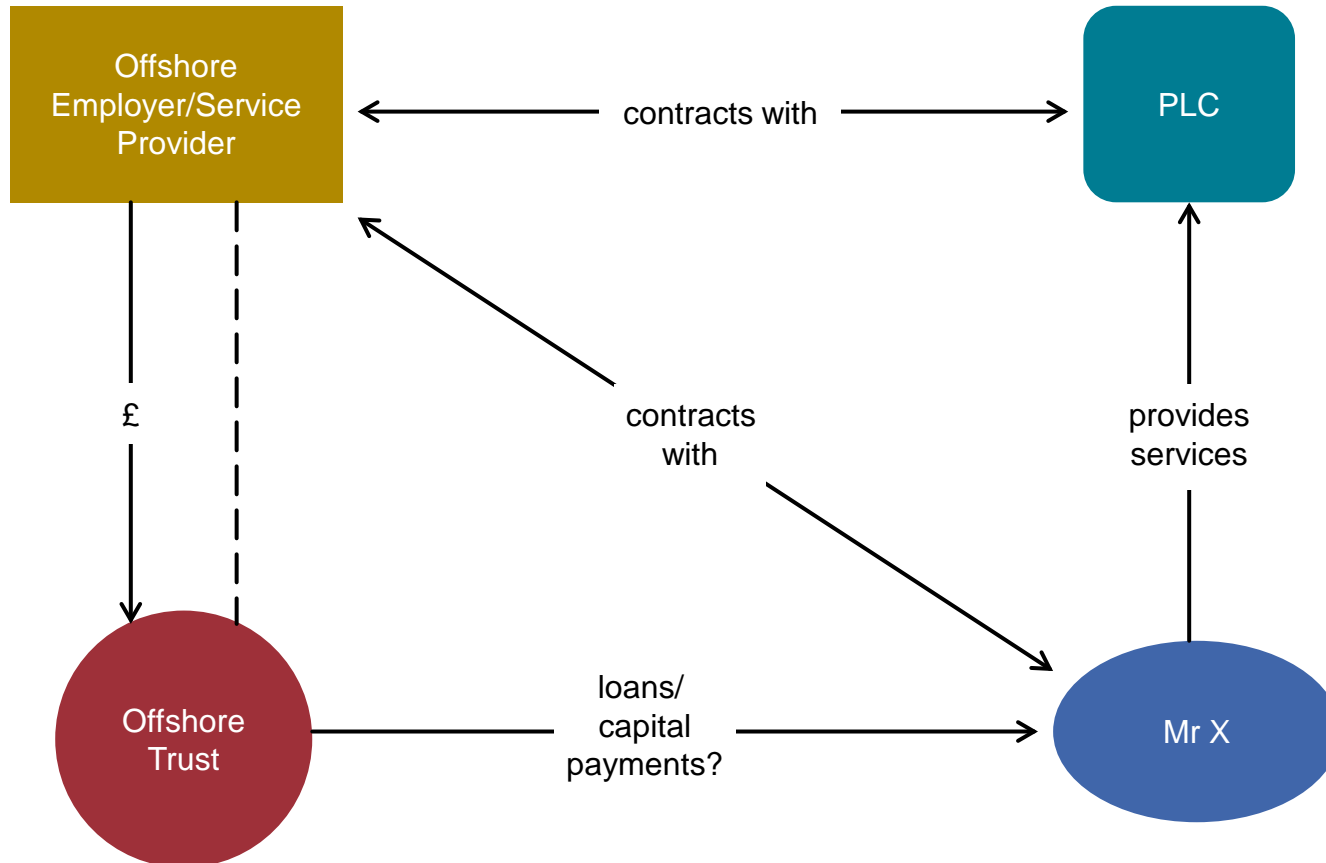
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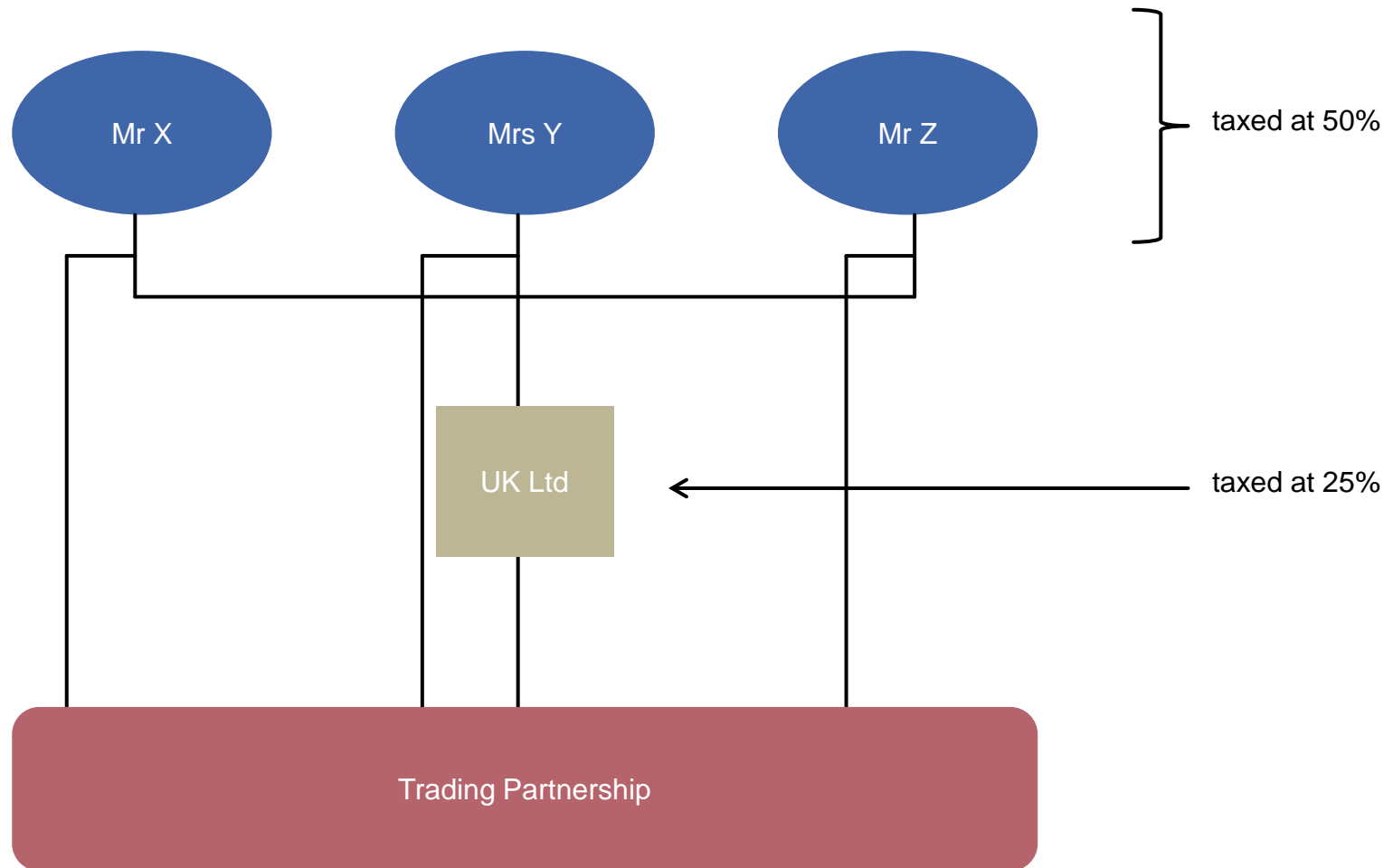
UK Tax Planning

