

The logo for TAXAND, featuring a stylized icon of four dots in a square grid to the left of the word "TAXAND" in a bold, black, sans-serif font.

TAXAND

A Venn diagram consisting of four overlapping circles: a large red circle on the left, a yellow circle at the top right, a green circle at the bottom right, and a blue circle on the right. The red circle is the largest and contains the main title. The other three circles overlap each other and the red circle.

**REAL
ESTATE TAX
WORKSHOP**

**CASE STUDIES
16 MAY 2019**

Your global tax partner

CONTENTS



1. The European anti-tax avoidance directive (ATAD) – impact on the real estate sector
2. Treaty issues from the Multilateral Instrument (MLI)
3. Pension funds investing in real estate
4. Direct lending and non-performing loans (NPL) in the real estate sector.



ATAD IMPACT ON THE REAL ESTATE SECTOR

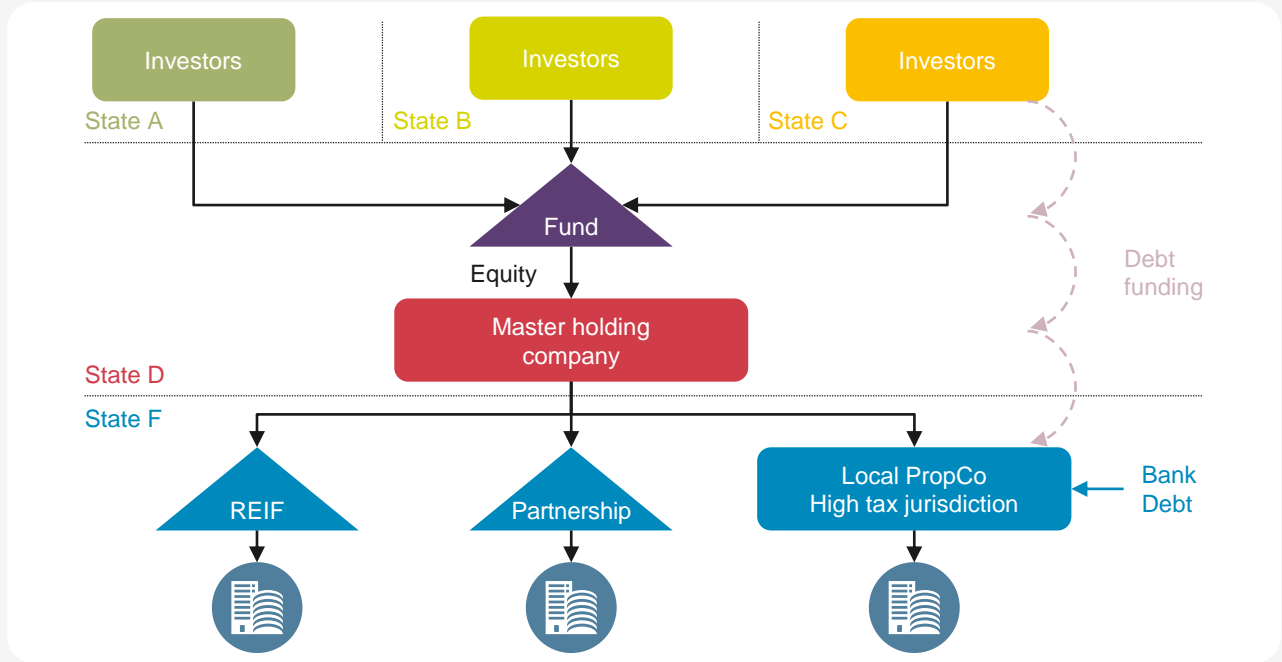
**FRANCESCO
CARDONE**

ATAD IMPACT ON THE REAL ESTATE SECTOR



Questions:

1. ATAD impact on property transactions?
2. Deductibility of bank debt still possible?
3. Restructuring due to loss of interest deductibility?





