

Spain

International Tax Structuring Opportunities For Outbound Indian Investment

October 2014

MONTERO | ARAMBURU
ABOGADOS 

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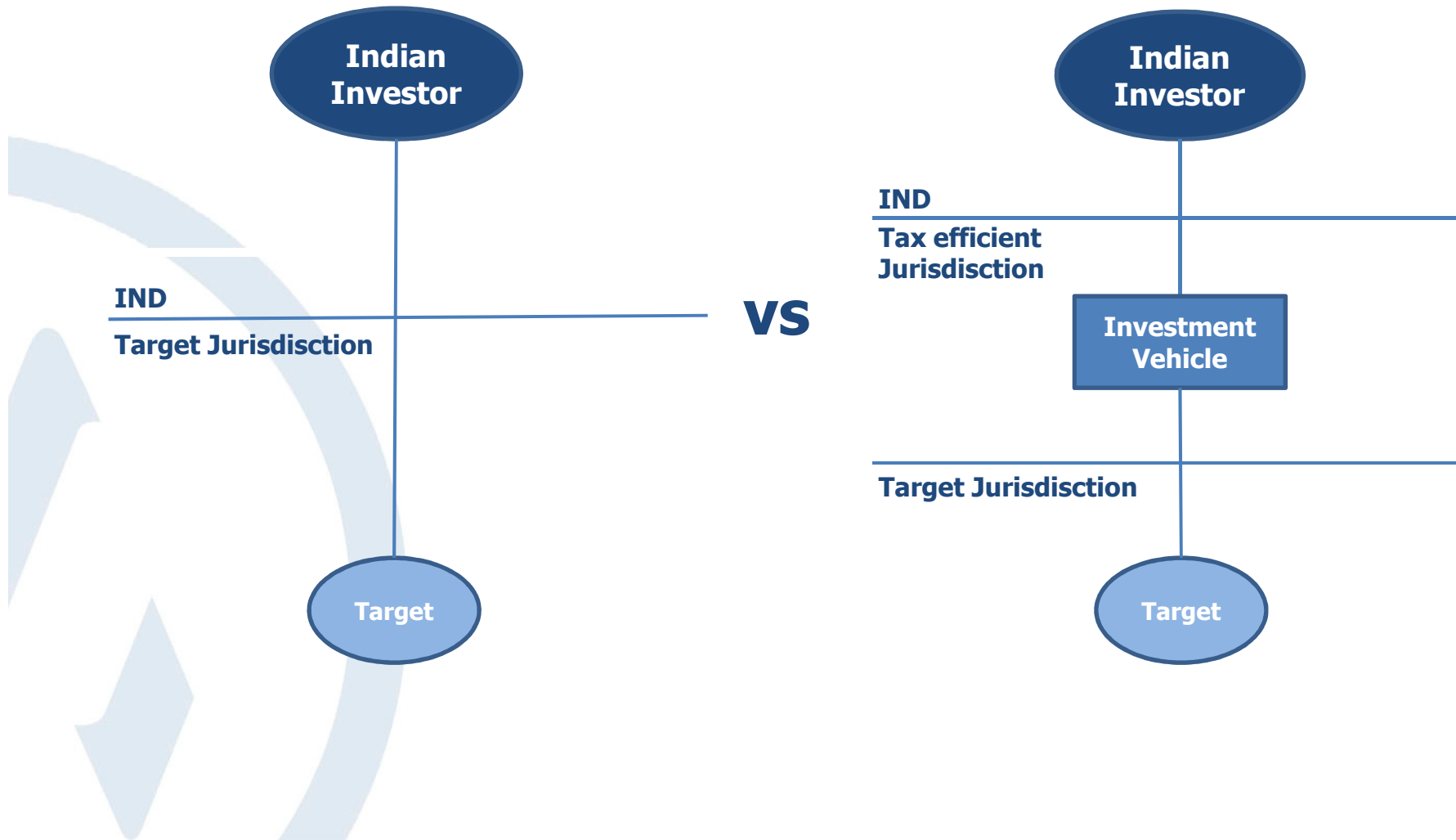
Agenda

