GGI ITPG Meeting

Lausanne 23 April 2015

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Agenda

Today's program

1. Some latest important news on international taxation
2. BEPS – quick round
3. Notes on BEPS actions 3, 4 and 6
4. Tip for a free course: “Rethinking International Tax Law”
5. Two international case studies:
   ① Ultra High Net Worth family from India investing in Dutch real estate market
   ② Restructuring Dutch family owned business with production facility in China

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International taxation – some latest news

- EU Directive 2011/16 (amended) into force as per 1 January 2015
- The Directive provides for mandatory automatic exchange of information, where information is available, in respect of five non-financial categories of income and capital, i.e. for
  - 1) income from employment
  - 2) director's fees
  - 3) life insurance products not covered by other Directives
  - 4) pensions
  - 5) ownership of and income from immovable property
- In practice, this means that, from 2017, Member State tax authorities will automatically exchange information with each other on most categories of income and capital held by private individuals and certain entities.
- Luxembourg to be an early adaptor – times are changing

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Automatic exchange of information as of January 1, 2015

As of January 1, 2015 EU Member States shall automatically exchange information regarding income from employment, director fees, life insurance products, pensions and income from immovable property with the EU Member States where taxpayers reside. This underlines the importance of being compliant in relation to cross border activities.

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Automatische uitwisseling van informatie per 1 januari 2015

Vanaf 1 januari 2015 moeten de lidstaten van de EU automatisch informatie verstrekken aan andere lidstaten over arbeidsinkomen, directiebeloningen, levensverzekeringsproducten, pensioenen, eigendom van en inkomsten uit onroerende zaken van ingezetenen van die andere lidstaten. Dit onderstreept het belang van een correcte fiscale behandeling van grensoverschrijdende werkzaamheden.

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NewsFlash

17 April 2015

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OECD

- Multilateral Competent Authority Agreement on the Automatic Exchange of Information
- The Global Standard was announced by the OECD to G20 Finance Ministers in September 2013
- Largely built on US FATCA (Foreign Accounts Tax Compliance Act)
- First countries will begin to exchange information under this new standard of tax transparency from 2017
- On 19 April 2015 Australia and the UK announced their plans to collaborate

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BEPS – Quick round

BEPS: Base Erosion and Profit Shifting

15 action areas

1. Address the tax challenges of the digital economy
2. Neutralize the effects of hybrid mismatch arrangements
3. Strengthen CFC rules
4. Limit base erosion via interest deductions and other financial payments
5. Counter harmful tax practices more effectively, taking into account transparency and substance

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BEPS – Quick round, cntd 1

6. Prevent treaty abuse
7. Prevent the artificial avoidance of PE status

8, 9 and 10: Assure that transfer pricing outcomes are in line with value creation

8. Intangibles
9. Risks and capital
10. Other high-risk transactions

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BEPS – Quick round, cntd 2

11. Establish methodologies to collect and analyze data on BEPS and the actions to address it
12. Require taxpayers to disclose their aggressive tax planning arrangements
13. Re-examine transfer pricing documentation
14. Make dispute resolution mechanisms more effective
15. Develop a multilateral instrument

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BEPS – Quick round, cntd 3

Notes on Actions 3, 4 and 6

- Public Discussion Draft – BEPS ACTION 3: STRENGTHENING CFC RULES
  12 May 2015
- Public Discussion Draft – BEPS ACTION 4: INTEREST DEDUCTION AND OTHER FINANCIAL PAYMENTS
  18 December 2014 – 6 February 2015
- Public Discussion Draft – BEPS ACTION 6: PREVENTING THE GRANTING OF TREATY BENEFITS IN INAPPROPRIATE CIRCUMSTANCES
  14 March 2014 – 9 April 2014

Tip for a free course on international taxation

Rethinking International Tax Law

Module 1: International tax planning – base case

Module 2: Design of corporate tax law systems

Module 3: Principles of international taxation & tax treaties

Module 4: Transfer pricing

Module 5: European Union law & Fiscal State Aid

Module 6: Tax planning & ethical dimensions

https://www.coursera.org/course/internationaltaxation

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Case Study I

"An Ultra High Net Worth family from India are looking to invest in real estate in the Netherlands as part of their investment portfolio. They have dedicated €150M for direct investment. The family organises their investments through entities located in the UAE."

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Case Study I, ctnd 1

Their fund manager has approached us with a proposition from an existing small Dutch business looking to expand in private home financing.