(or Greg's current Top 10 Tax Planning Topics)

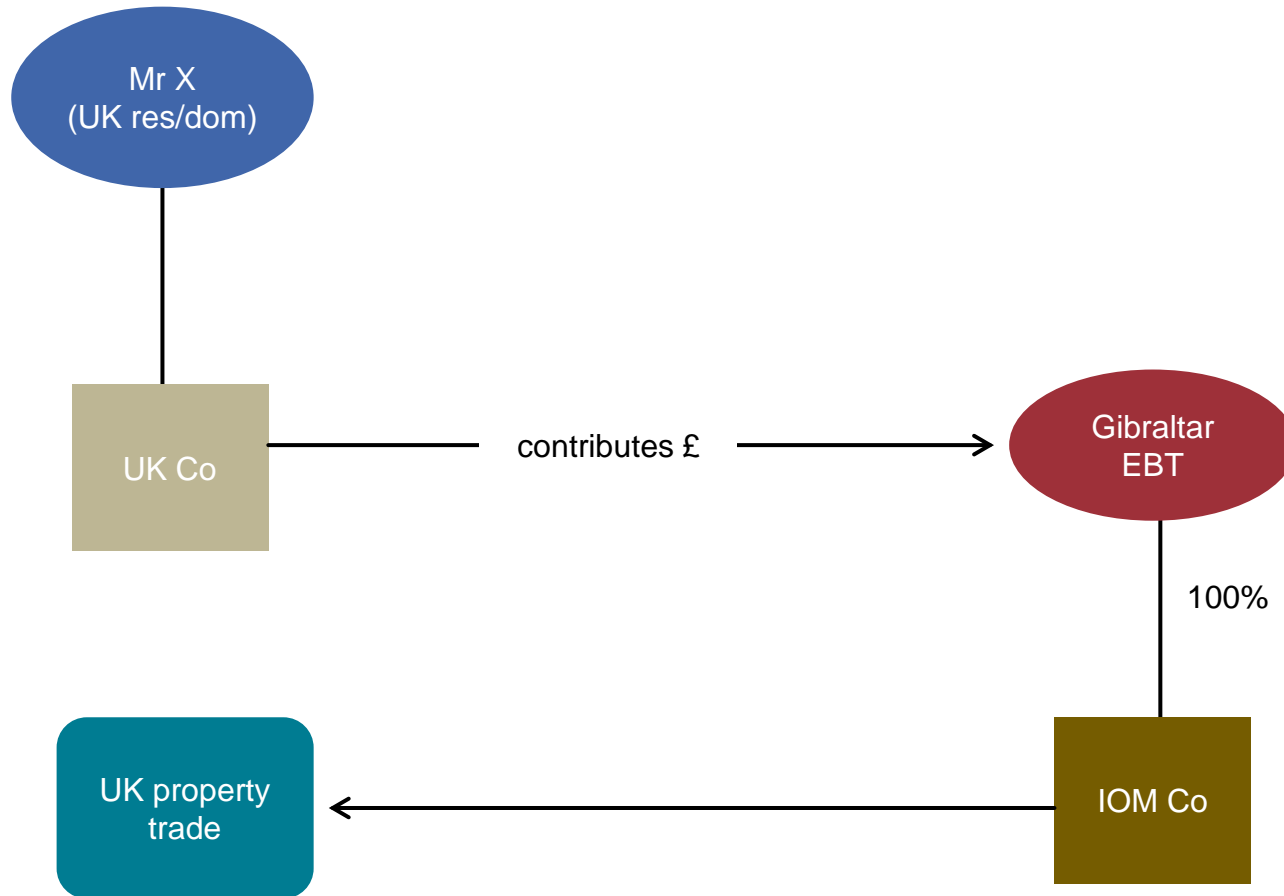
Gregory Jones
Tax Director
KPMG Isle of Man and Gibraltar