1. In General: The Convenience of a Tax Efficient Jurisdiction
2. Spanish Tax Efficient Devices for International Structuring



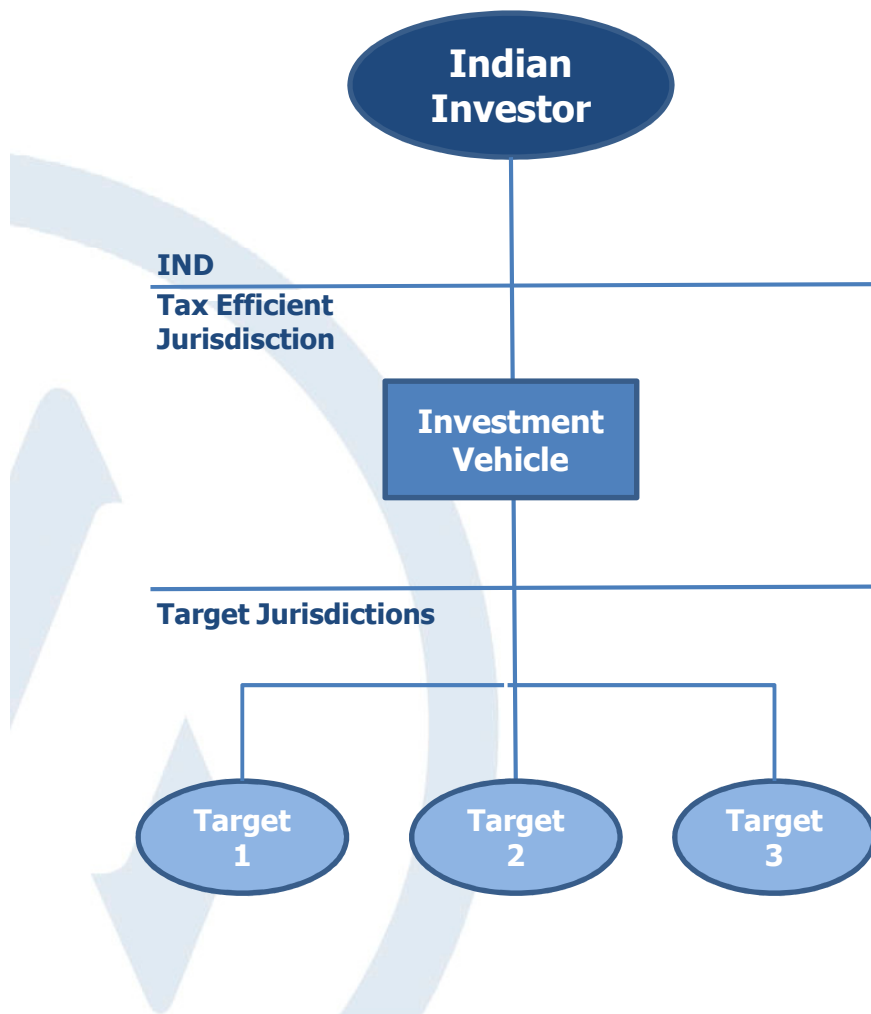


In General: The Convenience of a Tax Efficient Jurisdiction





In General: The Convenience of a Tax Efficient Jurisdiction



1. Reducing tax at source
2. Enabling tax efficient repatriation / redeployment
3. Enabling tax efficient exit / divestment



Spanish Tax Efficient Devices

Treaty network comparison

(Spain DOES / India does NOT have a DTC)

Europe

Bosnia-Herz.

