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Singapore

Structuring Investments into Singapore Real Estate

Teo Wee Hwee
Partner, International Tax, Funds & Real Estate

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Agenda

- Tax Considerations in Acquiring Real Estate
- Asset vs Share Deal
- Use of LLP and safe habour rules
- Some Interesting Developments

Tax Considerations in Acquiring Singapore Real Estate

Acquisition Tax issues

- Stamp Duty – affects yield and return
- GST – applicable to commercial assets but not applicable to residential
- GST is usually a more of cash flow problem but if the amount is substantial, sometimes financing is required
- In the case of a share deal, is the structure you have acquired tax efficient? This will affect tax efficiency during holding and exit.

Holding Period

- Is bank loan interest deductible? Any interest restriction issue? Any interest refinancing issue? Would be disastrous if interest is fully not deductible.

- Is interest deduction on shareholder's loans optimised? Interest deductible against rental income reduces tax and improves after-tax return

- Can we claim capital allowances on qualifying plant and machinery?

- Is treaty benefit available or useful? Mauritius?

- What else can be done to reduce net rental income?

Exit

- Is exit gain sourced in Singapore?
- Is exit gain capital or revenue in nature?
- Do I have documentation to support long term investment intention?
- If it is clearly trading investment (e.g. buy and sell of residential properties), can tax liability be reduced or managed to an acceptable level?
- Is treaty benefit available or relevant?
- Indirect costs e.g. stamp duty on disposal?

Asset vs Share Deal

Advantages of Asset Deal

- If previous owner has held the property for trading purpose, an asset deal will eliminate the associated exposure which otherwise can be hard to manage through a share deal
- An asset deal allows stepping up of capital allowance claims – previous owner may have already exhausted CA claims but new owner can claim CA based on market value – purchase price allocation required
- An asset deal allows one to set up a new capital structure (debt-equity mix) to optimise interest deduction. This can be particularly important if the intention of holding the property is very long term

Disadvantages of Asset Deal

- High Stamp Duty Costs at 3% - only a listed REIT enjoys exemption
- 7% GST applies – Exemption under Transfer of Business as a Going Concern may apply, otherwise cash flow issues
- If the intention is to sell the asset within say 2 to 3 years of holding, that may be too short to argue capital gain
- Cannot continue to claim Industrial building allowances as before

Advantages of Share Deal

- Significant savings on stamp duty – 0.2% vs 3% and no GST
- The saving is even more substantial in the case of residential properties – 15% ABSD
- If the previous owner has been holding the property for a long term investment purpose, the new shareholder can leverage on the holding period
- In a situation where you are buying at a price tag below what the previous owner has paid for, you can leverage on the higher cost base to minimise the tax on subsequent sale. However, you need to be careful that the previous owner has not claimed a deduction on the impairment losses which would other create tax losses that will be forfeited as a result of substantial change in shareholders. Waiver can be obtained but chances of success not certain.

Advantages of Share Deal

- If target company has been claiming industrial building allowances which have been phased out already, it can continue to claim – impact is about 2.5% per annum on qualifying cost

Disadvantages of Share Deal

- Capital structure may not allow optimisation of interest deduction. Restructuring is possible but effectiveness on a case by case basis and ruling is required from IRAS.

- Interest deduction is typically limited only to those applicable to the amount of internal and external loans taken up by target company. Need to compute tax leakage vs savings on stamp duty

- If previous owner has been holding the property for trading purposes, new shareholder will inherit the tax on trading gain – sometime known as pregnant tax

