



WEBINAR

2025 Tax Developments relevant for the European Real Estate Industry

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AGENDA

WELCOME & INTRODUCTION

LUXEMBOURG

SPAIN

THE NETHERLANDS

GERMANY

THE UNITED KINGDOM

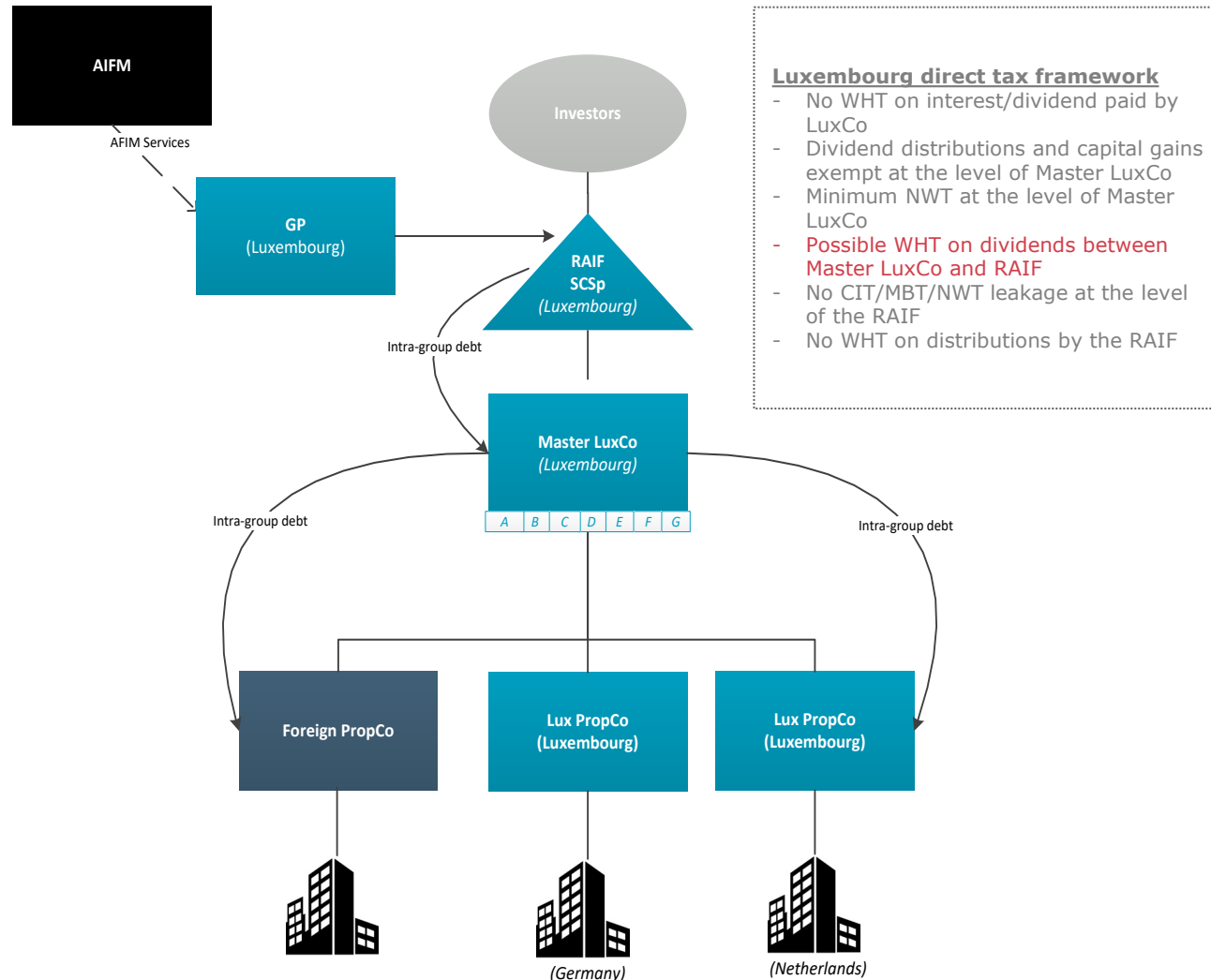
PANEL DISCUSSION + LIVE Q&A







CLASSES OF SHARES AND THEIR REDEMPTION



- A **recent change of the income tax law** based on recent case laws provides that the **redemption** of an entire class of shares followed by its cancellation is considered as a partial liquidation which is **not subject to Luxembourg withholding tax** under the following cumulative conditions:

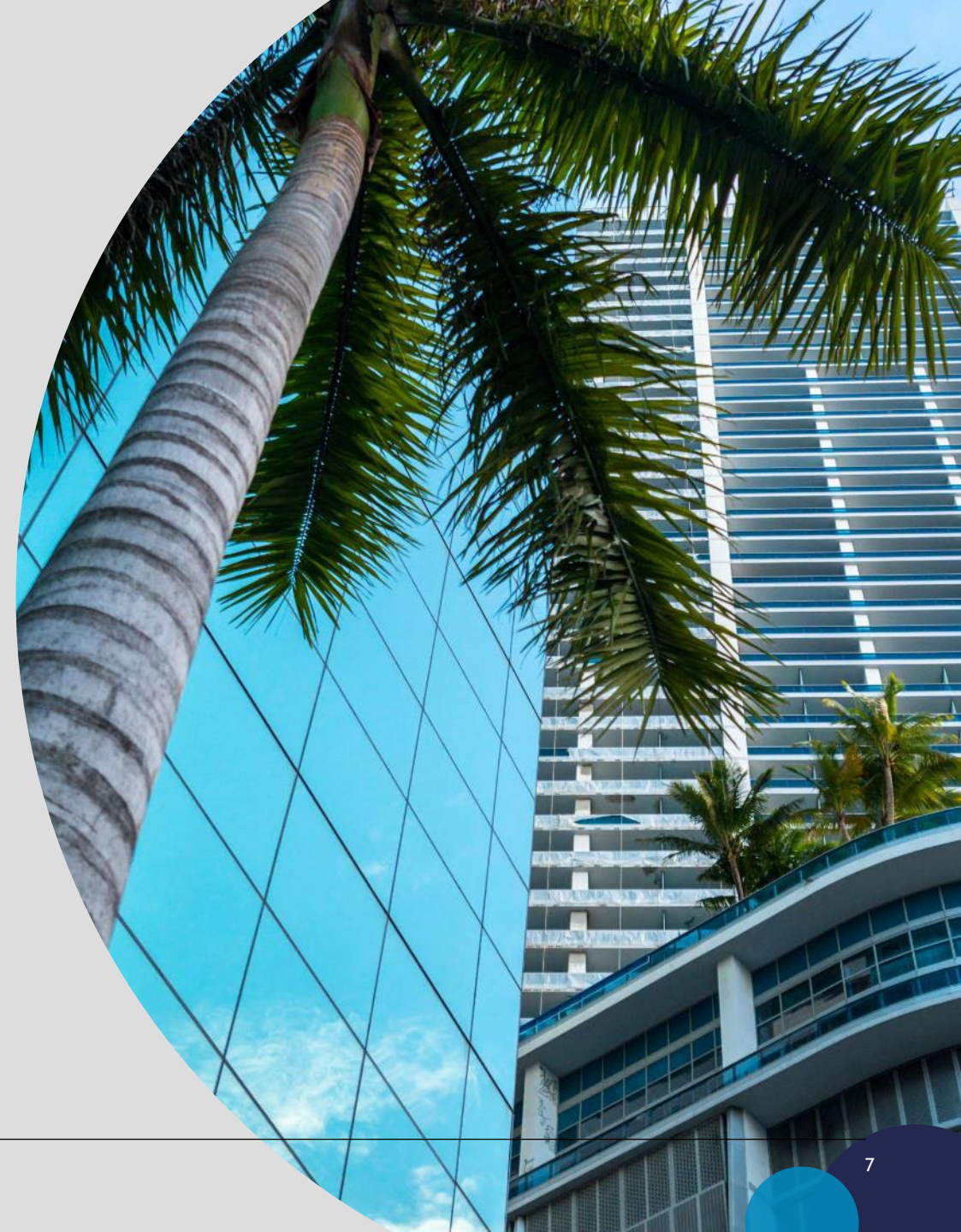
- ✓ **Timing of implementation:** the classes of shares are established at the time of the incorporation or during a subsequent share capital increase of the company
- ✓ **Different economic rights:** each class of shares has economic rights, as defined in the entity's articles of association, that are distinct from those of other classes
- ✓ **Cancellation:** a corresponding share capital reduction is following the redemption within six months
- ✓ **Price:** the redemption price is determinable based on criteria set in the entity's articles of association (or any other document referred to in the articles), reflecting the estimated fair market value of that class at the time of redemption
- ✓ **Reporting:** the Buy-Back made by an individual having a significant stake in the company (more than 10% during the five previous years) must be disclosed by said company in its annual income tax return
- ✓ **No abuse:** the non application of the WHT remains subject to the general anti-abuse regulations