TREATY ISSUES FROM MLI

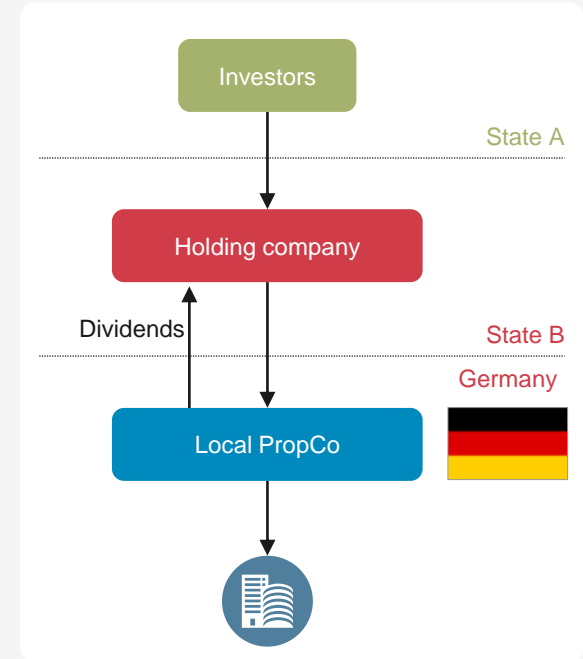
**TORSTEN
ENGERS**

TREATY ISSUES FROM MLI

MLI – Art. 7 – Impact of Principal Purpose Test/LOB Clauses

Problem:

- ❖ According to Art. 7 OECD-MLI States can opt for implementation of Principle Purpose Test or Limitation of Benefits Clause
- ❖ Interpretation of PPT is unclear.

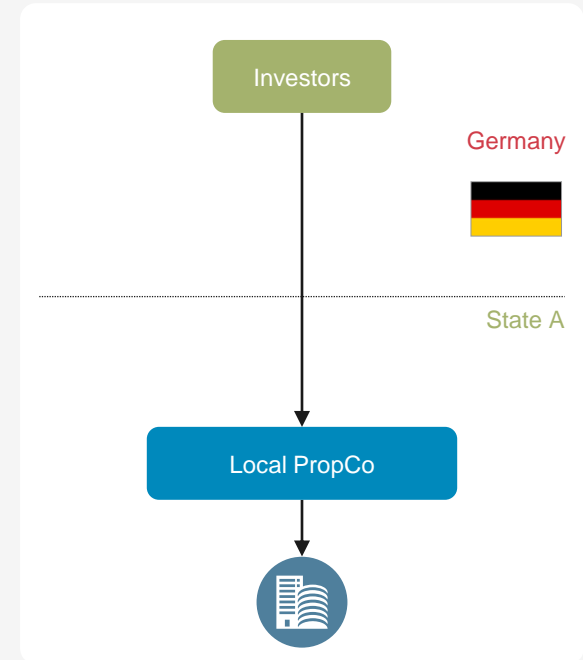


TREATY ISSUES FROM MLI

MLI – Art. 9 – Change of DTT re Real Estate Rich Companies

Problem:

- ❖ According to Art. 9 OECD-MLI (and according to Art. 13 (4) OECD MC) the right of taxation re the sale of shares in real estate companies is with the state where the real estate is located
- ❖ When implementing this provision into new treaties the right of taxation is shifted from the state of residency to the source state
- ❖ Germany has a very broad exit tax rule. It has been discussed over the last years whether this rule covers the ‘involuntary’ exit.



