

# Luxembourg - Why is it still the flavour of the month

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- General profile of Loyens & Loeff
- General profile of Luxembourg
- Overview of Luxembourg investment vehicles
- “New” Investment vehicle : The SIF
- Investments through Luxembourg: the holding company

# General profile of Loyens & Loeff (1)

- Operating as Loyens Winandy in Luxembourg (local bar reasons)
- Independent firm
- Close working relationship with prominent international law firms
- Tax lawyers and attorneys (also civil law notaries in the Netherlands)
- Expertise in international taxation, corporate law, financial and capital markets, cross-border financing, real estate, energy, regulatory and banking issues, etc.
- Clients: large and medium-size corporates, banks and other financial institutions, operating internationally
- Chambers: best Benelux firm 2004 + 2006

# General profile of Loyens & Loeff (2)

- Tax: “incomparable consistency and vast depth”
- Benelux: 7 offices
- Major financial centres: 10 offices
- Over 700 lawyers
- Turnover: +/- AUS \$ 400 million

# Luxembourg Fund Industry (1)

Country	Assets (B €)	Market share
Luxembourg	1,525.2	23.2%
France	1,270.6	19.4%
Germany	965.5	14.7%
United Kingdom	634.6	9.7%
Ireland	583.3	8.9%
Italy	410.1	6.2%
Spain	275.1	4.2%
Belgium	112.9	1.7%
Denmark	106.4	1.6%

# Luxembourg Fund Industry (2)

## Further figures:

- over 2,000 Investment funds
- close to €2 Trillion (AUS \$ 3.3 Trillion)
- Distributed worldwide (more than 150 countries)

# Overview of Luxembourg investment vehicles

- **Luxembourg regulated funds:**

- FCP (*fonds communs de placement*)
- SICAV
  - Listed or not listed, open for institutionals only or for the public at large
  - Comparable foreign vehicles: Dutch joint account fund, Dutch FBI, German *Sondervermögen*, German REIT (2007), French SIIC, Italian REIF, etc.
- SIF (lightly regulated, 2007)
- SICAR (private equity funds, 2004)

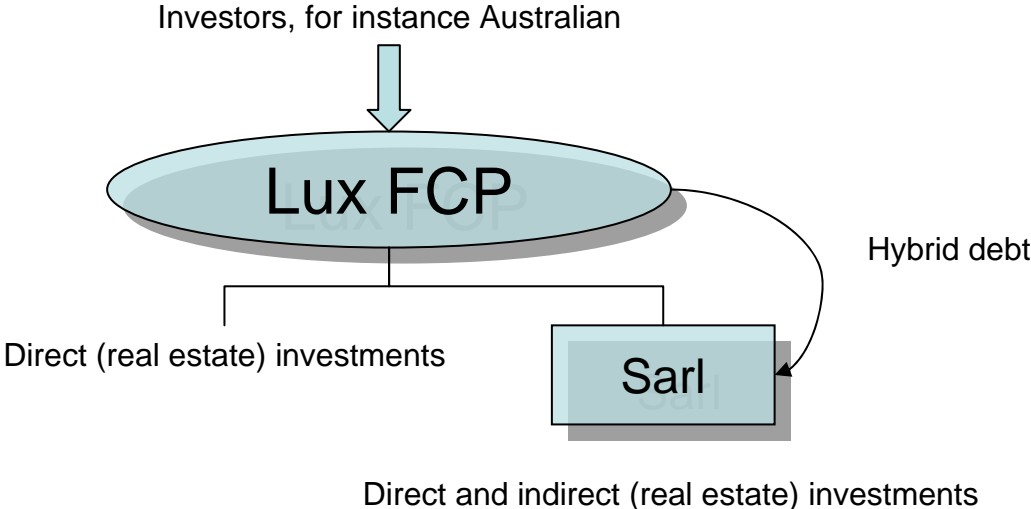
- **Luxembourg companies:**

- Normally taxed entity “Soparfi”
- Securitisation vehicle
- Holding 1929 (abolished in 2006, replaced with the “EU-proof” SPF)