Experts say that part of the market for private homes is “really hot”, mainly caused by the following factors:

- Banks are restrained or reluctant for various reasons
- Housing prices have reached a bottom in certain areas and are likely to go up in the decade ahead
- Sale and rent back opportunities with people wanting to capitalise on the (over-)value of their homes

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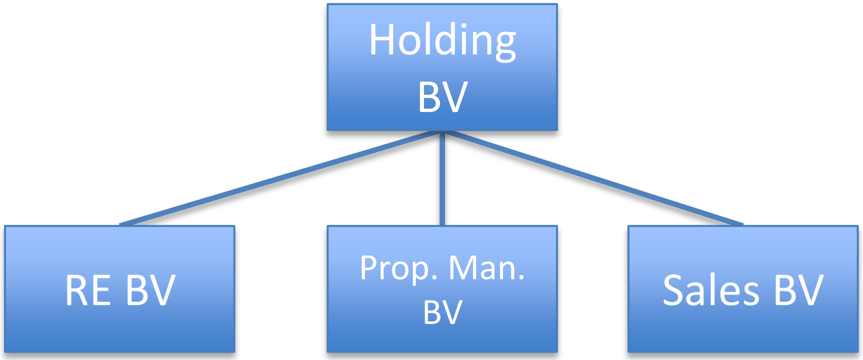
Case Study I, ctnd 2

Structure of the target



Entities 100% ownership and fiscal unity for Dutch CIT

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Case Study I, ctnd 3

Financials

- The investment proposition shows an average ROI over a 12 years period of 9% per annum, after tax
- Return includes 7% dividend and 2% increase in value
- Based on 100% equity financing
- The family requires a minimum of 8.5% cash return, net of tax

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Case Study I, ctnd 4

Simplified projected opening balance after €150M injection

Bank	150 M	Share capital	150M

Case Study I, ctnd 5

Tax consequences of direct equity investment

- 7% dividend equals €10.5M per annum
- Out of net profit reserves representing a portion of gross profit of €14M (based on 25% CIT)
- Underlying CIT = €3.5M
- DWT 5% (Netherlands – UAE treaty percentage)

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Case Study I, ctnd 6

Tax planning possibilities

Improve after tax cash ROI to investor by:

① Reducing Dutch CIT burden

② Reduction of existing DWT of 5%

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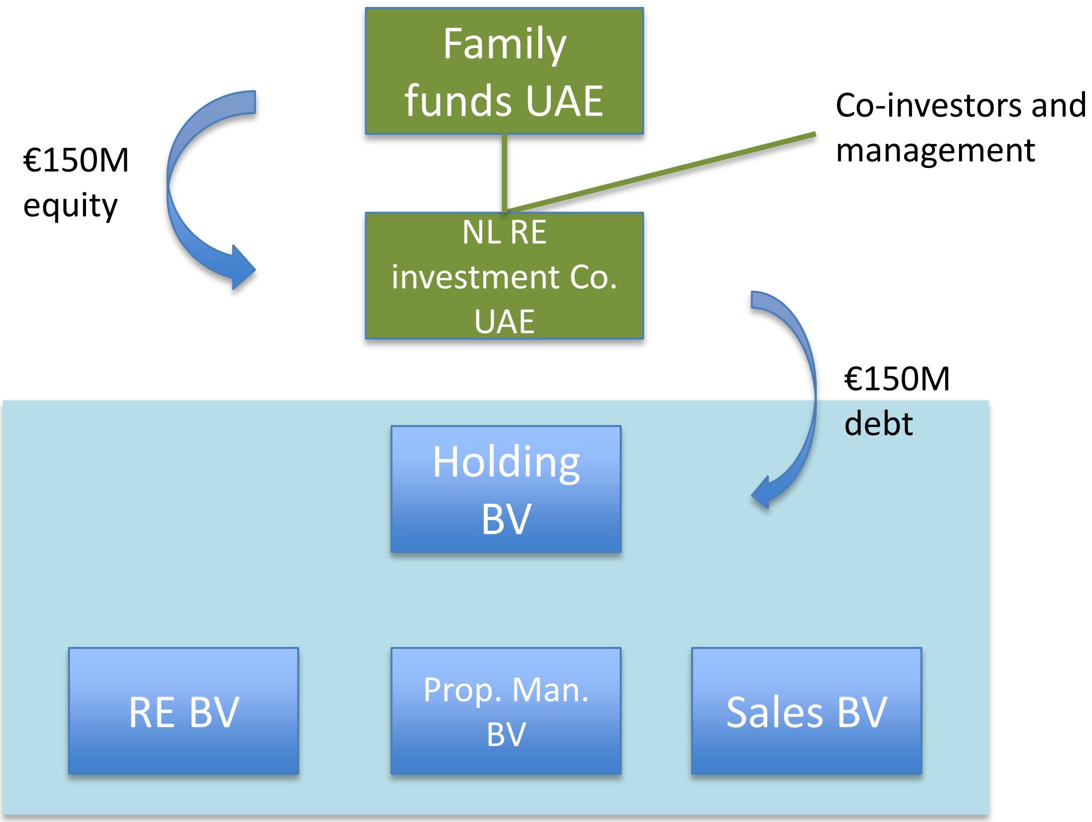
Case Study I, ctnd 7