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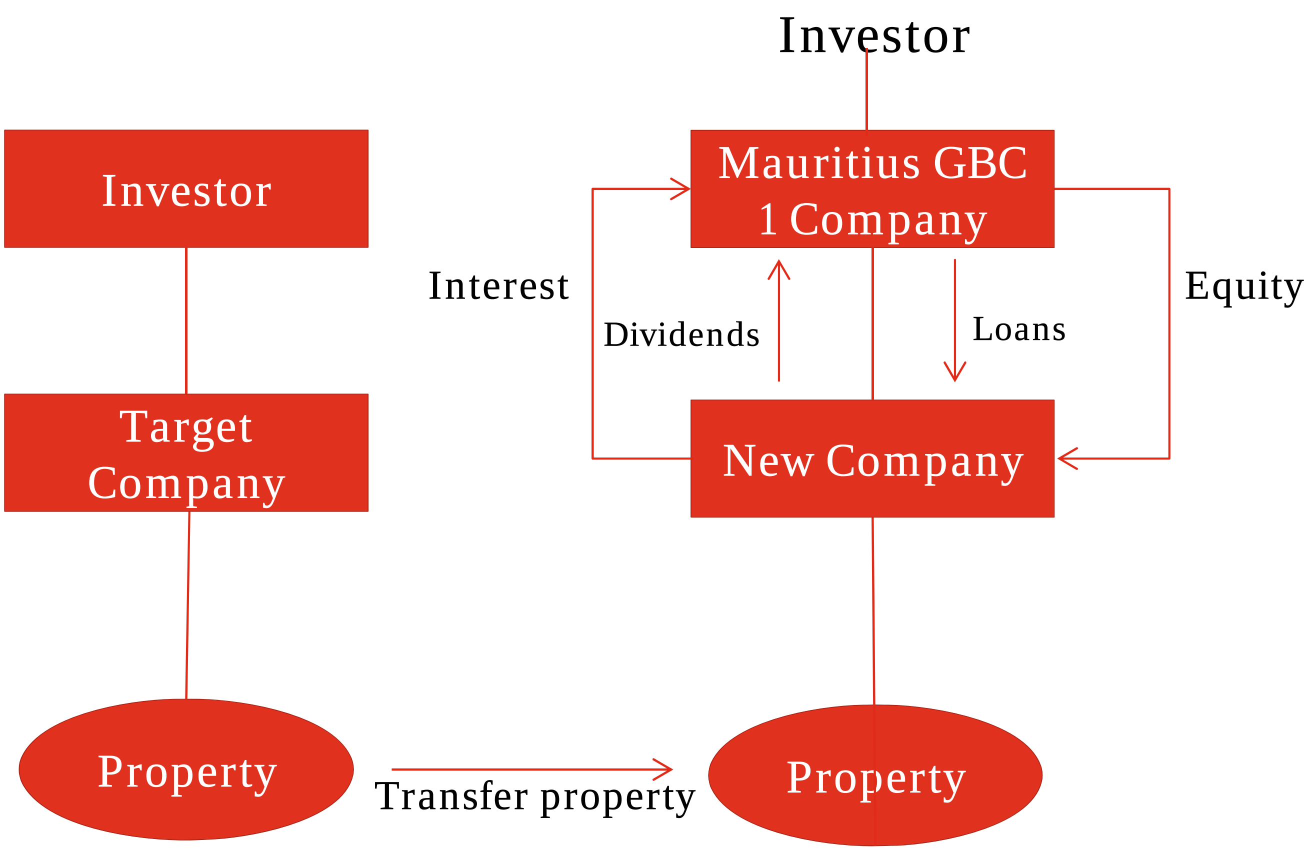
Restructuring under a Share Deal