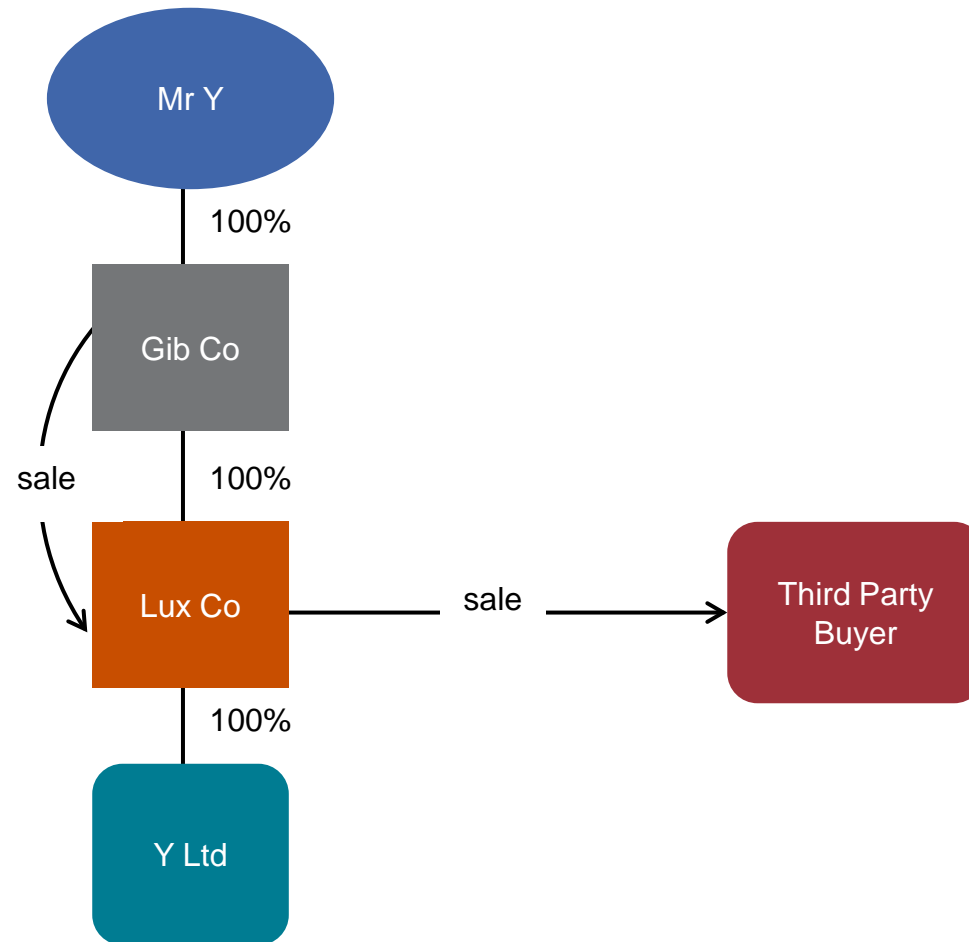




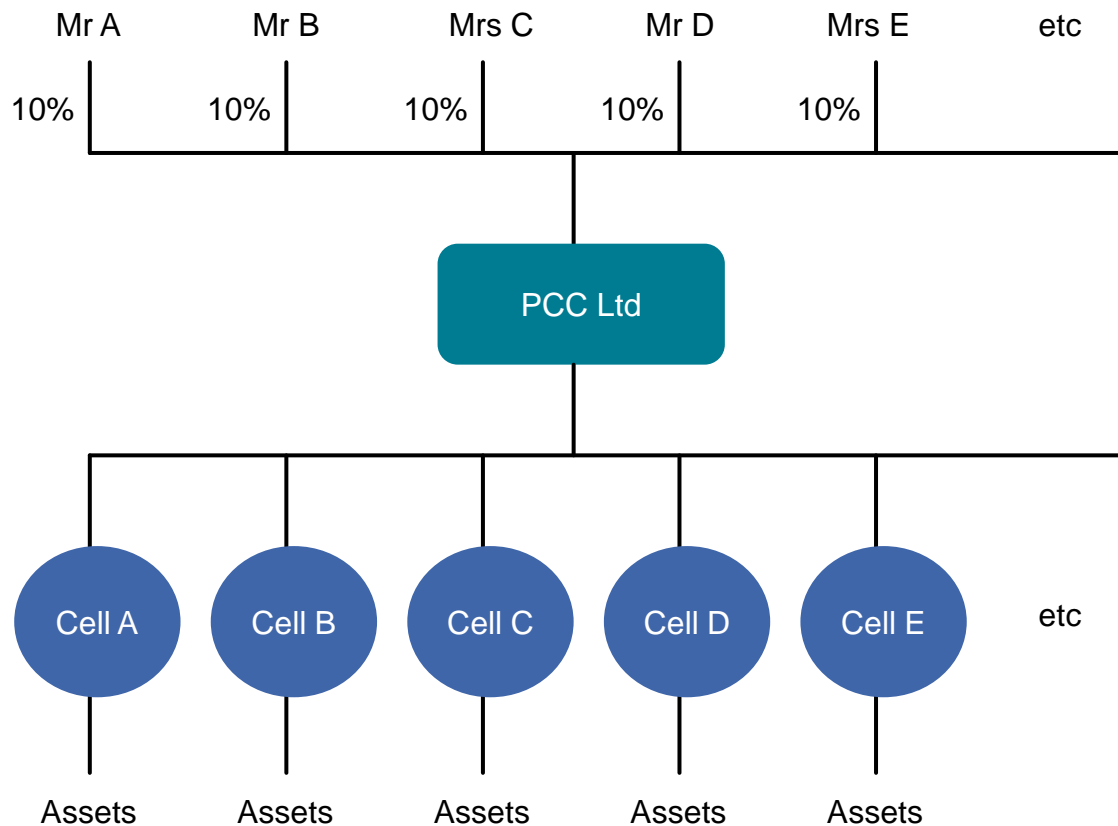
EBT structures for UK property trading



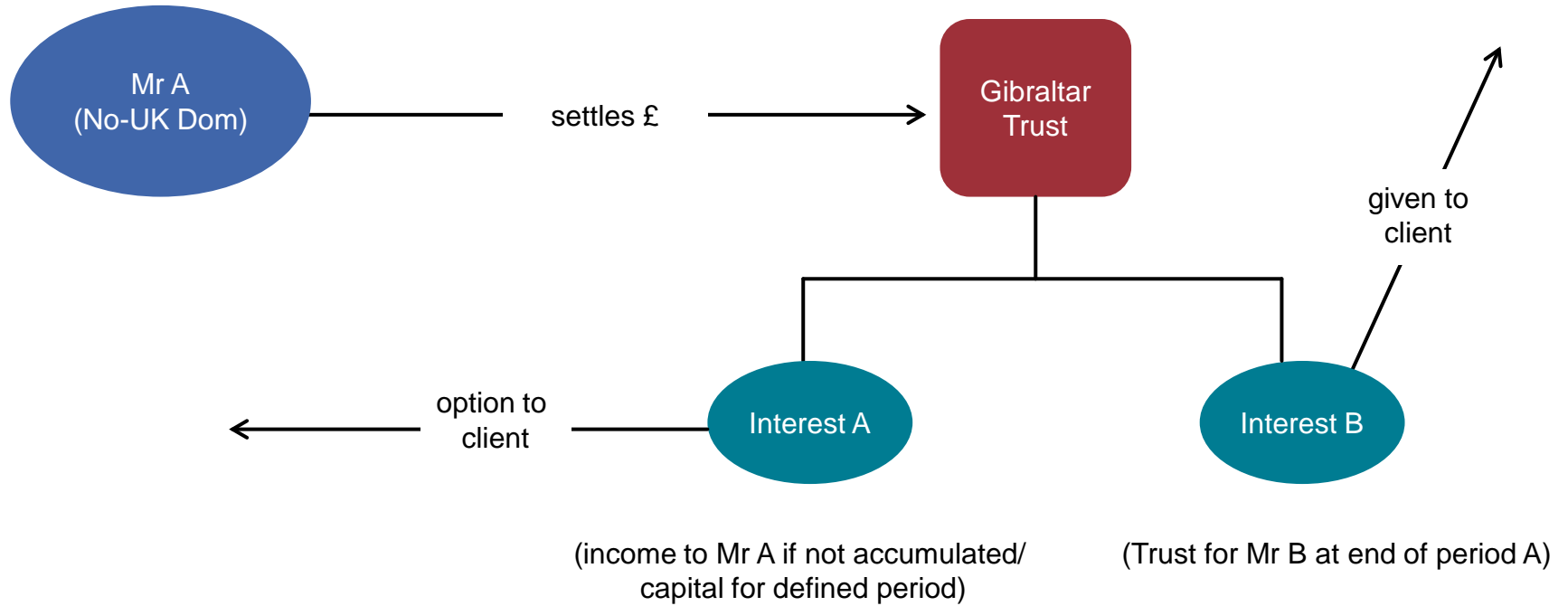
Offshore Envelope



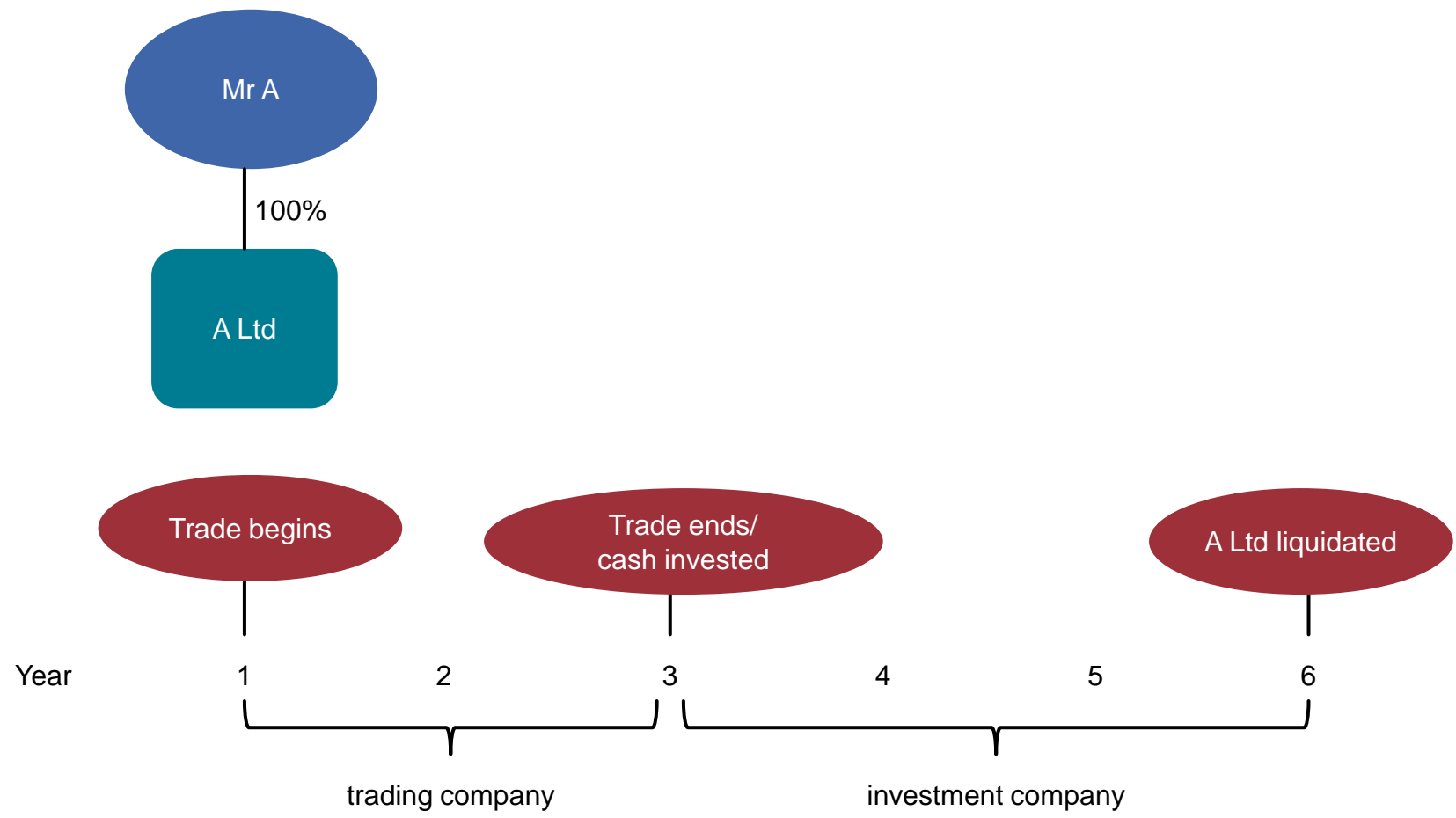
Protected Cell Companies



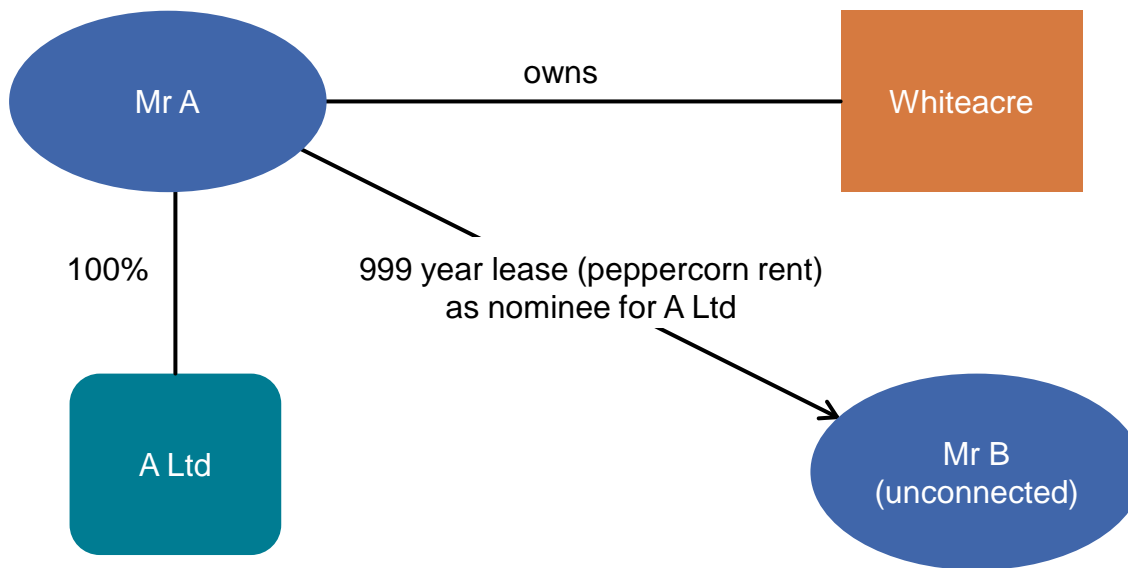
Excluded Property for IHT Planning



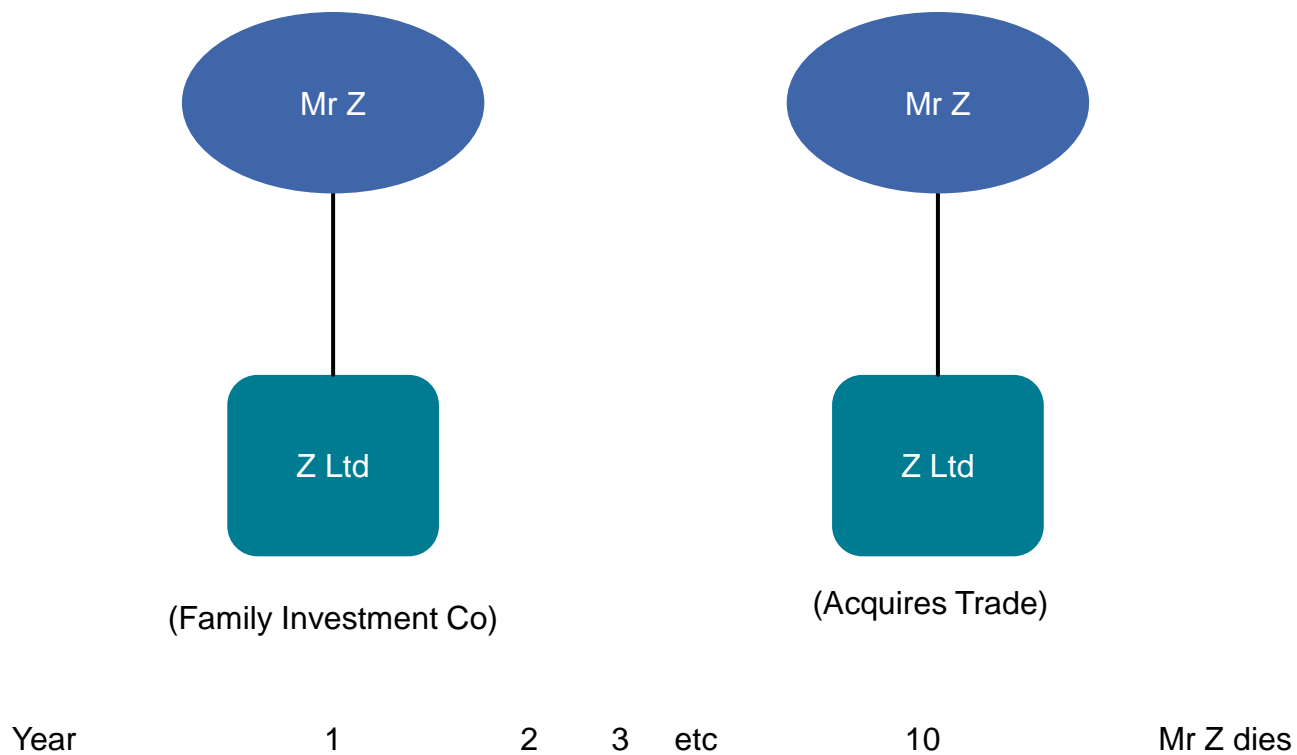
Entrepreneurs' Relief on Investment Company Shares



Transfer of shares to connected company without SDLT



Deathbed BPR planning for IHT



Acquiring property through UUT

interest relief and capital allowances



Mr A

sale of UUT units free of SDLT



Remember:

- **Planning is not just about avoidance**
- **Exploit rate differentials to make savings**
- **Utilise statutory reliefs where possible**
- **Beware possible introduction of GAAR**
- **Offshore still has a role to play!**





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Draft Finance Bill 2012

(Finance Bill 2012 to be published 29 March 2012)

January 2012



Corporation Tax

- Main rate for FY13 reduced from 25% to 24%
- Small profits rate is 20% for FY12
- Marginal relief fraction is $1/80^{\text{th}}$

Income Tax

- Rates of tax payable remain the same for 2012/13
- The personal allowance for the under 65s is increasing to £8,105
- But basic rate threshold is reducing to £35,000
- No change to additional rate threshold

Capital Gains Tax

- Annual exemption remains the same at £10,600
- Annual exemption amount will rise inline with the Consumer Prices Index instead of the Retail Prices Index from 2013-14 onwards
- Automatic indexation of the AEA using the CPI will still be subject to Parliament override