Macedonia (FYR)^(*)

Croatia^(*)

Andorra

Africa

Algeria

Nigeria

Tunisia

Senegal

Cape Verde

^(*): India started negotiations / waiting for ratification

Italics: Spain started negotiations / waiting for ratification



Spanish Tax Efficient Devices

Treaty network comparison

(Spain DOES / India does NOT have a DTC)

America

Argentina	Costa Rica	El Salvador	<i>Paraguay</i>
Barbados	Cuba	Jamaica	<i>Peru</i>
Bolivia	Dominican Rep.	Panama	<i>Puerto Rico</i>
Chile	Ecuador	Venezuela	

Asia

Hong Kong	Pakistan
Iran	<i>Bahrain</i>

(*): India started negotiations / waiting for ratification
Italics: Spain started negotiations / waiting for ratification



Spanish Tax Efficient Devices

Treaty network comparison → India vs Spain: general remarks

Spanish treaty network usually provides for:

- Lower WhT on interest & royalties
- Lower WhT on dividends for qualifying participations
- More restrictive source-based taxation on Capital Gains
- More restrictive source-based taxation on Business Income

Spanish Tax Efficient Devices

Treaty network comparison with other intermediate jurisdictions

(Spain DOES / Luxembourg does NOT have a DTC)

Europe	Africa	America		Asia
Albania	Algeria	Argentina	Ecuador	Turkmenistan
Bosnia-Herz.	Egypt	Australia	El Salvador	Venezuela
Croatia	Iran	Bolivia	Jamaica	<i>Paraguay</i>
Serbia	<i>Cape Verde</i>	Chile	Kuwait	<i>Peru</i>
<i>Belarus</i>	<i>Namibia</i>	Colombia	Kyrgyzstan	<i>Puerto Rico</i>
<i>Montenegro</i>	<i>Nigeria</i>	Costa Rica	New Zealand	Philippines(*)
	<i>Senegal</i>	Cuba	Pakistan	Uruguay(*)
		Dominican Rep.		

(*): Luxembourg started negotiations / waiting for ratification
Italics: Spain started negotiations / waiting for ratification



Spanish Tax Efficient Devices

Treaty network comparison with other intermediate jurisdictions

(Spain DOES / The Netherlands does NOT have a DTC)

Europe	Africa	America		Asia
Cyprus	<i>Cape Verde</i>	Bolivia	<i>Paraguay</i>	Iran
<i>Andorra</i>	<i>Namibia</i>	Cuba	<i>Peru</i>	Turkmenistan
	<i>Senegal</i>	Dominican Rep.	<i>Puerto Rico</i>	
	Algeria(*)	Ecuador	Chile(*)	
		El Salvador	Colombia(*)	
		Jamaica	Costa Rica(*)	
		Trinidad & Tobago	Uruguay(*)	

(*): The Netherlands started negotiations / waiting for ratification

Italics: Spain started negotiations / waiting for ratification



Spanish Tax Efficient Devices

Treaty network comparison with other intermediate jurisdictions

(Spain DOES / United Kingdom does NOT have a DTC)

Europe	Africa	America		Asia
	<i>Cape Verde</i>	Brazil	Cuba	Iran
	<i>Senegal</i>	Colombia	Uruguay	Kyrgyzstan
	Algeria ^(*)	Costa Rica	<i>Paraguay</i>	United Arab Emirates
		Dominican Rep.	<i>Peru</i>	
		Ecuador	<i>Puerto Rico</i>	
		El Salvador		

^(*): United Kingdom started negotiations / waiting for ratification
Italics: Spain started negotiations / waiting for ratification

Spanish Tax Efficient Devices

Treaty network comparison with other intermediate jurisdictions

(Spain DOES / Switzerland does NOT have a DTC)

Europe	Africa	America		Asia
Andorra	<i>Cape Verde</i>	Bolivia	Panama	<i>Bahrain</i>
Bosnia-Herz.(*)	<i>Namibia</i>	Brazil	<i>Paraguay</i>	Saudi Arabia(*)
Cyprus(*)	<i>Nigeria</i>	Cuba	<i>Puerto Rico</i>	
	<i>Senegal</i>	Dominican Rep.	Argentina(*)	
		El Salvador	Costa Rica(*)	

(*): Switzerland started negotiations / waiting for ratification
Italics: Spain started negotiations / waiting for ratification

Spanish Tax Efficient Devices

Treaty network comparison with other intermediate jurisdictions

(Spain DOES / Singapore does NOT have a DTC)

Europe

Bosnia-Herz.	Iceland	Serbia
Croacia	Macedonia (FYR)	<i>Andorra</i>
Greece	Moldova	<i>Montenegro</i>