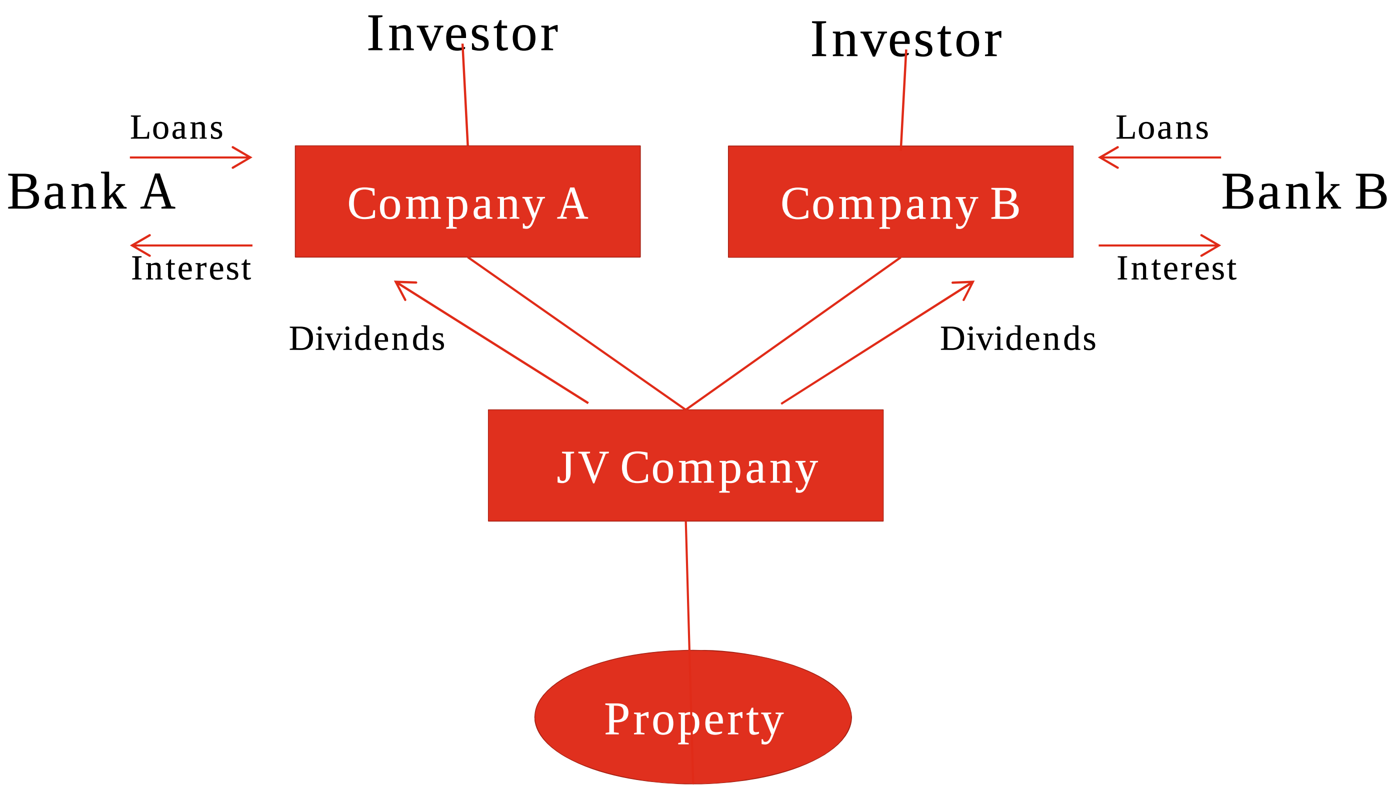


Issue: -

- Stamp duty but relief possible?
- Commercial justifications?
- Gain arising from transfer of property taxable or capital gain?
- GST?
- Ruling from IRAS required?

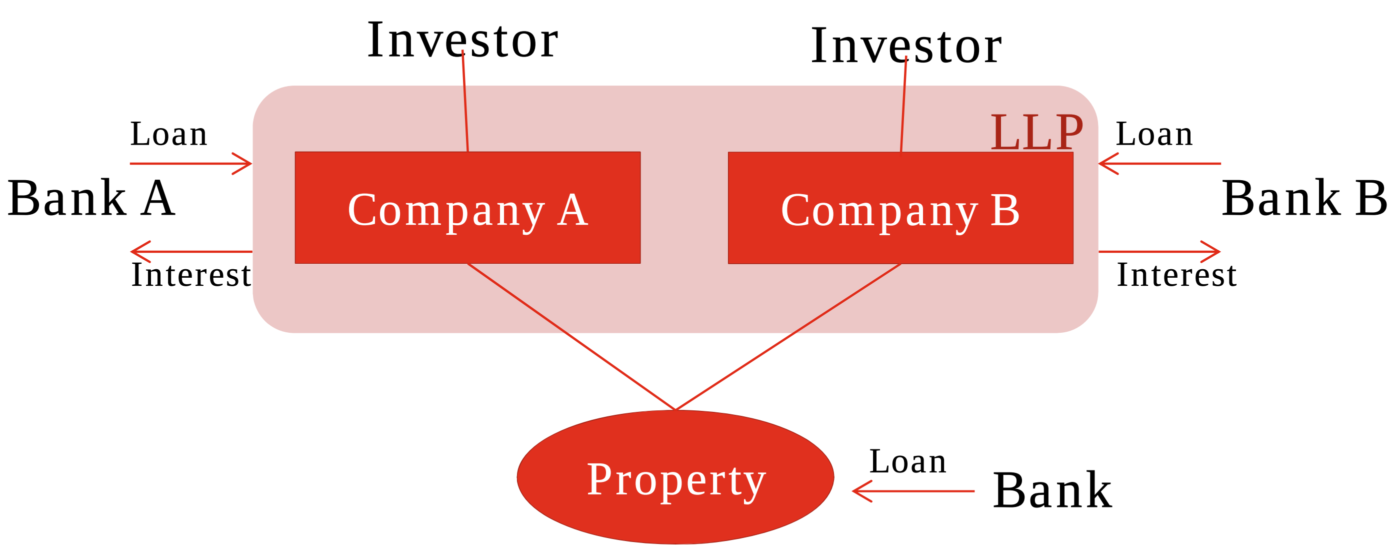
Use of LLP to own Singapore Property Assets

JV Entity as a Corporate Structure



Loan interest not deductible as dividend income is tax exempt.

JV entity as an LLP



Company A and B will be regarded as earning rental income and deduct interest expenses against rental income.

Some Interesting Developments

Safe Harbour rule

- Safe Harbour rule on capital gains wef 1 June 2012
- Gain on sale of shares not taxable if divesting company had held at least 20% of the ordinary shares in an investee company for a continuous period of 24 months.
- Excludes shares in an unlisted investee company that is in the business of trading or holding Singapore immovable property (other than the business of property development).
- What about shares in an intermediary holding company which owns shares in such a company? Should be covered by safe habour rules but perhaps need to watch out for tax avoidance consideration.

New treaty

- Singapore and Luxembourg signed a revised DTA on 9 October 2013.
- Not ratified yet.
- Amongst other changes, the revised DTA lowers the withholding tax rates on interest to 0% (old treaty 10%). Alternative against Mauritius? Set up and maintenance costs? Better substance?
- What about other new DTA signed with Isle of Man, Jersey, etc?