- SEIS relief is similar to income tax reliefs such as EIS and VCTs but aimed at start up companies
- There is also capital gains relief on the disposal of qualifying shares
- It will run for shares issued between 6 April 2012 and 5 April 2017 so is initially time limited
- Relief is available if there is a
 - Qualifying investor
 - Qualifying company
 - And additional qualifying conditions are met
- Relief will be available at the SEIS rate for the year (initially 50%) subject to an overall annual investment limit of £100,000.
- There is limited ability to treat the investment as made in the previous year
- As with EIS, there is a specified period for which conditions have to be met
 - Period A runs from incorporation to the termination date
 - Period B runs from the issue of the shares to the termination date
 - The termination date is the third anniversary of the share issue

- A claim for relief cannot be made until 70% of the money has been spent by the issuing company but no later than the fifth anniversary of the normal filing date for the tax year
- The company must issue a compliance certificate (need HMRC authority)
- Relief will be withdrawn in a variety of circumstances
 - Sale of shares
 - Grant of put or call option
 - Receipt of value
- There are various information requirements for the scheme
- CGT exemption on assets disposed of in 2012/13 where the gains are reinvested in SEIS shares in the same year

Non-dom reforms and Statutory residence test

- As announced in Budget 2011, various changes are made for ND individuals (no further changes for the lifetime of this UK Parliament)