Africa

Algeria	<i>Namibia</i>	Morocco ^(*)
Tunisia	<i>Nigeria</i>	
<i>Cape Verde</i>	<i>Senegal</i>	

^(*): Singapore started negotiations / waiting for ratification
Italics: Spain started negotiations / waiting for ratification

Spanish Tax Efficient Devices

Treaty network comparison with other intermediate jurisdictions

(Spain DOES / Singapore does NOT have a DTC)

America

Argentina	Costa Rica	United States	Ecuador ^(*)
Bolivia	Dominican Rep.	Venezuela	Uruguay ^(*)
Brazil	El Salvador	<i>Puerto Rico</i>	
Chile	Jamaica	<i>Paraguay</i>	
Colombia	Trinidad & Tobago	Barbados ^(*)	

Asia

Armenia	Kyrgyzstan	Turkmenistan
Hong Kong	Pakistan	<i>Azerbaijan</i>
Iran	Tajikistan	

^(*): Singapore started negotiations / waiting for ratification
Italics: Spain started negotiations / waiting for ratification

Spanish Tax Efficient Devices

Treaty network comparison with other intermediate jurisdictions

(Spain DOES / Mauritius does NOT have a DTC)

Europe

Albania	Finland	Lithuania	Poland	<i>Montenegro</i>
Austria	Hungary	Macedonia (FYR)	Romania	Czech Republic(*)
Belarus	Iceland	Malta	Serbia	Greece(*)
Bosnia-Herz.	Ireland	Moldova	Ukraine	Portugal(*)
Bulgaria	Israel	Netherlands	<i>Andorra</i>	
Estonia	Latvia	Norway	<i>Belarus</i>	

Africa

	Algeria	<i>Cape Verde</i>
	Morocco	Egypt(*)

(*): Mauritius started negotiations / waiting for ratification
Italics: Spain started negotiations / waiting for ratification

Spanish Tax Efficient Devices

Treaty network comparison with other intermediate jurisdictions

(Spain DOES / Mauritius does NOT have a DTC)

America

Argentina	Ecuador	Bolivia	Dominican Rep.	Uruguay	<i>Puerto Rico</i>
Brazil	Jamaica	Canada	El Salvador	Venezuela	
Chile	Panama	Colombia	Mexico	<i>Paraguay</i>	
Costa Rica	United States	Cuba	Trinidad & Tobago	<i>Peru</i>	

Asia

Armenia	Indonesia	Kyrgyzstan	Tajikistan	<i>Bahrain</i>
Australia	Japan	New Zealand	Turkey	<i>Uzbekistan</i>
Georgia	Kazakhstan	Philippines	Turkmenistan	Iran(*)
Hong Kong	Korea (Rep)	Russia	<i>Azerbaijan</i>	Vietnam(*)

(*): Mauritius started negotiations / waiting for ratification
Italics: Spain started negotiations / waiting for ratification

Spanish Tax Efficient Devices

Treaty network comparison with other intermediate jurisdictions

(Spain DOES / United Arab Emirates does NOT have a DTC)

Europe

Croatia	Norway	United Kingdom	Hungary(*)
Iceland	Russia	<i>Andorra</i>	Lithuania(*)
Israel	Serbia	<i>Montenegro</i>	Slovenia(*)
Macedonia	Slovak Republic	Albania(*)	
Moldova	Sweden	Bosnia-Herz. (*)	

Africa

	Nigeria	<i>Namibia</i>
	South Africa	<i>Senegal</i>
	<i>Cape Verde</i>	

(*): United Arab Emirates started negotiations / waiting for ratification

Italics: Spain started negotiations / waiting for ratification

Spanish Tax Efficient Devices

Treaty network comparison with other intermediate jurisdictions

(Spain DOES / United Arab Emirates does NOT have a DTC)

America

Argentina	Chile	Dominican Rep.	United States	<i>Puerto Rico</i>
Barbados	Colombia	El Salvador	Uruguay	Mexico(*)
Bolivia	Costa Rica	Jamaica	<i>Paraguay</i>	
Brazil	Cuba	Trinidad & Tobago	<i>Peru</i>	