# Luxembourg FCP (1)

- Both management of fund and legal ownership of assets with a management company
- Contractual arrangement
- Limited liability for unit holders
- No legal personality
- Several compartments possible (umbrella)
- Regulated
  
- Exempt from all Luxembourg taxes, except:
  - Annual levy of 0.05% or 0.01% over net asset value
  - € 1,250 capital duty upon set up

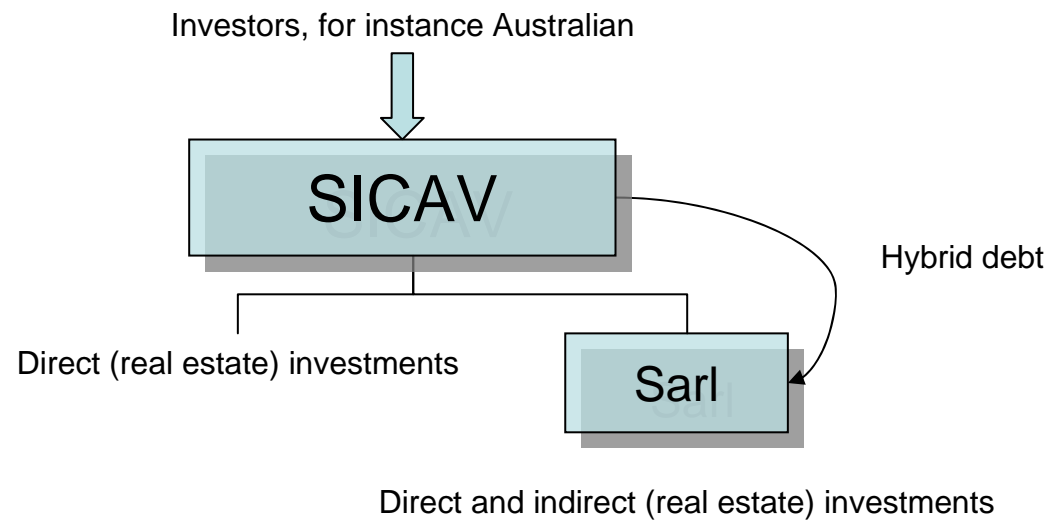
# Luxembourg FCP (2)



# Luxembourg SICAV (1)

- Public limited liability company
- Variable capital
- Several compartments possible (umbrella)
- Self-managed (but often a management company is appointed)
- Regulated
  
- Exempt from all Luxembourg taxes, except:
  - Annual levy of 0.05% or 0.01% over net asset value
  - € 1,250 capital duty upon set up

# Luxembourg SICAV (2)



# 2007: the SIF regime (1)

- Law on *Specialised Investment Fund*:

FCP/SICAR regime for institutional investors simplified by overhaul of old investment fund laws:

- Broader circle of eligible investors: all “well informed investors” including individuals
- No leverage restrictions
- No diversification restrictions, other than general adherence to risk spreading principle
- No “sponsor” requirements anymore
- Less publication requirements: simple annual report. No publication of net asset value required
- May be set up and operate while obtaining CSSF approval afterwards

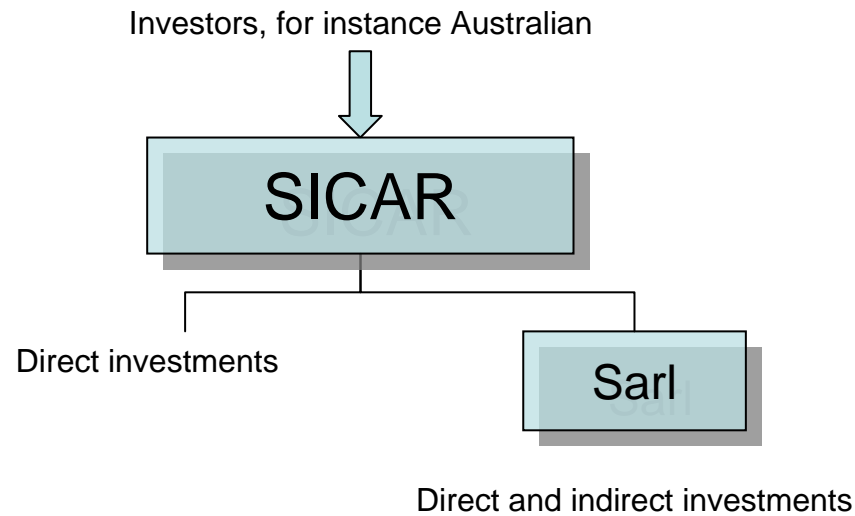
# 2007: the SIF regime (2)