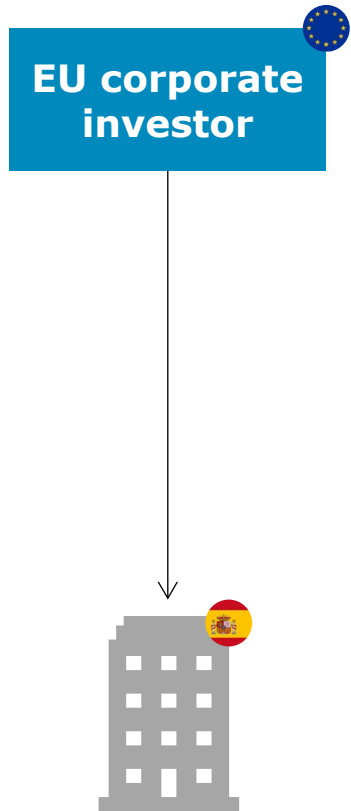
OTHER LUXEMBOURG TAX LAW CHANGES

- **Revision of the CIT rate** by 1%, bringing the **overall tax rate** of companies located in Luxembourg city with taxable income exceeding 200,000 euros down to **23.87% from the previous 24.94%**.
- Revision of the minimum net wealth tax (NWT) rules: removal of the difference between (i) companies holding mainly financial assets and (ii) other companies – the only reference will be the total balance sheet and the maximum amount of the minimum NWT will be EUR 4,815
- **Optionality of the participation exemption regime:** Possibility of waiving the benefit of the exemption for income from shareholdings where the conditions for the participation exemption are met solely by virtue of the threshold of the acquisition price of the shareholding, i.e. if the acquisition price is at least equal to an amount of EUR 1,200,000 (dividends) or EUR 6,000,000 (capital gains), but the shareholding threshold is < 10%.
- A **more favourable impatriate regime** for highly qualified employees relocating to Luxembourg
- Case law on the **qualification of interest free loans**
- 2024 tax measures boosting the construction sector extended until 30 June 2025





RELEVANT MATTERS IN COMMON INVESTMENT STRUCTURES



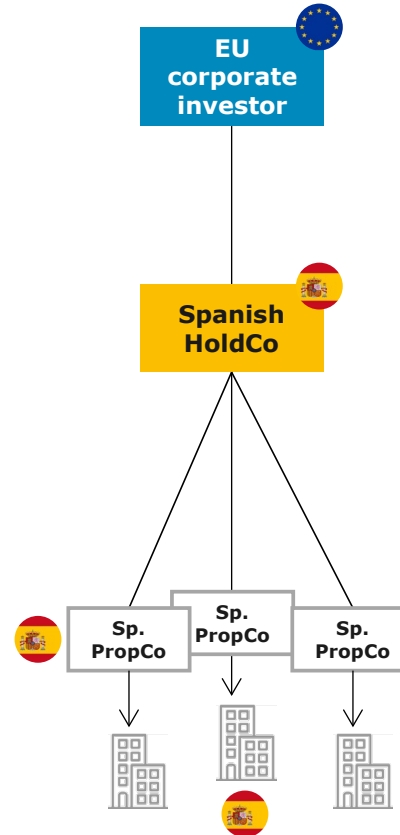
- **Key matter:** to determine whether a permanent establishment (PE) exists in Spain (business activity).
 - **No PE:** taxation under NRIT on operating (rental) income and capital gains (general rate of 19%). Possibility to deduct direct expenses for EU investors (not for non-EU).
 - **PE:** taxation under NRIT but applying CIT rules and rates (general rate of 25%).

RELEVANT MATTERS IN COMMON INVESTMENT STRUCTURES



- Taxation under **NRIT** on dividends and capital gains (general rate, 19%).
- **Key matters**
- **Dividend distribution:** need to analyse access to dividend exemption under PSD (subject to compliance with all requirements).
 - **Substance considerations** / economic motives and business reasons – PSD SAAR (majority of ultimate shareholders non-resident in the EU). Recent case-law.
 - **Beneficial owner (BO) concept:** evolution of Spanish case-law since the Danish Cases (ECJ C-116/16 and C-117/16).
- **Capital gains:** In general, 19% NRIT on capital gain obtained in the sale of PropCo allowed by domestic law (EU exemption not applicable with substantial RE underlying) and many DTTs/MLI.

- Taxation under **CIT** on all income (general rate, 25%).



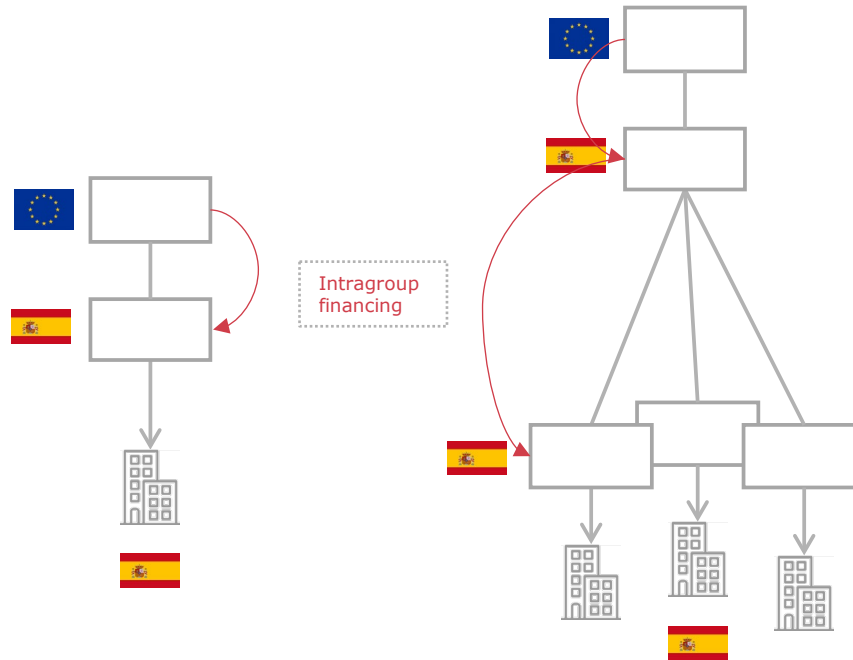
- Taxation under **NRIT** on dividends and capital gains (general rate, 19%).
- **Key matters**
- **Dividend distribution:** see prior case.
- **Capital gains:** In general, 19% NRIT on capital gain obtained in the sale of Spanish HoldCo (i.e. indirectly, RE SPV) allowed by domestic law and many DTTs/MLI.
 - Particular case of the **Spain-Luxembourg DTT**.