- An increase in the remittance basis charge for those who have been resident for 12 out of the previous 14 tax years - £50,000
- Exemption from a remittance tax charge where money is remitted to invest in qualifying investments.
- Amendments to the rules on sale of exempt property and changes to the nomination process to give more flexibility
- The statutory residence test as been delayed and will be legislated in Finance Bill 2013
- The test will be introduced with effect 6 April 2013
- Draft legislation is expected to be published around Budget 2012
- From 6 April 2012 gains and losses on withdrawals from foreign currency bank accounts will be removed from CGT

New Controlled Foreign Company (“CFC”) Regime

- Finance Bill 2012 will include legislation introducing a new CFC regime which will focus on taxing foreign profits that have been artificially diverted from the UK
- To the extent that a CFC’s chargeable profits fail the “Gateway” and are not otherwise exempt, they will be apportioned to the UK and taxed on any UK resident company with a 25% assessable interest in the CFC
- NB: includes capital gains – unlike current regime
- The CFC charge will be reduced by a credit for any foreign tax attributable to the apportioned profits and by the offset of relevant UK reliefs
- The definition of control will follow the mechanical approach under the existing CFC rules, but will also incorporate an accounts based condition and an anti-avoidance provision
- Protected cell companies will be caught by the new CFC regime as each ‘cell’ will be treated as if it were a separate company

Profits within the “Gateway”