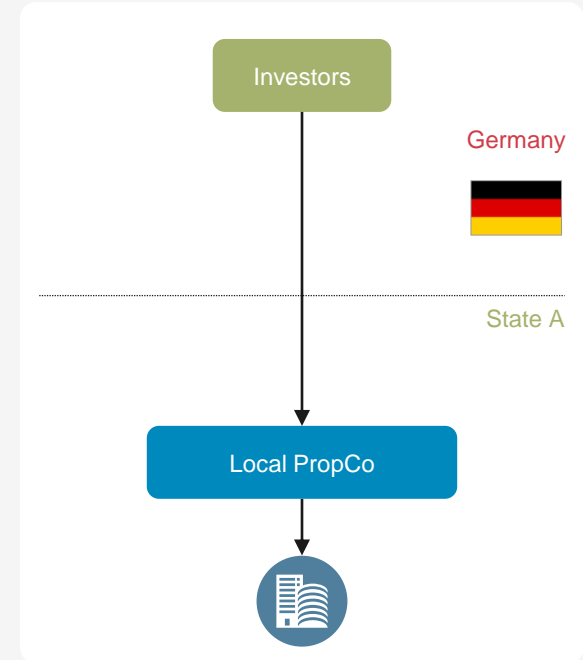
TREATY ISSUES FROM MLI



MLI – Art. 9 – Change of DTT re Real Estate Rich Companies

Decree of the Federal Ministry of Finance:

- ❖ On 26 October 2018 the Federal Ministry of Finance has issued a decree according to which the exit tax rules cover these unrealised capital gains. An ‘action of the taxpayer’ is not a prerequisite for exit taxation
- ❖ Hence, the exit tax applies re Spain on 1 January 2013 and re Luxembourg on 1 January 2014.



TREATY ISSUES FROM MLI

MLI – Art. 3 – Treatment of Hybrid Entities

Luxembourg Fund Structures?

Partnership



**PENSION FUNDS
INVESTING IN
REAL ESTATE**

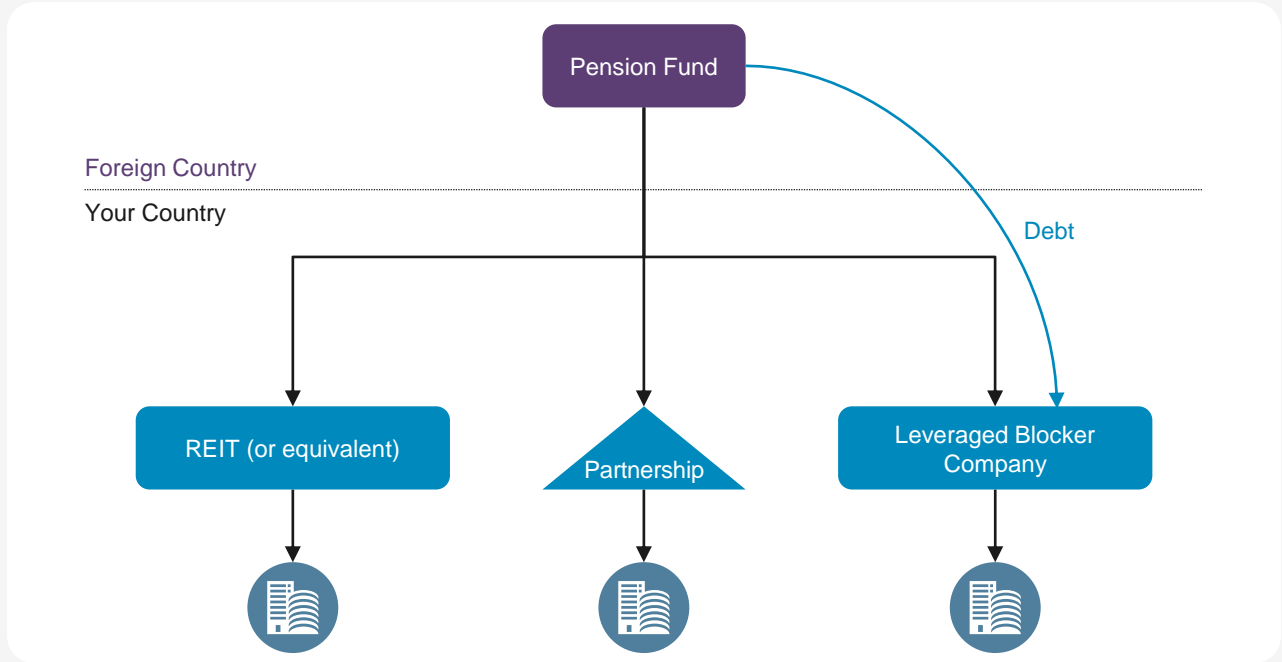
**FRANCIS (JAY)
HELVERSON**

BASIC PENSION FUND STRUCTURES



Questions:

1. Which of the three Structures is most tax efficient in your country?
 - a. Do pension funds receive favourable treatment? (government versus private)
 - b. If taxable, are they taxed as companies or something else?
 - c. Do you have REITs?
 - d. Are real estate capital gains taxable?
 - e. Limitations on debt and interest deductibility?
 - f. Withholding tax?
 - g. Treaty benefits?
2. Other Structures?