- Taxation under **CIT** on all income (general rate, 25%) in all Spanish entities.
- **Key matters:** need to analyse access to 95% exemption for dividends and capital gains under the **domestic participation exemption regime** (subject to compliance with all requirements).
 - Need to justify from an economic point of view the existence of two holding entities in the investment structure (substance, existence of different functions and **business rationale**) – GAAR.
 - Relevance of **PropCos performing a business activity** for the participation exemption to apply on capital gain obtained in the sale of a PropCo by Spanish HoldCo.
 - Case of **leasing activity** (PropCos): full-time employee with labor contract / group level / possibility to substitute by PMA with a third party if the leasing activity is complex enough.

Potential EU discrimination case

CIT legislation does not exclude the application of the participation exemption to stakes in real estate companies **vs.** NRIT legislation which excludes the application of the EU exemption to the transfer of shares of real estate companies.

RELEVANT MATTERS IN COMMON INVESTMENT STRUCTURES

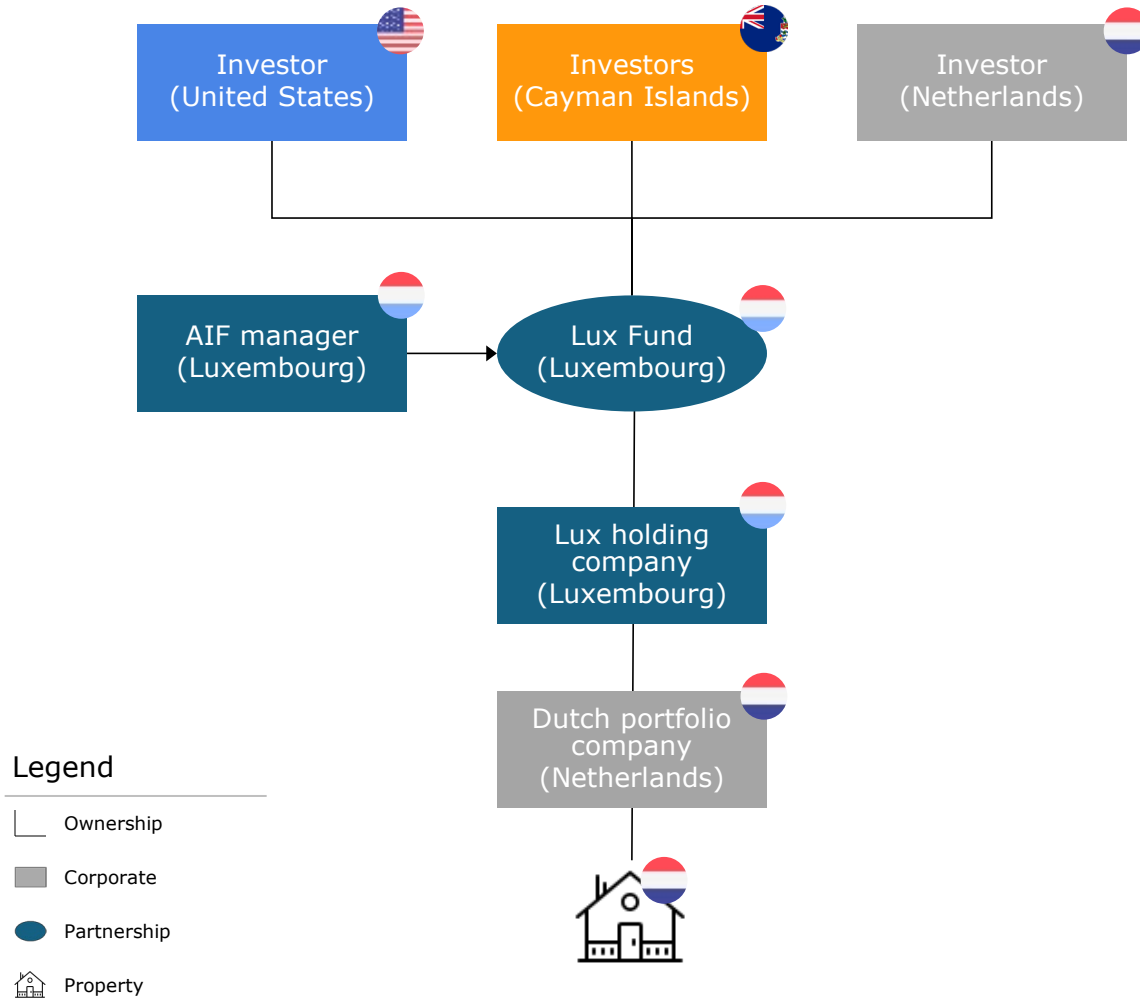


- Intragroup financing: several **key matters**
 - TP rules (LTV, interest)
 - Rules for interest deduction (EBITDA, ATAD II, etc.)
 - BO concept: evolution of case-law
 - Debt push-down
 - SDT costs of refinancing
 - **Focus point: recent experiences in tax audits**