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Singapore

Using Singapore for Outbound Real Estate Investments

Tan Hui Cheng
Partner, Tax - Financial Services, Funds & Real Estate

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Agenda

1. Singapore Investment Structures

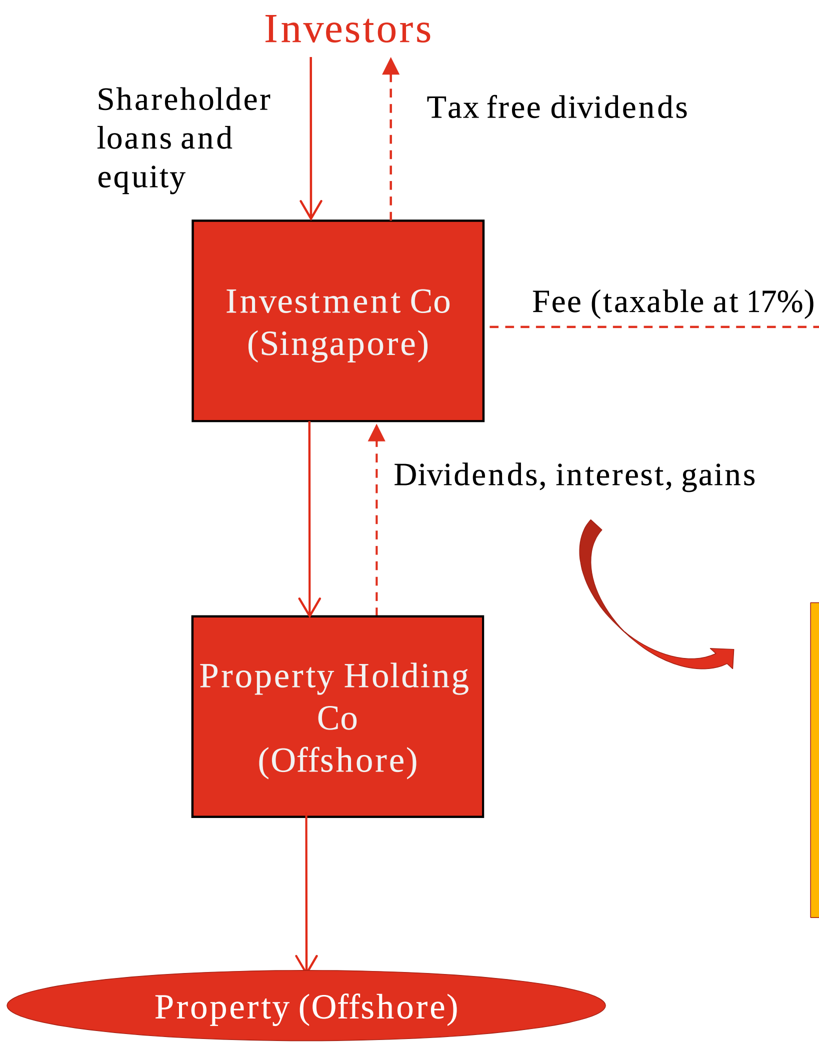
2. Domestic Tax Incentives Schemes for Singapore Funds

3. 2013 Updates

4. Proposed Investment Fund Law Framework

Singapore Investment Structures

Singapore Investment Structures



Generally taxable at 17%, unless specifically exempt, subject to certain conditions

Foreign tax credit may be available with respect to foreign-sourced income for which withholding tax has been paid.

Foreign Tax Credit

- Amount of foreign tax credits (FTC) to be granted is the lower of the foreign tax paid and Singapore tax payable on the income

- FTC computed on a "source-by-source and country-by-country" basis.

- Any excess of foreign tax paid over the Singapore tax payable is disregarded, due to the following:

  - excess of foreign tax paid over the Singapore tax payable on one type / source of foreign income not available for offset against the other.

→ Results in a loss of tax benefits

FTC Pooling

- Enhanced in 2011 to allow taxpayers to pool FTC on foreign income received ("FTC pooling method"), subject to certain conditions.

- Further facilitates the remittance of foreign income into Singapore.

Conditions for FTC Pooling

- foreign income tax must have been paid on the foreign income;
- headline tax rate of the foreign jurisdiction from which the foreign income is remitted is <u>at least 15%</u>;
- there is Singapore tax payable on the foreign income; and
- the taxpayer is entitled to claim an FTC under the Income Tax Act.

FTC Method vs FTC Pooling

Example:

- Gross US interest and dividend income of $300K, and 200K respectively for which withholding tax of 30% is paid.
- Gross Chinese interest income of 100K for which withholding tax of 10% was paid (under SG-China DTA).