PENSION FUND TAX ISSUES (1/2)



US Issues we see:

1. What is the US tax classification of the pension fund?
 - a. 'Trust' (may be taxable at up to **37%** on operating income and **20%** on capital gains)
 - b. Corporation (taxable at **21%** since US tax reform)
2. Is the pension fund part of or controlled by a foreign government (potential exemption from tax)?
3. Is the pension fund a 'qualified foreign pension fund'? If so – exempt from FIRPTA
4. If invested in a REIT, will the pension fund be entitled to a lower treaty rate on distributions?
 - a. Ordinary dividends?
 - b. Capital gain dividends?
 - c. Is the investment REITable?

PENSION FUND TAX ISSUES (2/2)



5. What is the mix of operating income versus capital gains on the investment?
6. How much can a Blocker be leveraged? Interest rate? Can we elect out of the interest limitation rules?
7. Is the pension fund taxable in its home country? Foreign tax credit implications?
8. Anti-abuse rules? (anti-hybrid rules).

Objective:

- ❖ US tax can be greatly minimised and in some cases eliminated.



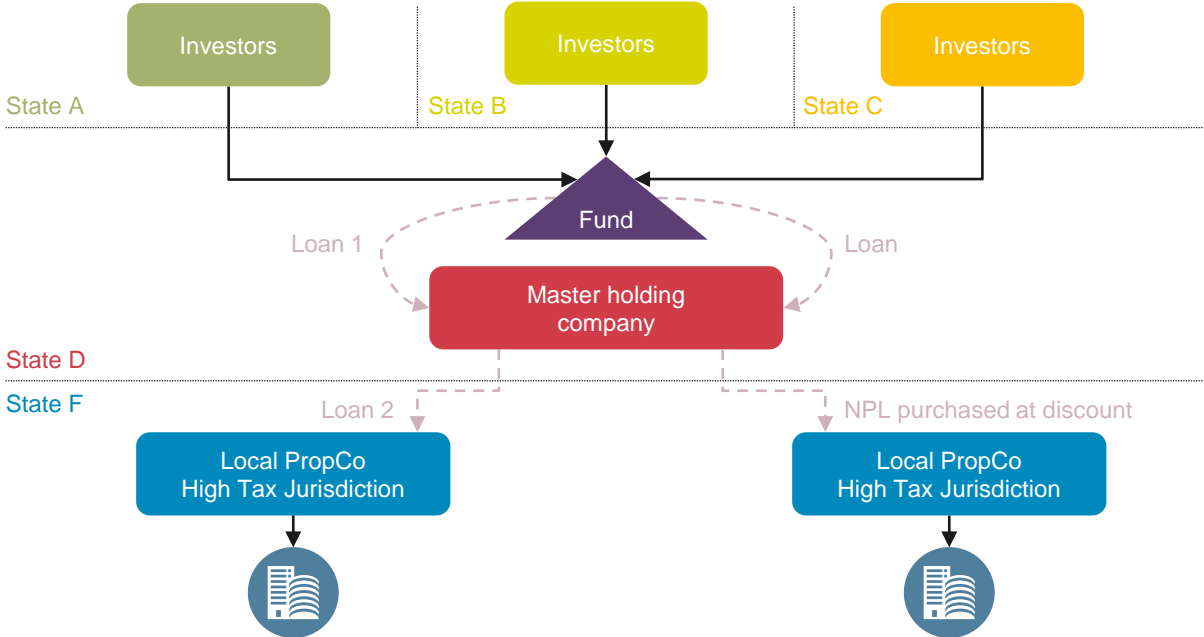
DIRECT LENDING & NPL IN THE REAL ESTATE SECTOR

KEITH O'DONNELL
& FRANCK LLINAS

DIRECT LENDING AND NPL IN THE REAL ESTATE SECTOR



Typical RE fund structure





**SPEAKER
PROFILES**

SPEAKER PROFILE



Keith O'Donnell

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Keith sits on the Taxand board and leads Taxand's global real estate tax team. A tax specialist for 27 years, Keith has previously held senior positions within Ernst & Young and Andersen, where he was Tax Leader in the real estate industry and asset management teams in Europe. Keith advises global groups on the design and implementation of European tax strategies, with particular emphasis on pan-European real estate and private equity funds.

Keith has been instrumental in shaping legislative change in coordination with industry groups. He chairs the INREV Tax Committee and sits on a number of key international bodies including the OECD's collective investment vehicle ICG and the EU Commission's expert group on open-ended real estate funds.

Educated in Brussels and Dublin, he is bilingual in French and English, and speaks Luxembourgish and Italian. Keith is qualified as a Chartered Accountant and Tax Advisor and has a law degree from the National University of Ireland.

SPEAKER PROFILE



Franck Llinas

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Franck joined Arsene in 2005. He was promoted to the role of Partner in 2011 and currently co-manages the Real Estate department.

Franck advises French and international real estate stakeholders, private or corporate, on:

- ❖ Implementation of regulated and unregulated investment structures
- ❖ Tax assistance in restructuring transactions and operations
- ❖ Tax assistance in direct and indirect tax law
- ❖ Tax inspection and litigation assistance.