THE NETHERLANDS



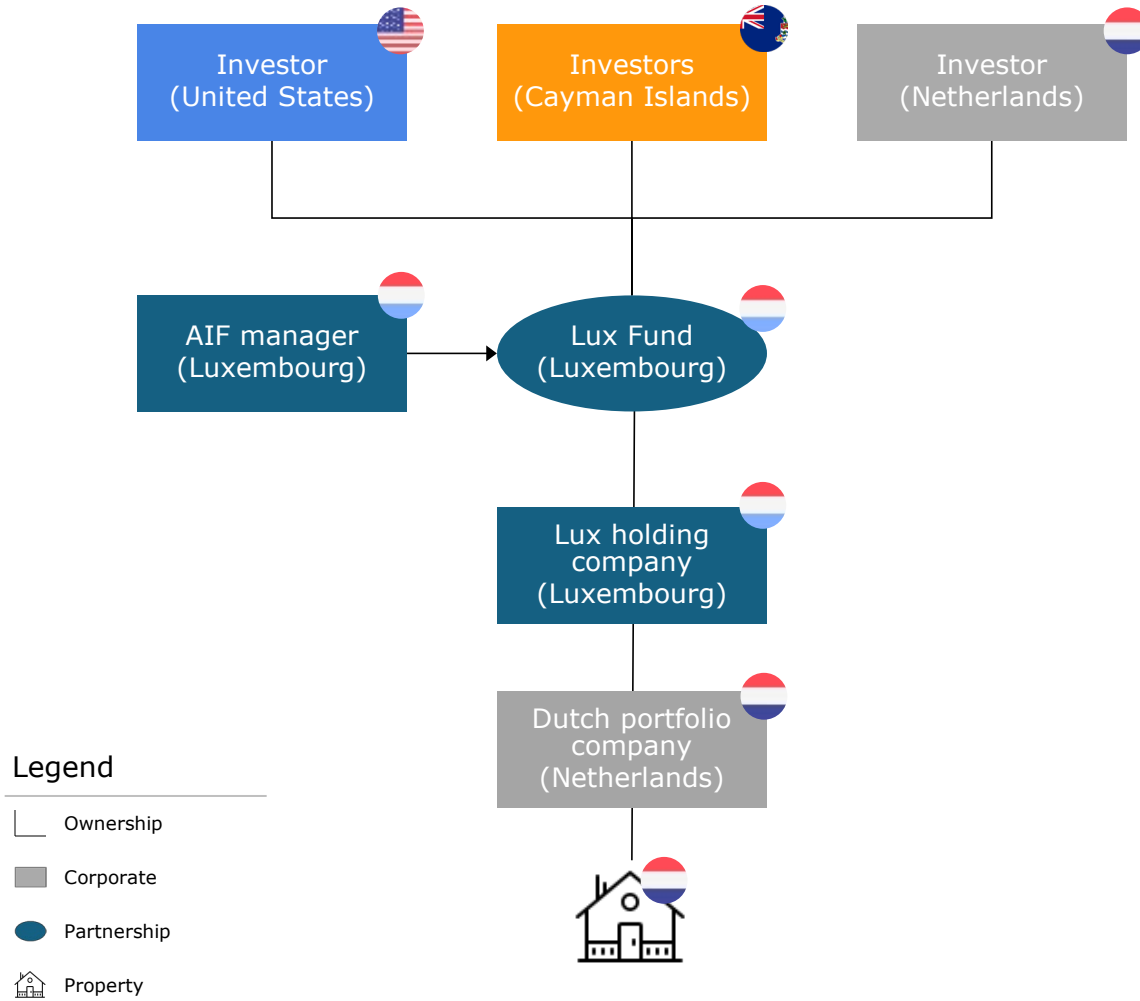
NEW ENTITY CLASSIFICATION RULES: OVERHAUL PER 1/1/2025



Dutch tax consequences

- After decades of lobbying, the Dutch partnership entity tax classification finally aligns with global standards. This should mitigate hybrid entity mismatches.
- At the same time, the switch in entity tax classification may have a serious negative impact on existing structures, both investor and investment tax planning.
 - **Investor tax planning:** Dutch participation exemption regime
 - **Investment tax planning:** ATAD2, interest deduction, WHT planning
- Need to review international real estate investment fund structures involving Dutch investors / real estate investments.