Finance structure (simplified)



Case Study I, ctnd 8

Re. finance structure (simplified)

1. Proposing a loan from NL RE investment Co. UAE instead of equity (i.e. subordinated loan at 8.5% interest) would save €3,187,500 on Dutch CIT per annum
2. Equalling an improvement of the ROI of 2.125% (25% of 8.5%)
3. Note: the Netherlands does not levy withholding tax on interest!

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Case Study I, ctnd 9

Various checks from a Dutch tax perspective re. deductibility of interest:

1. Legal form of loan agreement basically decisive, however, it must be
    - a true and real loan
    - not ‘in fact’ an equity participation and
    - no loss financing
2. Both the conditions of the loan and the interest must be ‘businesslike’
3. Various interest deduction limitations in Dutch CIT law exist
4. NOTE: as per 1 January 2013 Dutch excessive debt financing rules were abolished (‘thincap rules’)

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Case Study I, ctnd 10

Possibilities to reduce Dutch DWT?

- Even after deduction of the 8.5% interest re. the €150M loan the business proposition still shows sustantial profits after a number of years.
- Client has asked us for ideas to save on the 5% DWT which would be due on dividend payments from NL to UAE (treaty percentage).

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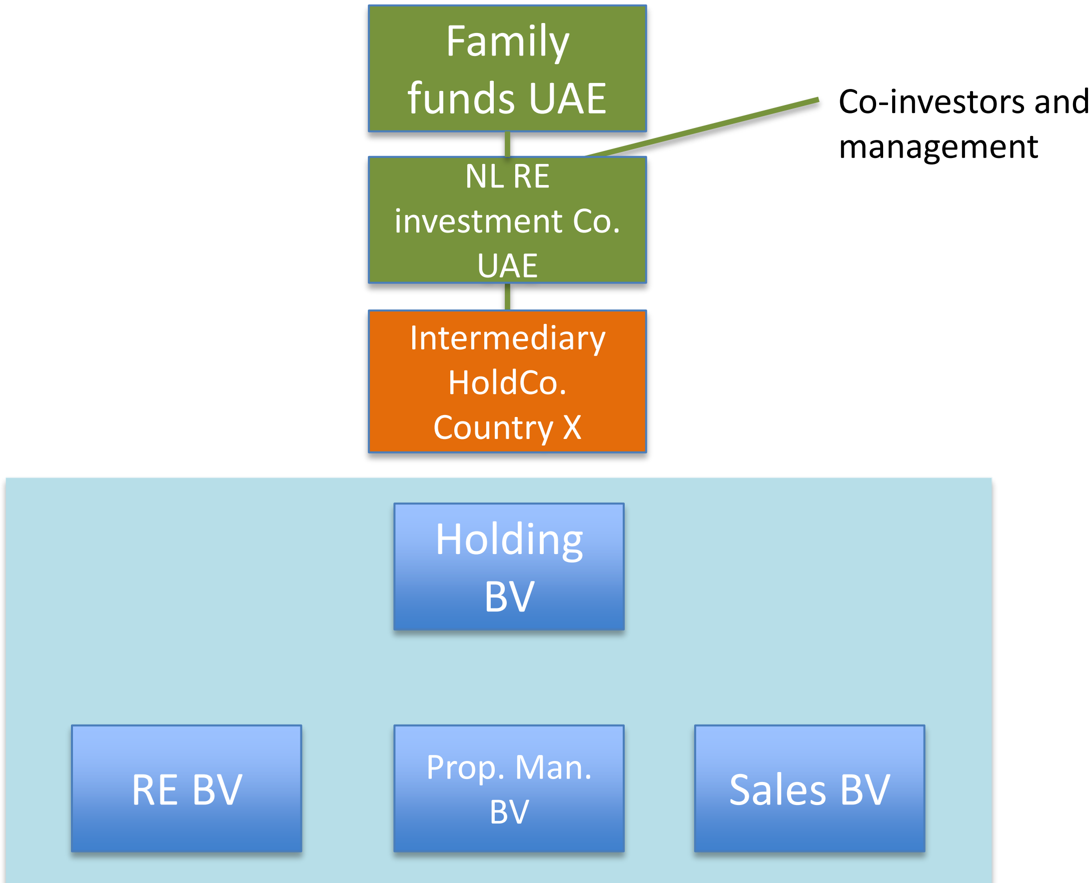
Case Study I, ctnd 11