Asia

Australia	Kyrgyzstan	<i>Bahrain</i>	Hong Kong(*)	Vietnam(*)
Iran	Saudi Arabia	<i>Oman</i>	Japan(*)	
Kuwait	Tajikistan	<i>Qatar</i>	Uzbekistan(*)	

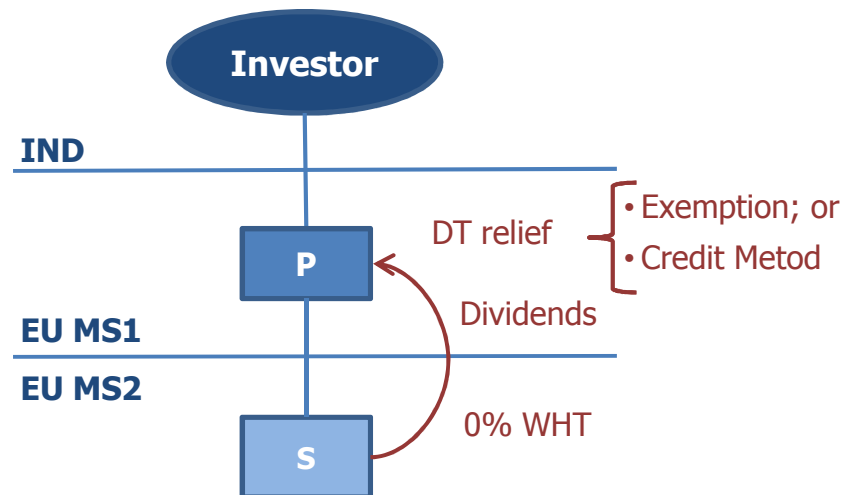
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Spanish Tax Efficient Devices