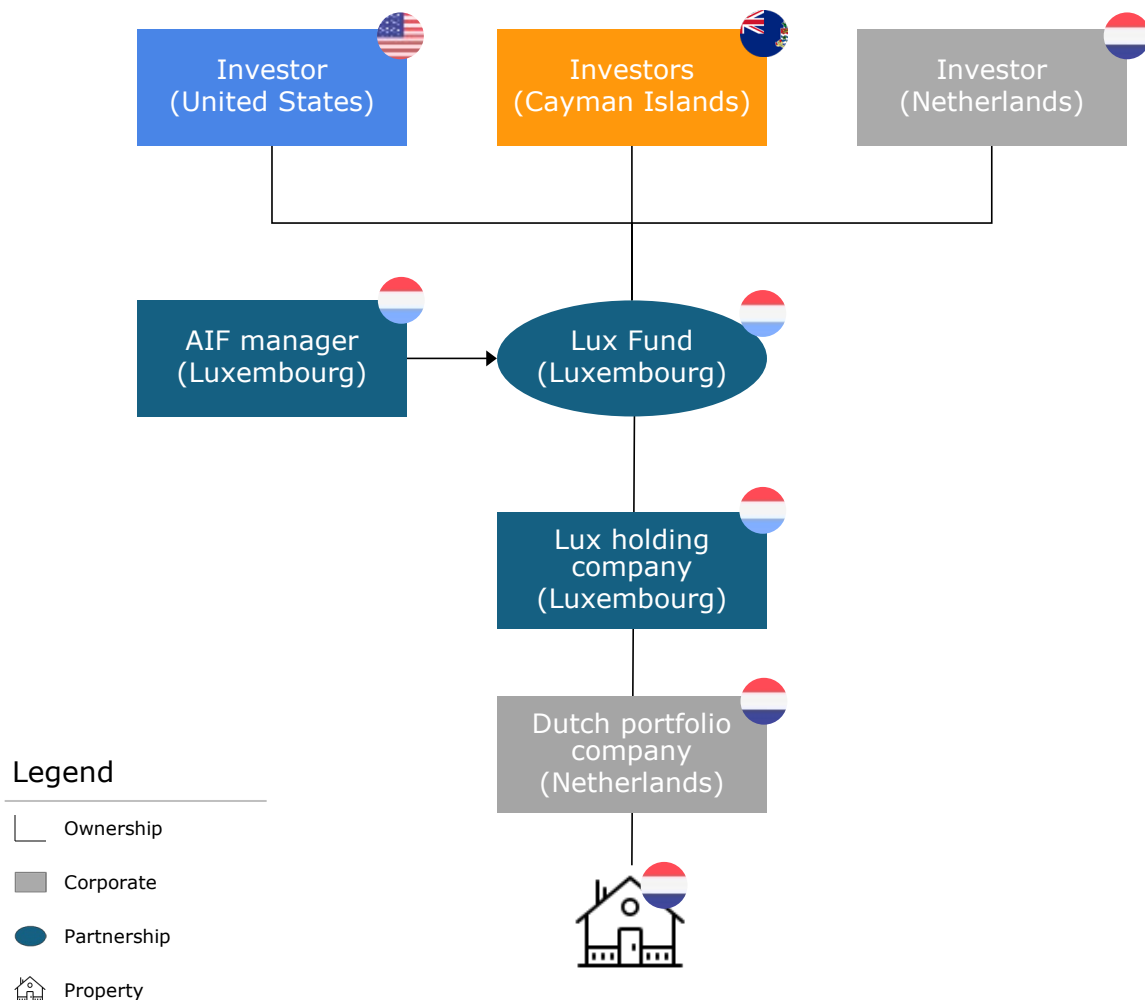
NEW ENTITY CLASSIFICATION RULES: MAIN RULE



General

- Dutch limited partnership (CV) and foreign **comparable** entities will classify as tax transparent by default. This will apply to the Dutch CV, and foreign similar LP entities like Luxembourg SCSp, UK LP and German KG.
- The Dutch tax classification of foreign entities **incomparable** to a Dutch legal entity will align with the entity's tax treatment in the foreign jurisdiction (symmetrical approach).
- An exception applies if the foreign entity is resident in the Netherlands, which will result in a non-transparent classification (fixed approach).

NEW ENTITY CLASSIFICATION RULES: FUND PRIORITY RULE EXCEPTION



General

- Fund Priority rule: foreign partnerships which are considered an AIF and do not carry out a 'business enterprise' (i.e. PE and VC funds) will classify as a mutual fund (*fonds voor gemene rekening*).
- A mutual fund is in principle non-transparent. An exception applies if the fund is redemption-only (i.e. units can only be traded by means of redemption).
- PE and VC funds are considered carrying out a business enterprise. Therefore, these fund entities will not classify as a mutual fund but as (Dutch) limited partnerships and will be tax transparent by default (see slide 4).
- PM: Co-invest and feeder entities in a PE or VC structure are not considered carrying out a business.

Dutch tax consequences

- Foreign fund entities which are not a main PE/VC fund entity remain non-tax transparent unless structured with a redemption only mechanism.
- Hybrid mismatches are still not resolved > ATAD2 consequences.



KEY TAX ISSUES OF COALITION CONTRACT – WHAT CAN WE EXPECT?