- Tax treatment of the SIF:
  - Unchanged vis-à-vis FCP/SICAV:
    - Flat capital duty rate of EUR 1,250
    - Annual subscription tax (only rate for institutional investors applicable: 0.01%)
    - Exemptions of annual subscription tax available for funds of funds, certain money market funds and pension pooling schemes in the form of a SIF
    - No other taxation applicable:
      - No withholding tax on distributions
      - No capital gains tax for investors upon disposal of SIF
      - No income tax or net wealth tax for SIF

# Luxembourg SICAR (1)

- Investment company in risk capital (SICAR) – Introduced by the Law of 15 June 2004
- Intermediate between SICAV and normal limited liability company
- Lightly regulated
- Until end 2006: approximately 100 SICAR's were set up
  
- Subject to corporate income tax, but: risk capital income is exempt
- Exempt from net wealth tax
- Exempt from dividend withholding tax
- € 1,250 capital duty on set up only
- No exit taxation for its investors
- Risk of SICAR regime being qualified as forbidden state aid?

# Luxembourg SICAR (2)



# Comparison: Fund regimes in the Benelux countries (1)

	Luxembourg SICAV	Dutch FBI	Dutch VBI <sup>[1]</sup>	Belgian SICAV
<b>1. Introduction</b>				
<i>Legal form</i>	SICAV ( <i>Société d'investissement à capital variable</i> ) in the form of a Société Anonyme ( <i>public limited liability company</i> – “SA”).	NV, BV ( <i>limited liability company</i> ) or FGR ( <i>mutual fund</i> ) or a comparable entity within the EU.	NV ( <i>public limited liability company</i> ) or FGR ( <i>mutual fund</i> ) or a comparable entity within the EU.	SICAV ( <i>Société d'investissement à capital variable</i> ) or BEVEK ( <i>Beleggingsvennootschap met veranderlijk kapitaal</i> ) in the form of a public limited liability company (SA, NV, SCA or CVA).
<i>Corporate profile</i>	Separate legal personality. Investor liability limited.	Separate legal personality if NV or BV. Investor liability limited.	VBI is owner of assets, legal personality if NV. Investor liability limited.	Separate legal personality. Investor liability limited.

<sup>[1]</sup>

Entry into force of this regime is expected for first half year of 2007.

# Comparison: Fund regimes in the Benelux countries (2)

	Luxembourg SICAV	Dutch FBI	Dutch VBI <sup>[1]</sup>	Belgian SICAV
<b>2. Tax regime</b>				
<i>Investors' requirements</i>	None (but regulatory requirements apply)	Various shareholders' restrictions apply for tax purposes.	None	None
<i>Profit distribution obligation and other obligations</i>	No obligations.	Profits must be distributed within eight months after the fiscal year-end. Gearing limitations, an activity tests and certain other restrictions apply.	Investments restricted to categories of securities / financial instruments listed in regulatory law. Risk spreading principle must be applied. Open-ended character is obligatory.	In principle, no obligations
<i>Tax treatment at fund level</i>	Not subject to corporate income tax, and not subject to net wealth tax. Annual subscription tax of 0.05% on net asset value of SICAV, reduced to 0.01% for institutional investor funds. Limited capital duty (one time flat tax EUR 1200).	Corporate income tax at a rate of 0%. Capital gains may be added to a tax free reinvestment reserve. No capital duty. The FBI is entitled to a payment in cash made by the Dutch authorities in lieu of a partial credit for foreign dividend withholding tax incurred by the FBI.	Exempt from corporate income tax. No capital duty. No other levy.	Subject to corporate income tax, but de facto zero taxable basis. No capital duty. Annual tax of 0.08 % on the net asset value of the SICAV / BEVEK, reduced to 0.01% for institutional and professional investor funds.