Holding structure



Case Study I, ctnd 12

Looking for the best location for Intermediary HoldCo.

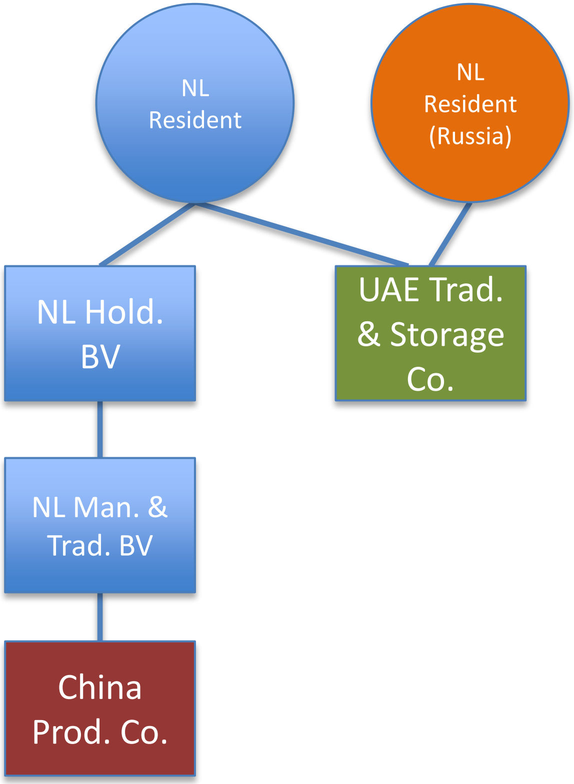
- United Kingdom ?
- Belgium ?
- “Standard solution”: Cyprus

Case Study I, ctnd 13

Where will BEPS come in?

Case Study II

Restructuring Dutch family owned business with production facility in China



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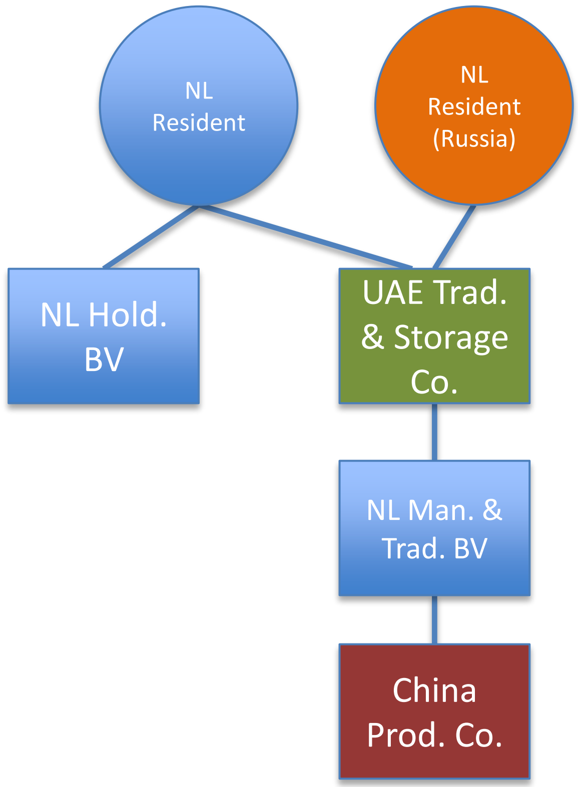
Case Study II, cntd 1



Case Study II, cntd 2

Because the partner of Dutch individual qualifies for 30%-ruling, the following benefits exist:

- Lower effective tax rate on Dutch salary (30% of gross tax free)
- Income from movable property tax free (including dividends from own business through UAE)
- No net wealth tax on liquid and foreign assets
- Partner may allocate his assets to his wife

- What other jurisdictions would have similar benefits / treatment of (fictitious) non-residents?

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Case Study II, ctnd 3

Where will BEPS come in?

End

Any questions or comments?