- **Degressive depreciation rates** (30% in 2025-2027) for investments in equipment (“Ausrüstung”)
- Step-by-Step **decrease of Corporate Income Tax rate from 15% to 10%** starting in 2028
- **Amendment of rules** re. option for partnerships to opt into CIT regime
- Targeting “low trade tax rate shopping” - **increase of minimum trade tax rate from 7% to 9.8%**
- **Keeping Pillar II rules**
- Pushing **Financial Transaction Tax**
- Targeting “**Cum-Cum**”-Transactions
- **Reducing Bureaucracy** re. taxes
- “We will create a legally secure and European competitive framework in capital market law for investment funds in infrastructure and renewable energies. At the same time, tax regulations must also be adapted in a targeted manner. We will continue to improve the framework conditions for start-ups. In particular, we will increase the availability of venture capital by improving investment opportunities for institutional investors.”



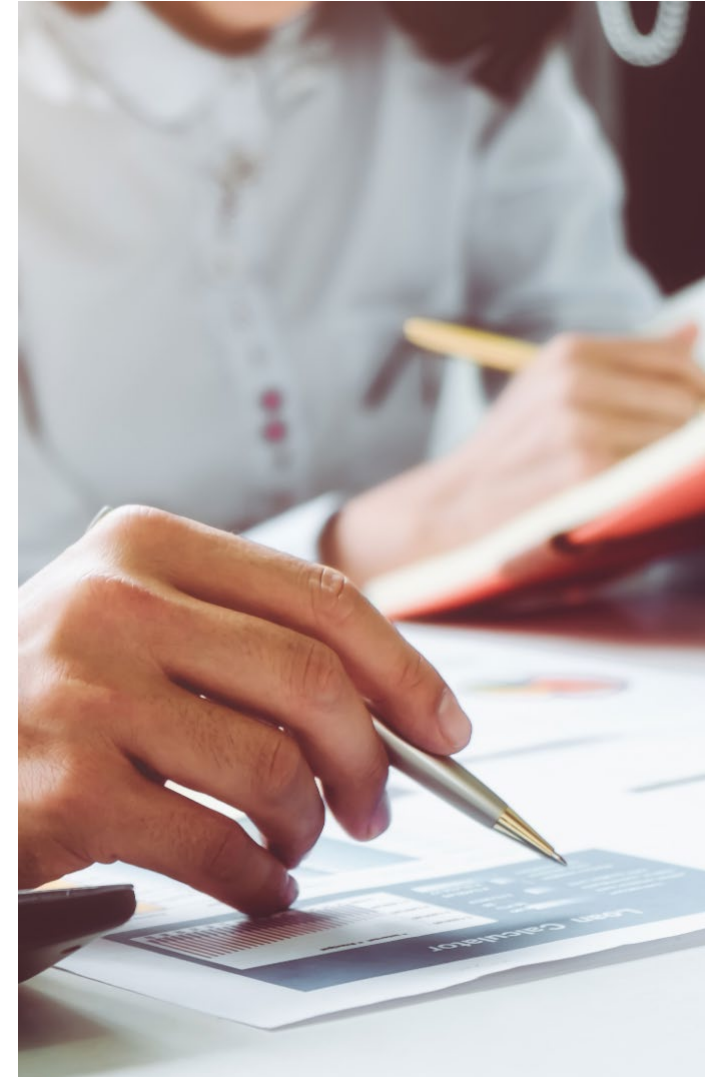


- **Financing**

- German tax authorities challenge at arm's length interest rates
- Discussion on interest rates are more sophisticated and more difficult than five years ago

- **Non-PE Structures**

- Recent case law has encouraged German tax authorities to scrutinize non-pe structures, in particular in real estate branch
- German tax authorities are carefully scrutinizing whether there are management decisions in German. They ask for
 - Contracts of Asset Managers, Property Managers
 - Explanations regarding decision making
 - (Qualified) personal in Luxembourg
 - Copies of the PoAs



THE UNITED KINGDOM



WHAT IS A RESERVED INVESTOR FUND?