FTC pooling method	
	$
Interest (from US)	300,000
Interest (from China)	100,000
Dividend (from US)	200,000
	600,000
Tax @ 17%	102,000
Less FTC	(102,000)*
Tax payable	**0**

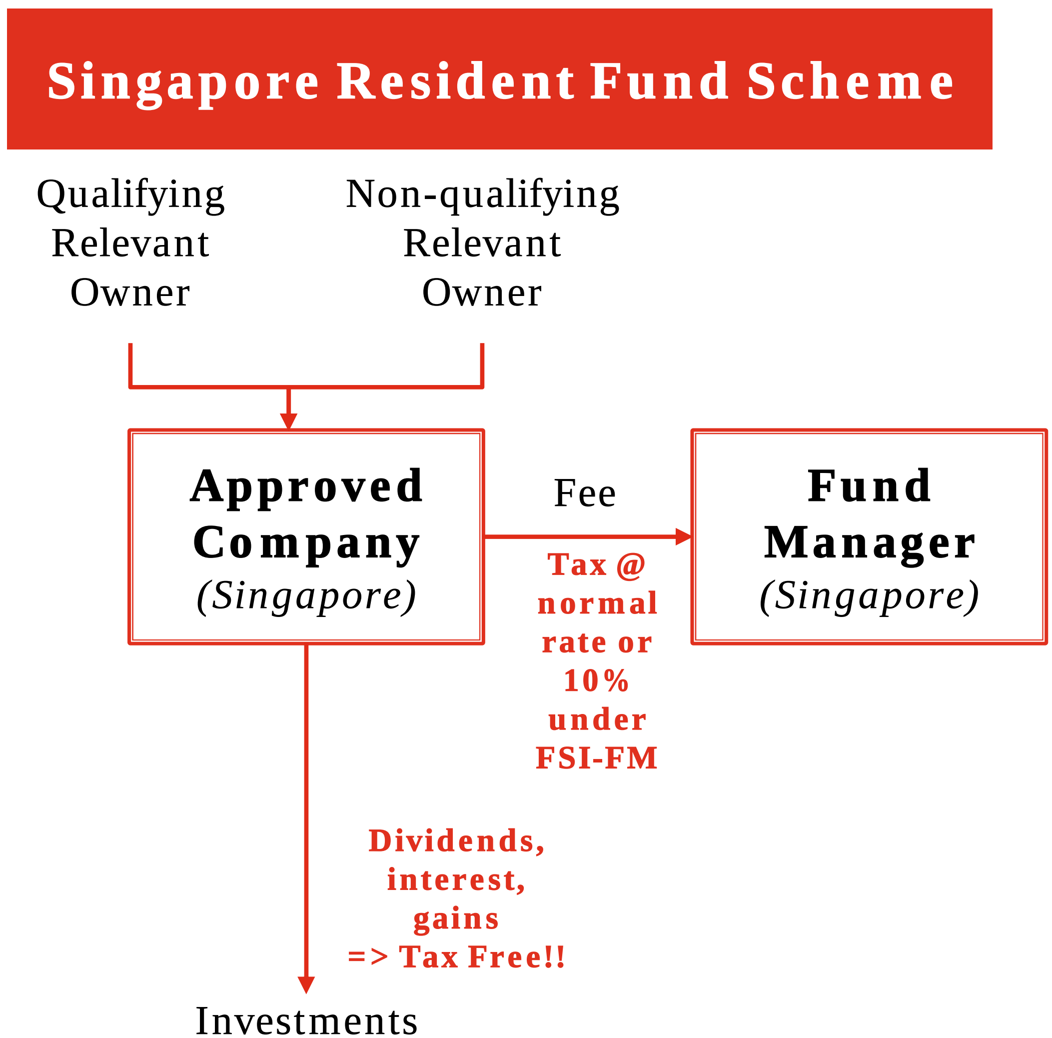
*FTC for Interest and Dividend (from US and India): Lower of (300K x 0.3 + 100K x 0.1 + 200K x 0.3 = 160K) or 102K	102,000

FTC method	
	$
Interest (from US)	300,000
Interest (from China)	100,000
Dividend (from US)	200,000
	600,000
Tax @ 17%	102,000
Less FTC	(95,000)*
Tax payable	**7,000**

*FTC for Interest (from US): Lower of (300K x 0.3 = 90K) or (300K/600K x 102K = 51K)	51,000
*FTC for Interest (from China): Lower of (100K x 0.10 = 10K) or (100K/600K x 102K = 17K)	10,000
*FTC for Dividend (from US): Lower of (200K x 0.3 = 60K) or (200K/600K x 102K = 34K)	34,000