- The “Gateway” is intended to provide an easy way to assess whether or not profits are within the new regime
- Business profits that are artificially diverted from the UK due to arrangements that separate ownership of an asset or bearing of a risk outside the UK from the significant people functions (SPFs) involved with the exploitation of the asset or with management of the risk in the UK; and all three conditions met
 1. **Artificiality condition:** Majority of profits from the assets/risks connected with UK activity by SPFs
 2. **Non-tax value (NTV) condition:** Separation of assets/risks from activity does not create any substantial NTV
 3. Arrangement would not have been entered into between **independent companies**
- Groups can apply the more mechanical “safe harbours” and “entity-level exemptions” to exempt profits if they choose
- Finance income which is not otherwise exempt will be fully taxable, unless the ‘finance company partial exemption’ (as it is commonly known) applies
- Trading finance profits of a bank or insurance company will be caught if attributable to excess capital and there has been an investment of capital directly or indirectly from a UK connected company
- For captives resident in EEA member states, profits will be caught to the extent that they arise from insurance contracts with connected UK companies where the insured party does not have a significant UK non-tax motive. For captives resident outside the EEA, profits from all UK connected insurance contracts will be caught

- Regardless of “Gateway”, safe harbours will exempt certain types of income e.g. Property income
- Entity level exemptions:
 - **Low profits exemption:** CFC’s profits do not exceed £500,000 & non-trading income not more than £50,000 or CFC’s profits do not exceed £50,000 irrespective of amount of investment income
 - **Low profit margin exemption:** CFC’s profits do not exceed 10% of its operating expenditure
 - **Excluded territories exemption:** CFC resident in territory with a headline rate of tax > 75% of the UK CT rate
 - **Temporary period exemption:** A time limited exemption is still under consideration
 - **Tax exemption:** Local tax paid not less than 75% of the UK tax
 - **Finance company partial exemption** (“FCPE”) – effective rate of 5.75%

- New Part 8A CTA 10 - elective regime: applies to relevant IP profits of Qualifying Companies
- Preferential rate of 10% on profits attributable to patents and certain other qualifying IP
- Given as a deduction from total profits and deduction based on formula:

$$\text{Relevant IP profits} \times \frac{\text{Main Rate CT} - \text{IP Rate (10\%)}}{\text{Main Rate CT}}$$

- Phased in from 1 April 2013 over 5 years by taking % of Relevant IP profits

2013 60%

2014 70%

2015 80%

2016 90%

Example calculation with full 10% IP rate

Taxable Profits excluding relevant IP	300,000	
Relevant IP	100,000	
IP Deduction *	<u>(58,333)</u>	
Total Taxable Profits	341,667	
Tax at 24%	£82,000	

Relevant IP Profits	x	Main rate of CT – IPR (Special IP rate of 10%)
		Main rate of CT

- From 6 December 2011, there will be an 8 week consultation on draft secondary legislation to make changes to the system
- Revises conditions that a pension scheme must meet to be a QROPS
- Strengthen the information and reporting requirements:
 - introduce an acknowledgement by the individual to be completed before a transfer is made that tax charges may apply;
 - introduce revised time limits for registered pension schemes to report transfers to QROPS;
 - provide additional powers for HMRC to request information from a scheme manager of a QROPS;
 - and revise the time limits for the reporting of payments by a QROPS to HMRC
- Effective from 6 April 2012



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VAT Update -Gibraltar

25 January 2012

Sandra Skuszka



Updates from the European Commission

- Insurance and Financial Services
- New VAT invoicing rules
- Green paper on the future of VAT

Updates from the UK

- Cost sharing agreement

Services relating to property

On the 14 December 2011 the European Commission working party on Indirect Tax discussed the Proposals for changes as regards the VAT treatment of insurance and financial services.

- **Treatment of insurance and financial services is not uniform between the member states.**
- **Need clarification of definitions of exempt insurance and financial services to ensure consistency.**
- **Suggested introduction of cost sharing groups.**
- **Also considered - transfer of insurance and reinsurance contracts and portfolios, outsourcing and the management of investment funds.**
- **Question raised – should they continue discussions or wait for decision on Financial Transaction Tax and the Green Paper on the ‘Future of VAT’.**
- **Have decided to continue with the debate as substantial progress made.**

Council Directive 2010/45/EU (*the invoicing Directive*)

Issued guidance notes for implementation in a years time

- Invoices must reflect actual supplies – audit trail should be provided (*extraction of profits by means of management charges?*)
- Use of electronic invoicing should be readily accepted by all but a matter of agreement between parties.
- It is the responsibility of the person receiving the supplies to determine the authenticity of the supplier and origin of the services/goods.
- Invoicing shall be subject to the rules applying in the Member State in which the supply of goods or services is deemed to be made.
- Exempt supplies – Article 219a of Directive 2010/45/EU establishes which Member State rules will apply. (some require an invoice for exempt supplies)
- Financial and Insurance services – without prejudice to above no invoice is required.
- Sequential numbering is required.

- Conversion of VAT amount into national currency.
- Member States can require translation of invoices for certain supplies.
- Content – identification of VAT treatment. (*quote the relevant VAT Directive Article*).

This communication follows the issue of the evaluation of elements of the EU VAT system issued on the 1 December 2011 which takes into consideration response to the Green Paper on the Future of VAT issued in December 2010.

Main Points Raised

- General feeling that the fragmentation of the common EU Vat system into 27 national VAT systems is the main obstacle to efficient EU trade.
- Lack of harmonisation discourages businesses from cross boarder trade.
- Fundamental overhaul required but acknowledgement that it will be a long term project.
- VAT accounts for, on average, 21% of national tax revenues.

Aims Identified

- Move towards taxed at destination rather than country of origin.
- Make the system simple to reduce administration and increase harmonisation. (review of exemptions and reduced rates).
- Progress the One-Stop-Shop concept.
- Improve the government of VAT at EU level.