# Comparison: Fund regimes in the Benelux countries (3)

	Luxembourg SICAV	Dutch FBI	Dutch VBI <sup>[1]</sup>	Belgian SICAV
<i>Treaty application</i>	SICAV can make use of 23 bilateral tax treaties. Most important are: Germany, Spain, People's Republic of China, Portugal, Austria, Turkey, Singapore and Korea.	As the FBI is subject to corporate income tax (although at a rate of 0%), in general, the FBI can make use of bilateral tax treaties.	The VBI is exempt of corporate income tax, and, therefore, cannot make use of bilateral tax treaties.	As the SICAV / BEVEK is subject to corporate income tax (although on a reduced taxable basis), in general, the SICAV / BEVEK can make use of bilateral tax treaties.
<i>Withholding tax treatment</i>	No withholding tax	Dividend distributions are subject to 15% withholding tax. Distributions from the reinvestment reserve can be made free from dividend withholding tax.	No withholding tax	Dividend distributions are subject to 15% withholding tax.

# Comparison: Fund regimes in the Benelux countries (4)

	Luxembourg SICAV	Dutch FBI	Dutch VBI <sup>[1]</sup>	Belgian SICAV
<b>3. Other</b>				
<i>Flexibility</i>	No transfer restrictions, lock-up, open/closed ended, redemption and distribution etc.. However, mandatory Luxembourg custodian, auditor and administrative agent.	The conditions of the FBI regime (shareholders' requirements, gearing limitations, activity test, etc.) and legal requirements for corporations must be taken into account.	VBI may not be used as a real estate fund. There is a limit on the permitted scope of assets.	The conditions of the SICAV regime and legal requirements for corporations must be taken into account.
<i>Regulatory / Risk diversification rules</i>	Subject to prior authorisation and on-going supervision by CSSF ( <i>Commission de Surveillance du Secteur Financier</i> ). Appointment of Luxembourg custodian entrusted with the safeguarding of the SICAV's assets. Risk diversification rules apply on a case-by-case basis. If the SICAV qualifies as a UCITS ( <i>Undertakings for Collective Investment in Transferable Securities</i> ), a European passport is available.	Regulatory supervision is not a condition for benefiting from the FBI regime (tax regime). However, depending on the investors' base, the manager or the FBI may be subject to a licence requirement and on-going supervision by the AFM ( <i>Autoriteit Financiële Markten</i> ). In practise, an exemption often applies (e.g, for funds with an institutional investors' base). If the FBI qualifies as a UCITS, a European passport is available.	VBI or its manager must qualify as an investment fund for purposes of Dutch regulatory law and is, consequently, subject to a licence requirement and on-going supervision by the Dutch regulator (AFM), unless an exemption applies. If the VBI qualifies as a UCITS, a European passport is available.	Subject to prior authorisation and on-going supervision by CBFA ( <i>Commission bancaire, financière et des assurances</i> ). Risk diversification rules apply. If the SICAV qualifies as a UCITS ( <i>Undertakings for Collective Investment in Transferable Securities</i> ), a European passport is available.

# Luxembourg Securitisation Vehicle

- Tax and legal framework for securitisation transactions
- Introduced by the law of March 22, 2004
- Limited liability company or partnership
- Several compartments possible (umbrella)
- Private or public; in latter case regulated
  
- Subject to corporate income tax, but: dividends deductible
- Exempt from net wealth tax
- Exempt from dividend withholding tax
- € 1,250 capital duty on set up only
- Risk of SV regime being qualified as forbidden state aid?