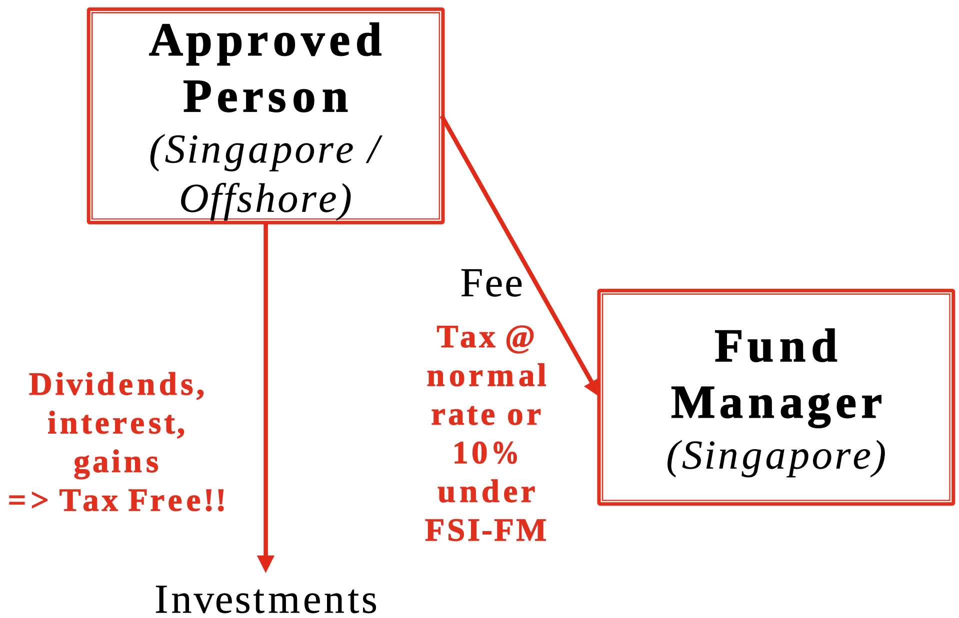
Domestic Tax Incentive Schemes for Singapore Funds

Singapore Resident Fund (SRF) Scheme

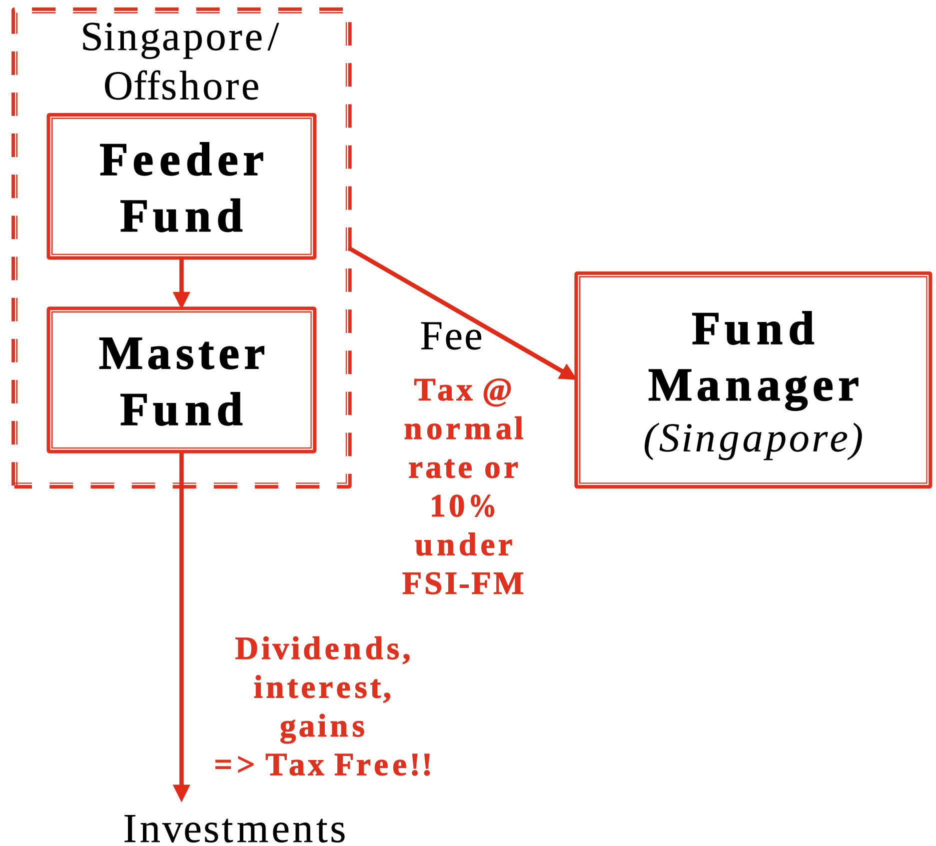


Enhanced-Tier Fund (ETF) Tax Incentive Scheme

Standalone Fund



Master-Feeder structure



Key Conditions

SRF Scheme	ETF Scheme
Legal form - Singapore company	Legal form - Company, LP or Trust
Shareholders test	**S$50 million fund size**
Managed or advised by qualifying fund manager	Managed or advised by qualifying fund manager **with 3 investment professionals**
Singapore-based fund administrator	Singapore-based fund administrator
At least S$200,000 business spending	At least S$200,000 **local** business spending
No change in investment objective / strategy after approval	No change in investment objective / strategy after approval