1

New form of UK unauthorised onshore fund vehicle

2

Intended to plug a gap in the UK's fund offering for real estate investing

3

Legal form is a contractual scheme

4

Only available to institutional investors, and those that invest over £1m



TAX TREATMENT OF THE RIF

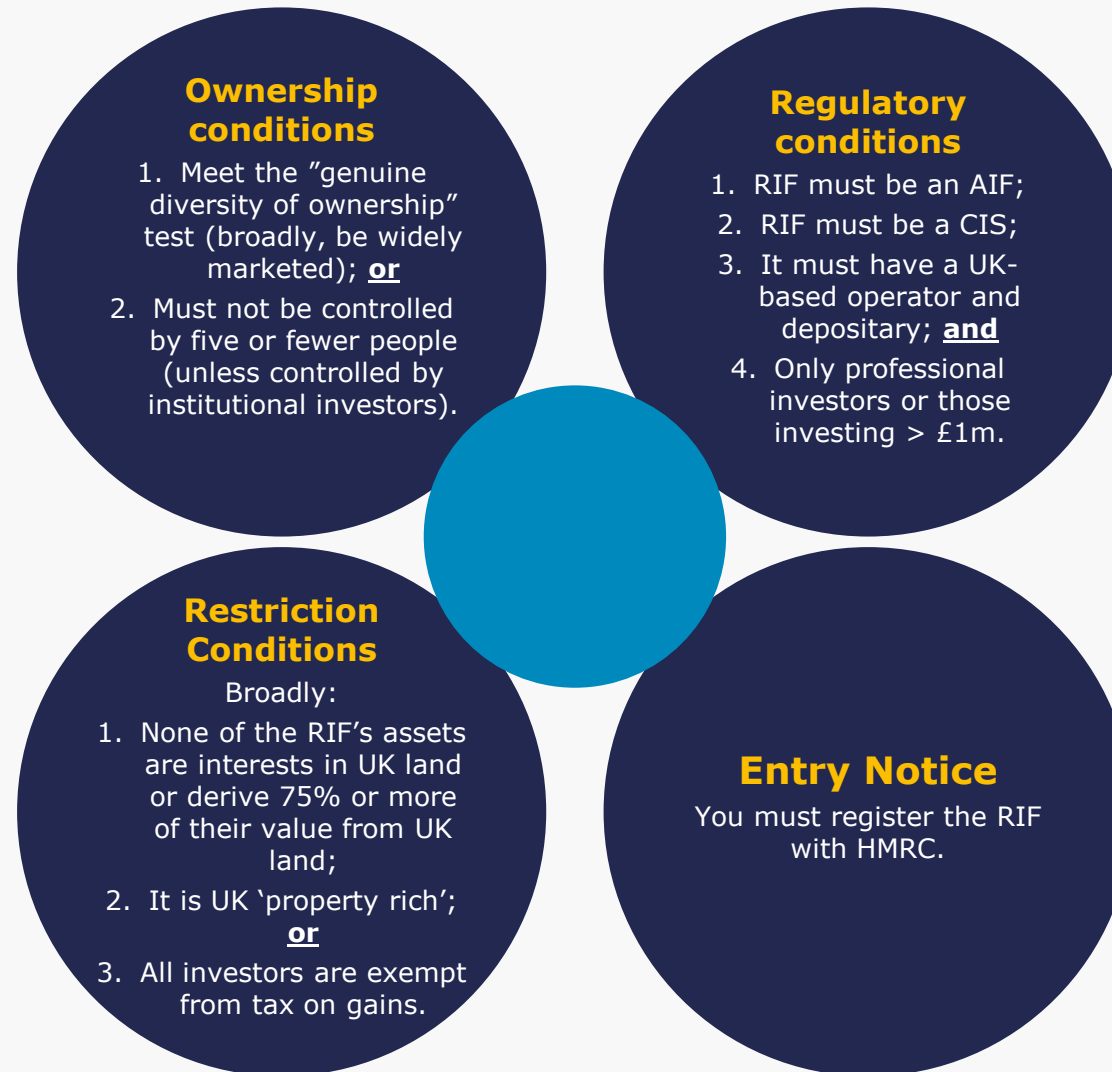
- The RIF has a number of tax features that make it an attractive addition to the UK's 'fund toolbox'.

Taxation of RIF – income	Transparent for income. Investors taxed on income as it arises.
Taxation of RIF – gains	Opaque for gains. No tax on gains for RIF, and investors generally only taxed on gains arising on disposal of RIF units.*
VAT	No exemption, but potential input VAT recovery if investing in UK commercial real estate
Transfer taxes on transfer of RIF interests	None
SDLT on transfer of RIF interests	None

*In the usual way, if the RIF is 'UK property rich', gains realised on the disposal of RIF interests by non-resident investors will be liable to UK tax (subject to applicable treaty relief).

- Anti-avoidance rules exist to prevent a RIF holding substantial UK property but falling below the threshold for being 'property rich'.

ELIGIBILITY CRITERIA





WHY DOES IT MATTER?

1

Expected to be of interest for investment into UK commercial real estate

2

Key benefits include onshore structure, tax efficiency and cost

3

May see new commercial real estate funds set up as onshore RIFs rather than as offshore JPUTs

4

UK private REITs may remain more attractive for foreign pension funds investing in UK property

CARRIED INTEREST REFORMS



Current rules (for typical partnership structure):

- Carry is taxed according to how the underlying investment returns out of which carry is paid are ordinarily taxed.
- This is subject to a minimum 32% rate and a minimum holding period.

Real estate fund

Fund profits
Capital gains & rental income



Carried interest

Blended rate
between 32% & 45%

Future tax treatment (from April 2026):

- All carry treated as deemed trading income, subject to a discounted rate of c. 34.1% (if certain conditions are met).
- Rules still under consultation.

Real estate fund

Fund profits
Capital gains & rental income



Carried interest

Potentially
subject to c.
34.1% rate.



RELAXATION OF REIT RULES

2022

Introduction of “private” REIT. Can benefit from REIT status if entity held by **70% institutional investors**.

2023-2024

General relaxation of the REIT rules to benefit institutional investors, including:

- Relaxation of close company rules if REIT held by institutional investors;
- Ability to “look through” holding vehicles and partnerships; and
- Relaxation of punitive charge on REIT if investors hold more than 10%

Institutional investors include widely-held funds, pension schemes, life insurance companies, sovereign investors, charities and overseas equivalents to UK REITs.



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