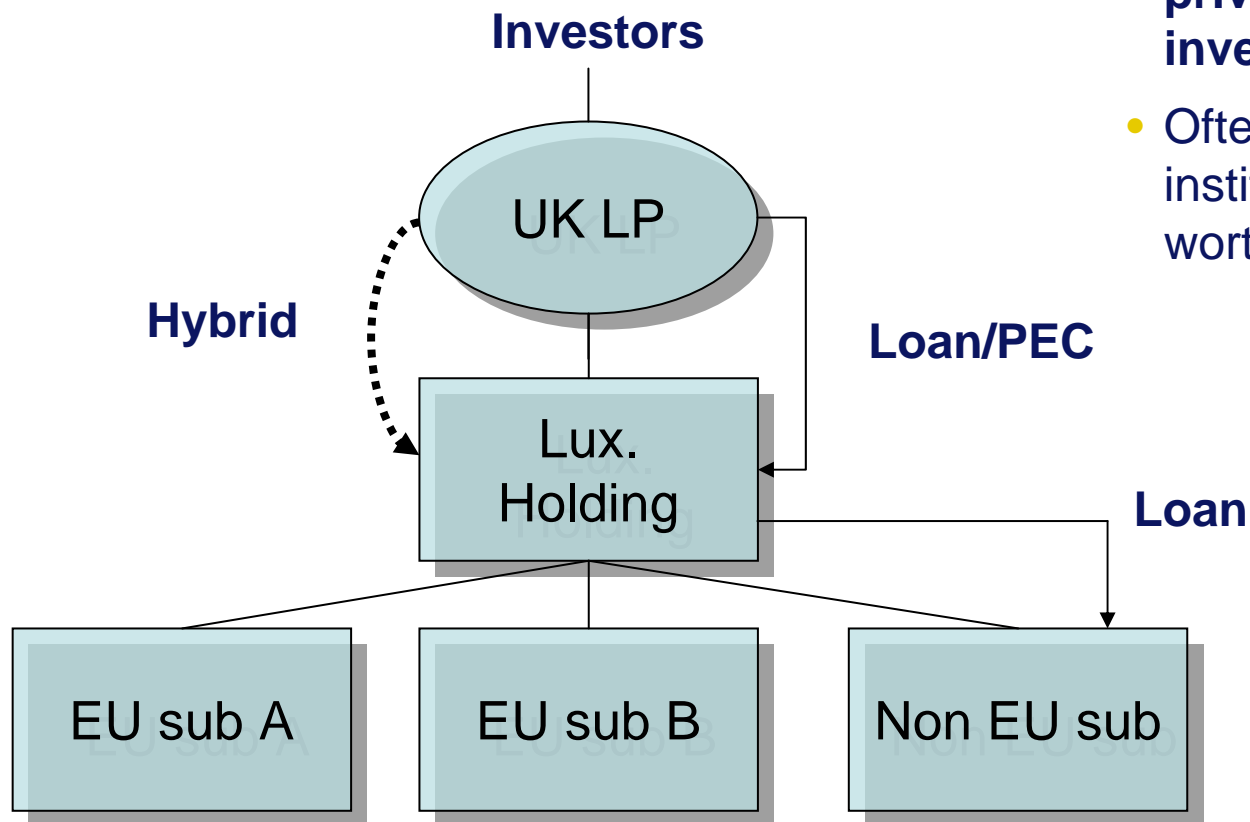
# Luxembourg Soparfi (holding/financing entity)

- SA (public limited liability company), Sarl (private limited liability company), SCA (limited partnership with share capital)
- Subject to corporate income tax (rate 29.63%)
- Subject to annual net wealth tax (rate 0.5%)
- But: participation exemption
- Dividend withholding tax (rate 15%, reduced under tax treaties, EU parent subsidiary directive)
- Capital duty on capital contributions (rate 1%)
- Flexible ruling practice