2013 Updates

1 Financial-Sector Incentive for Fund Management

- Extension of scheme to 31 December 2018
- Introduction of new criteria

2 Legislated changes

- Enhancements to designated investments and specified income lists
- Exemption of withholding tax on interest and related payments made by qualifying persons to non-residents
- Other changes gazetted recently on 16 October 2013

2013 Updates – FSI-FM

- Changes to 10% tax rate entitlement under Financial Sector Incentive for Fund Management (FSI-FM)
- Minimum fund size requirement introduced – in excess of S$250 million

2013 Updates – FSI-FM

- Going forward, considering interaction with requirements under regulatory regime:

Registered Fund Managers

- No tax incentive
- Taxed at 17%

Licensed Fund Managers

- FSI-FM incentive
- Taxed at 10%
- Other criteria apply (e.g. headcount, business spending, etc.)

Exempt Fund Managers

- FSI-FM incentive may be applicable depending on AUM size
- Taxed at 10%
- Other criteria apply (e.g. headcount, business spending, etc.)

2013 Updates – Legislated Changes

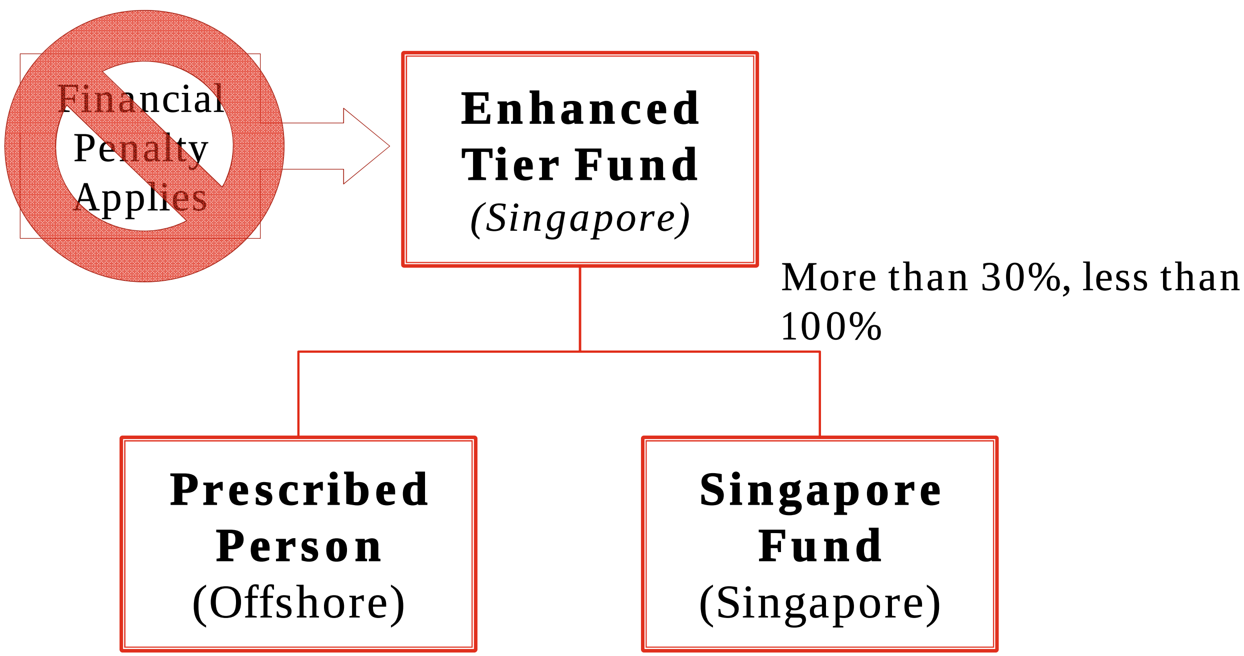
Withholding tax exemption on interest and related payments to non-residents by qualifying persons

MAS Circular Guidelines	Legislated in Regulations
- Exclude interest payments made with the intention of avoiding any tax in Singapore	- Exclude interest payments made with the intention of avoiding any tax in Singapore
- Exclude interest payments that relate to capital structure of the fund (classified as equity under accounting principles)	- Interest payments covered by exemption as long as incurred on loans that are taken, incurred or procured for the purpose facilitating an investment activity. - Exclude interest payments on loans taken for the purpose of making dividend payments, distributions to beneficiaries / unitholders, payments for share buyback or share capital reduction