UK Cost sharing exemption

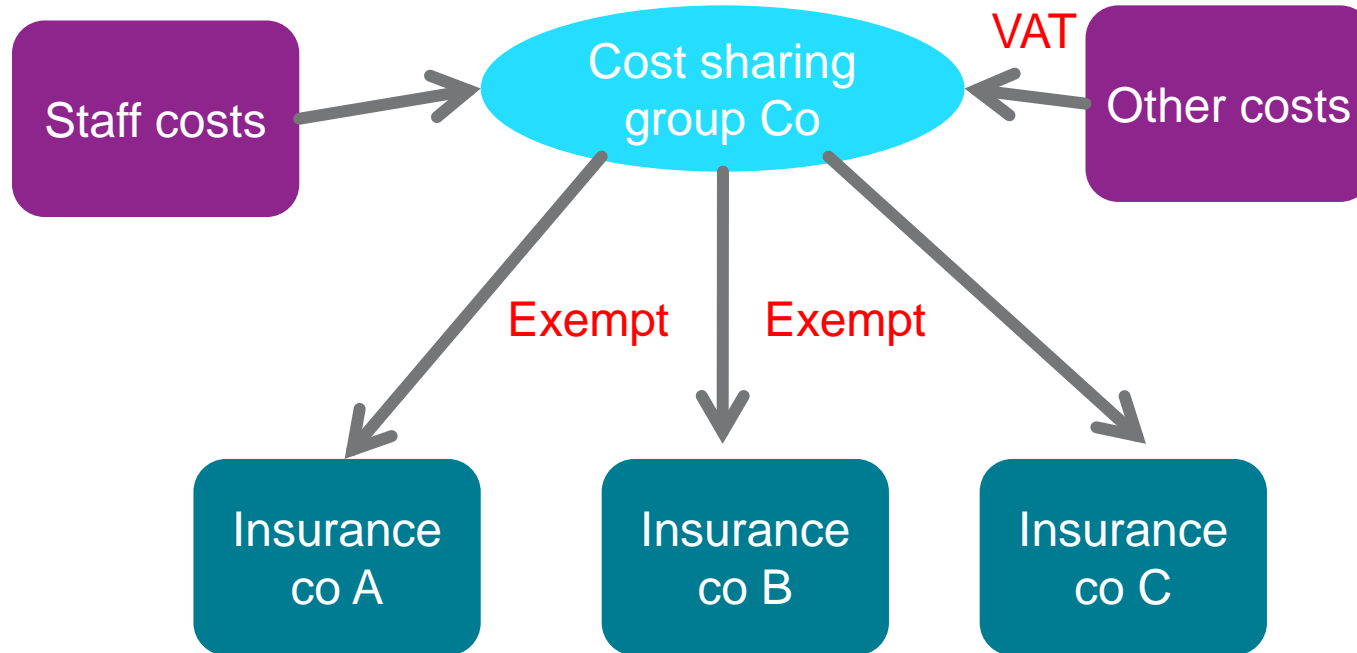
Legislation is to be introduced in the UK Finance Bill 2012 implementing Article 132(1)(f) of the EU VAT Directive. Exempts from VAT the recharge of costs between members of a cost sharing group.

- 1. The cost sharing group must be independent.*
- 2. Members of the cost sharing group must make exempt and/or non-taxable supplies.*
- 3. Supplies by the cost sharing group to its members must be at cost.*
- 4. The services supplied by the group to its members must be 'directly necessary' for the members' exempt and or non-taxable supplies.*
- 5. Cost sharing, using the exemption, must not cause a distortion of competition.*

Will apply to financial organisations, insurance companies, charities, educational establishments.

HMRC to issue comprehensive guidance.

Cost sharing group



Property related services

Property related services are supplied where the property is located.

May require the supplier to be registered for VAT in the country where the property is located.

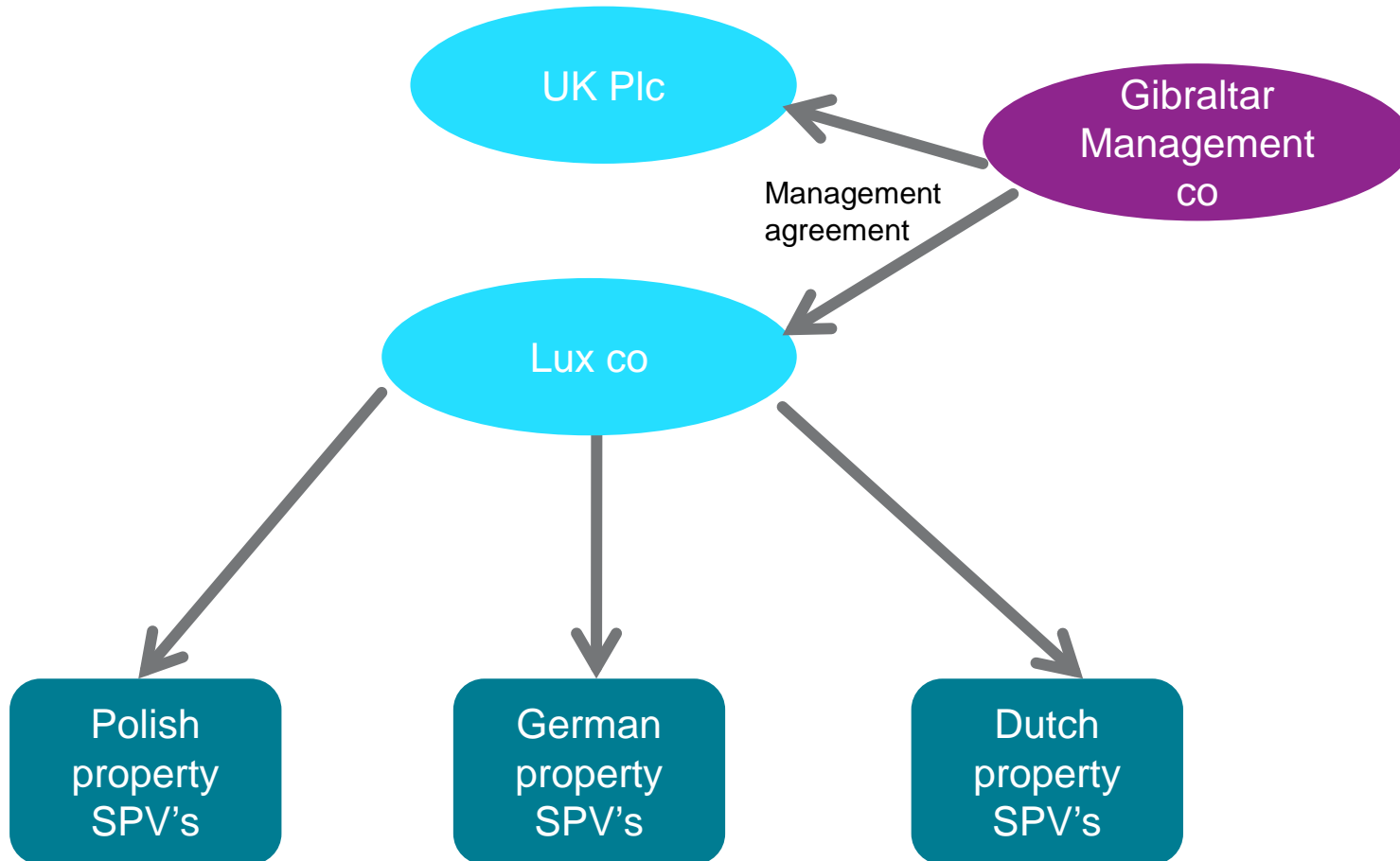
If supplier does not register for VAT and declare the VAT due on the services supplied there can be hefty fines for non-compliance.

No definition in EU law of which services should be regarded as property related so each Member State applies its own rules.