## Ideal EU holding taxation features:

- Flexible and full participation exemption for dividends/capital gains
- Entitlement to EU Directives and tax treaties
- No source tax on dividends EU Case law Depending on location/avoidable
- No source tax on interest and royalties
- No capital duty or stamp duty With planning avoidable
- No thin capitalisation rules hardly
- No CFC rules not for EU investments
- Ruling practice
- Pass the smell test
- Flexible corporate law
- Infrastructure for substance
- Central location and political stability

# Private equity holding structures (1)



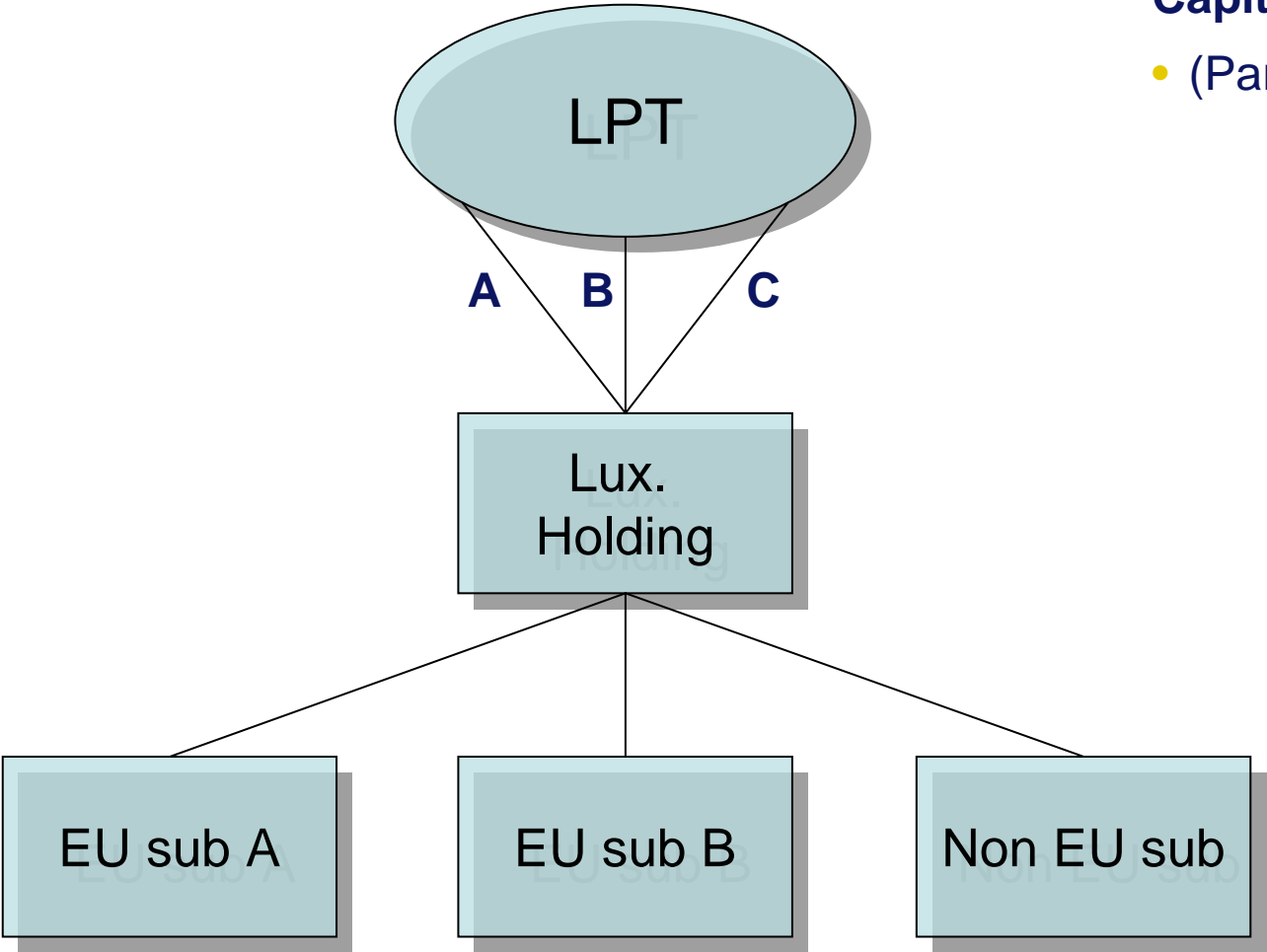
**Common structure for private equity investments**