2013 Updates – Legislated Changes

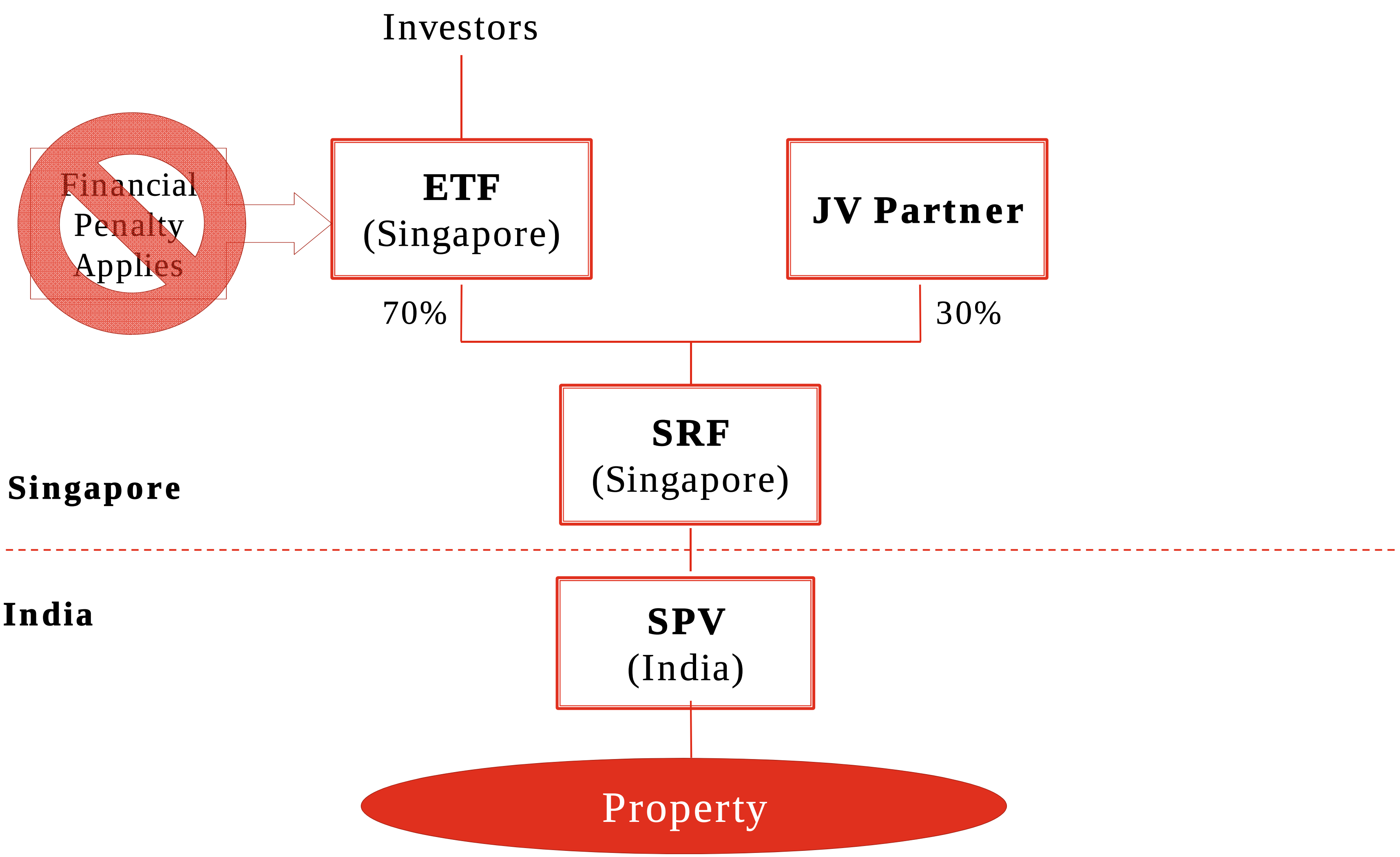
Recent October 2013 Changes

- Removal of financial penalty for Enhanced Tier Fund holding less than 100% of Offshore Fund or Singapore Fund



2013 Updates – Legislated Changes

Application to real estate funds



2013 Updates – Legislated Changes

Recent October 2013 Changes

- Change in investment strategy previously not allowed – resulted in tax exemptions not applying.

- With effect from 8 October 2012, Enhanced Tier Fund and Singapore Resident Fund can continue to enjoy tax exemption even if there is a change in investment strategy as long as certain conditions are met.

- Deadline: 1 April 2014.

Proposed Investment Fund Law Framework

Proposed Investment Fund Law Framework

Issues

- Issues with payment of dividends and redemption of share capital? Governed by Company Law.
- Consolidation issues.
- Privacy issues due to public filing of accounts and records.

How about introducing a new investment fund law framework?

PwC White Paper to MAS

- Allow variable capital with ease of entry and exit.
- Multiple share classes for differing fee structures, strategies etc.
- Minimal restrictions on distributions.
- Umbrella fund with sub-fund structure / cell structure.
- No public access to financial statements of funds and investor information (except listed funds).

Q&A

How can PwC help you

PwC is a global market leader for tax services. Our tax practice is among the largest in Singapore. With more than 250 tax professionals and partners, we help individuals and businesses with tax strategy, planning and compliance, while also delivering a wide range of business advisory services. From fund management, treasury, transfer pricing to international tax planning, our specialist team of investment management and real estate tax experts can help provide you with the ideal tax solution to fit your particular business strategy.