Property related services can include:

- **Property rental**
- **Rental collection**
- **Property management**
- **Involvement with the purchase or sale of a property**
- **Legal services in respect of a property**
- **Accountancy services in respect of a property**
- **Some advisory services**
- **Marketing services**
- **Estate agents**

Property structures





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An Update on Spain

Francisco De La
Puentes Perales

NET WEALTH TAX

- On September 2011 the Spanish Official Gazette has published the Royal Decree-Law 13/2011 which removes the 100% tax allowance on the Net Wealth Tax and introduces the new limits for tax purposes.
- Spanish Net Wealth Tax is based on the net assets held at December 31 every year and the tax rates range from 0.2% to 2.5%.
- Residents are liable for wealth tax on their worldwide assets, while non Spanish tax residents are taxed only on the assets located or rights exercisable in Spain.
- The main tax consequences of the new Spanish Net Wealth Tax are as follows:
 - ✓ The Wealth tax will be applicable for tax years 2011 and 2012. The abovementioned 100% tax allowance will be presumably again in force as of January 1, 2013.
 - ✓ The minimum taxable base is raised up to 700,000 euros (previously 108,182.18 euros as a general rule)
 - ✓ The tax exemption for habitual is raised up to 300,000 euros (previously 150,253.03 euros). (Only applicable to residents).

URGENT TAX MEASURES

<p>Withholdings on account of investment income:</p> <ul style="list-style-type: none"> • Dividends • Interest and other similar income • Assurance transactions • Other issues (Intellectual property, industrial, technical assistance...) 	<p>New applicable rate: 21% (Previous rate: 19%) Applicable to <u>any income paid from 1 January 2012</u>. This measure will require immediate adaptation of IT systems and processes.</p>
<p>Withholdings on account of capital gains arising from the transfer or redemption of shares or units of investment funds, investment companies or others collective investment institutions.</p>	<p>New applicable rate: 21% (Previous rate: 19%) Applicable to <u>any income paid from 1 January 2012</u>. This measure will require immediate adaptation of IT systems and processes.</p>

URGENT TAX MEASURES

<p>Withholdings on account of other income:</p> <ul style="list-style-type: none"> • Awards • Lease or sublease of urban buildings. • Profit distributions made by Permanent Establishments in Spain to foreign Head Offices 	<p>New applicable rate: 21% (Previous rate: 19%) Applicable to <u>any income obtained from 1 January 2012.</u> The withholding tax rate of 15% applicable to Professional Activities has not been modified.</p>
<p>Non-Residents Income Tax Rate</p>	<p>New applicable rate: 24,75% (Previous rate: 24%), applicable to other income subject to Non-Residents Income Tax not comprised in the above-mentioned categories (e.g. royalties).</p>

URGENT TAX MEASURES

IRPF	New surcharge on personal income tax	<p>Increase of tax rates according to a progressive scale in up to 10%.</p> <p>Marginal tax rates may exceed 50%.</p>
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International Tax Update

Darren Anton



National Grid Indus case – 29 November 2011

- An important ECJ decision on the imposition of exit tax on a company that had relocated its place of effective management from the Netherlands to the UK.

SIAT case – AG opinion – 29 September 2011

- AG opinion on disputed Belgian rules regarding payments for the services supplied by non-resident providers established in a “tax haven” are only deductible if the taxpayer is able to prove the genuine nature of the transaction.

EU Commission and Spain v Gibraltar and the UK - 15 November 2011

- The final decision in the long running case has, in the end, had no impact on Gibraltar.

Marks & Spencer Case - 14 October 2011

- The case regarded losses generated by its overseas subsidiaries against its UK profits under the UK group relief rules. The UK Court of Appeal published its decision (litigation started in 2002 and this is six years after the ECJ decision), so there is now greater clarity on making such type of claims.

On 11 November 2011, EC published a proposal for a revision to the EU I&R Directive:

- Amend the current text as follows:
 - (i) **widening the scope of the Directive** to include a new set of eligible companies in line with the scope of the Parent-Subsidiary Directive
 - (ii) reducing the currently applicable 25% **minimum holding to 10%**
 - (iii) **broadening the definition of “associated company”** to include indirect shareholdings
 - (iv) extending exemption requirements to close existing loopholes – **the interest and royalty income has to be subject to corporate income tax** in the hands of the recipient
 - (v) clarifying the **requirements for a permanent establishment** to be treated as a payer of interest or royalties
- Points (i) and (iv) were included in the EC’s proposal of December 2003 to amend the Interest and Royalties Directive, that was withdrawn in 2010.
- It is expected that the Proposal will only be implemented once approval from all 27 Member States has been obtained, which, based on the experience of the 2003 proposal, may prove to be a lengthy process.

EC-Treaty prohibits Discrimination

Article 63 Treaty about the Functioning of the EU (“TFEU”)

- *“all restrictions on the movement of capital between EU-Member States and EU-Member States and third countries shall be prohibited.”*

European Court of Justice (ECJ) Rulings

- Investing in shares is a movement of capital.
- Withholding taxes qualify as a prohibited restriction where resident recipients of the same dividends would not have suffered the same effective dividend tax burden.
- Outbound dividends cannot be subject to higher taxation than domestic dividends.

Third Country Residents (= outside the EU)

- It is clear from Article 63 TFEU’s wording that it has application to dividends paid by a company resident in the EU to a resident in a third country.

As a result, 3rd country entities - which have suffered WHT on dividends in situations in which a domestic entity wouldn’t should be in a position to file for a refund...

ECJ's requirements for Third Country claims

- Dividend payment must be paid in respect of a portfolio investment (<10-15% participation).
- Exchange of information clause in the Double Tax Treaty (DTT) between the paying and the recipient state.

When to claim?

- Now!! EU – and also Non-EU investors are becoming more and more active filing WHT-refund claims.
- Realising significant financial returns as soon as possible.
- Protective claims need to comply with the jurisdictions claim period.

Who can claim?

- Potentially applies to all portfolio investors outside the EU, such as: **Investment funds, Pension funds, Charities, Insurance companies, Sovereign wealth funds, Incorporated Corporations.**

OECD releases a discussion draft on the definition of “permanent establishment”

- **Article 5 of the OECD Model Tax Convention** includes the definition of the treaty concept of “permanent establishment” (“PE”).
- While the principles are well established, the **practical application of Article 5 is often very difficult**, particularly as operating models evolve.
- An OECD working party has been **considering various questions related to the interpretation and application of the definition of PE**.
- Its **preliminary proposals** for additions and changes to the commentary on Article 5 have now been published.
- The intention of many of the proposals is to **reflect the changing ways that enterprises carry out their business**, e.g. time requirements for the existence of a PE; Meaning of “place of management; additional work on a construction site.
- **Comments** from interested parties have been invited by **10 February 2012**.

Thank you





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