Franck teaches real estate tax at Aix-Marseille University in the Law and Tax Law Master's program, hosts seminars for clients on a regular basis, and contributes to articles in national and international press outlets (he has been in charge of real estate issues for Lexbase since 2012).

Education

- ❖ Corporate law, tax law and accounting Magister degree at Aix-Marseille University
- ❖ Corporate law and tax law and DJCE DESS degree
- ❖ Comparative law degree (Erasmus exchange at University College London)
- ❖ CAPA (2001).

SPEAKER PROFILE



Torsten Engers

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Torsten Engers is based in Taxand Germany, where he is a partner at Flick Gocke Schaumburg in Frankfurt. He is a qualified lawyer (**Rechtsanwalt**), tax advisor (**Steuerberater**) and expert advisor on international tax law.

His areas of specialisation are the taxation of real-estate transactions, international tax law, the structuring of cross-border investments (inbound and outbound), mergers and acquisitions and corporate reorganisations and business taxation.

Torsten is a lecturer at the University of Frankfurt am Main and a member of the International Bar Association.

SPEAKER PROFILE



Francesco Cardone

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Francesco obtained a Degree in Law in 2004 (University of Turin) and in 2014 a Master's Degree (Advanced LL.M.) in International Tax Law from the International Tax Centre of Leiden (Leiden University, The Netherlands). He was admitted to the Italian Bar in 2007.

After an experience with another Tax firm and a summer internship in the Transfer pricing team of Baker & McKenzie Amsterdam, he worked for Fantozzi & Associati in Milan, where he was a Senior Associate until December 2017 and joined LED Taxand on January 2018.

Francesco advises domestic and foreign companies on corporate taxation, international taxation as well as on mergers and acquisitions. He has also gained extensive experience in relation to real estate transactions and tax litigation.

SPEAKER PROFILE



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Mr. Helverson brings more than 20 years of tax experience and specialises in international tax consulting for inbound operations, with expertise in mergers and acquisitions, and cross-border tax planning.

Prior to joining A&M, Mr. Helverson was the lead managing partner of WTS US Previously, he was a Director with KMPG in both New York and Frankfurt, Germany.

He is the author of numerous publications including articles in The Journal of Private Equity, Private Equity International, and Tax Notes International as well as a chapter of the treatise Tax Due Diligence, published by C.H. Beck Verlag.

Mr. Helverson earned a bachelor's degree from Rutgers University, a J.D. with honors, from Rutgers University School of Law, and an LL.M. in Taxation from New York University School of Law.