- Often suitable for both institutionals and high net worth individuals

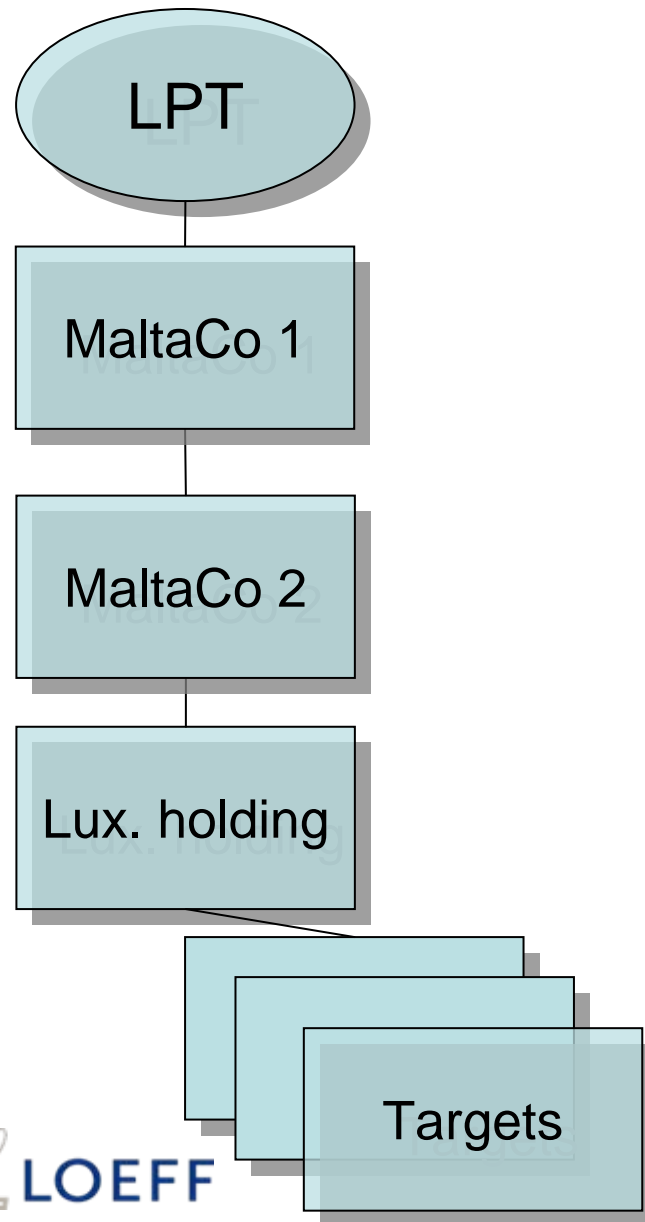
# Private equity holding structures (2)

## Capital gains structure:

- (Partial) liquidation



# Private equity holding structures (3)



## Double Malta structure

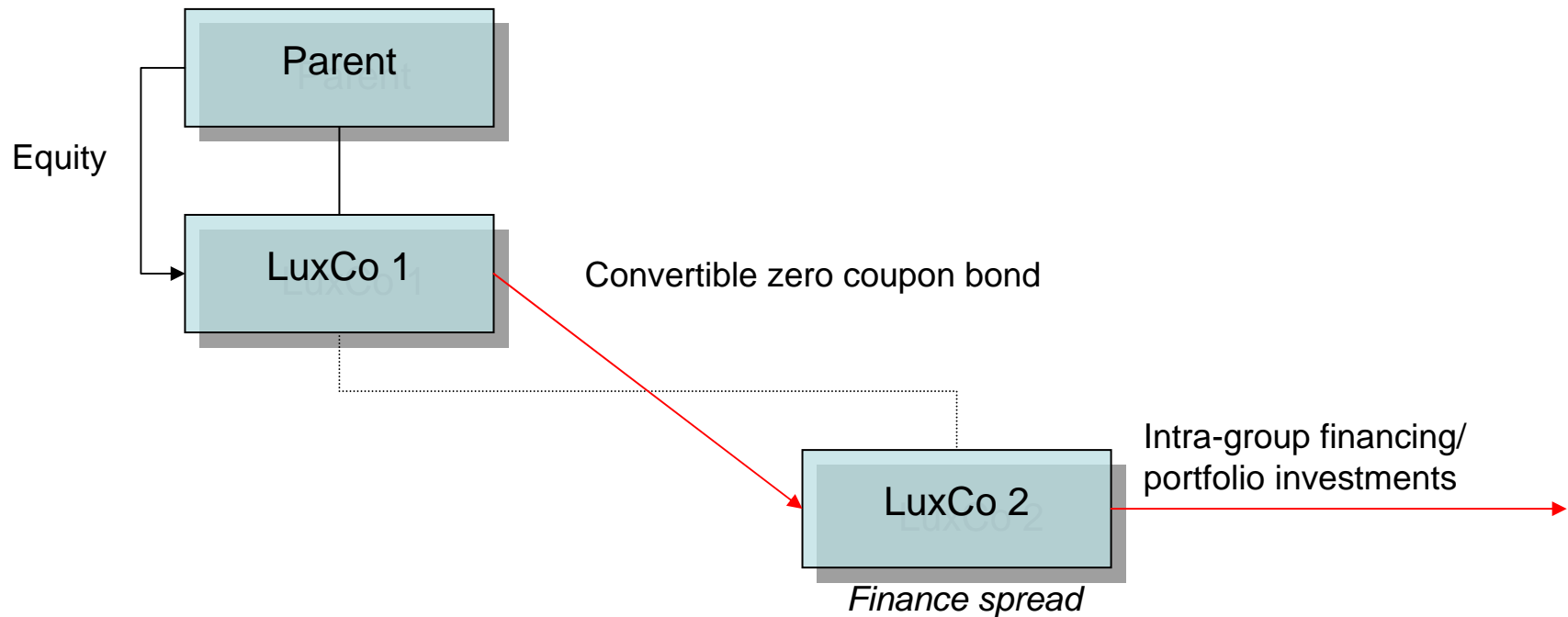
- Lux. interposed, because of substance / smell test
- Malta: no exemption, but refund at shareholder-level
- Double Malta: avoid qualification issues for refund

# Using Luxembourg in tax structuring: toolbox

<b>Corporate income tax</b>	
<b>Base Erosion</b> <ul style="list-style-type: none"><li>Royalty / Financing conduit</li><li>Hybrid</li><li>Repo</li><li>Loss making entity</li><li>Debt in general</li><li><i>More...</i></li></ul>	<b>Piggy Bank</b> <ul style="list-style-type: none"><li>Branch for portfolio investments</li><li>ZORA</li><li>Irish gift</li><li>Belgian SICAV</li><li><i>More...</i></li></ul>
<b>EXIT</b>	
<b>Equity</b> <ul style="list-style-type: none"><li>Liquidation</li><li>Redemption classes of shares</li><li>Permanent establishment</li><li>Interposing new holding</li><li><i>More...</i></li></ul>	<b>Debt Instruments</b> <ul style="list-style-type: none"><li>Hybrid</li><li>Redeemable convertible bond</li><li>Income sharing loan</li><li><i>More...</i></li></ul>

# Luxembourg tax saving structure (1)

- Luxembourg domestic hybrid (“ZORA”)
  - Can be used to convert taxable portfolio/interest income into dividend income, eligible to participation exemption



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