Spain as EU Member State: Parent-Subsidiary Directive



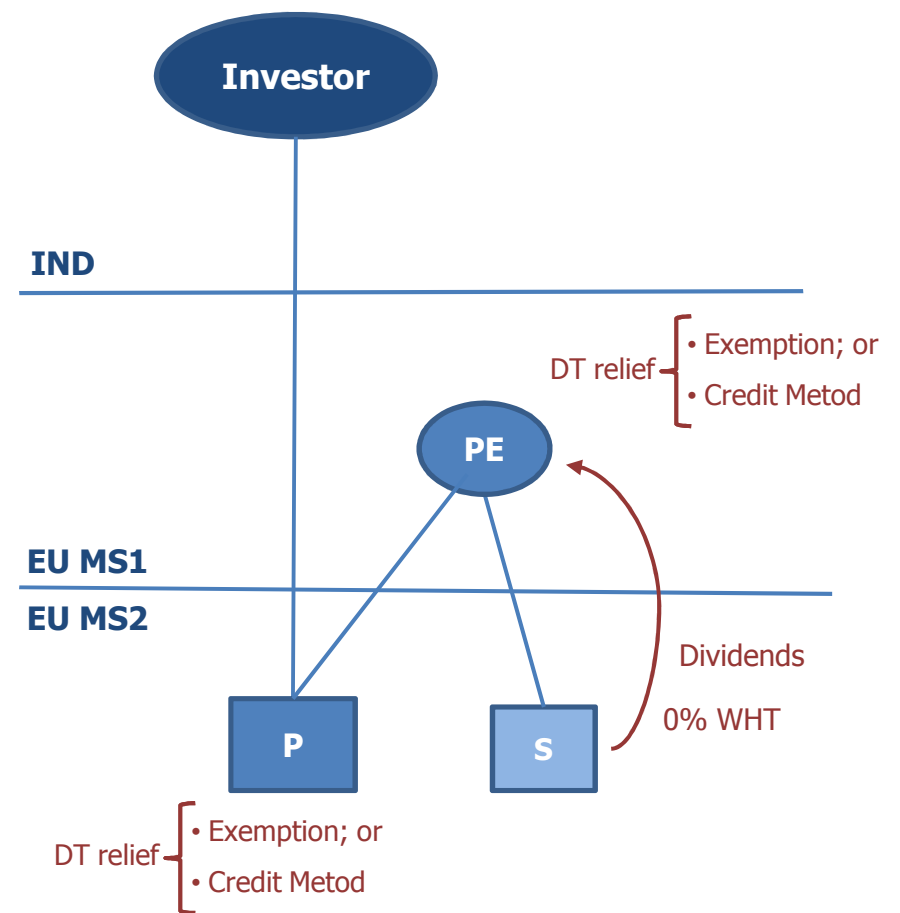
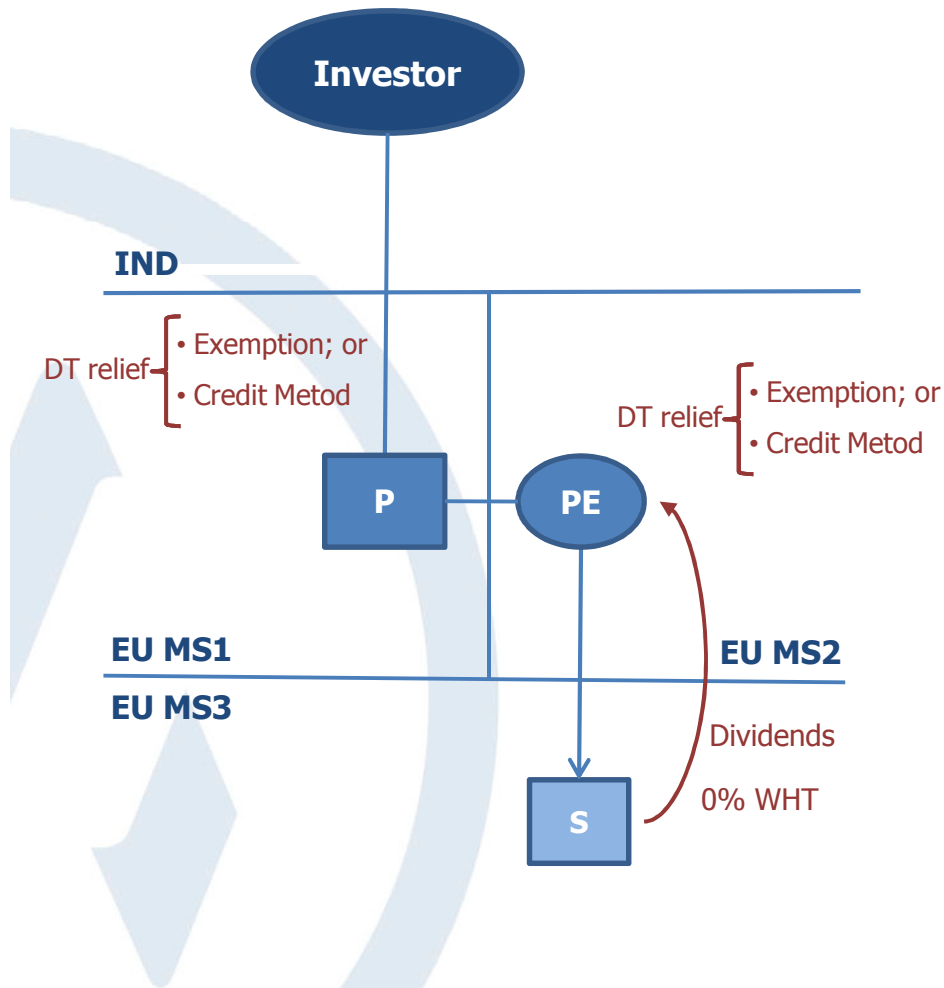
Requirements → Companies involved must:

- ❖ Be EU companies and take one of the legal forms listed in Annex → almost all-encompassing list;
- ❖ Be tax resident in EU Member States (even under tie-breaker rule of DTC with non-EU countries); and
- ❖ Be subject to CIT in their respective countries (without an option of being exempt) → also applies to PEs

- P-S relationship {
- At least 10% holding in the capital (or 10% voting rights - bilateral agreement needed -) of S
 - Minimum holding period of at least 2 years

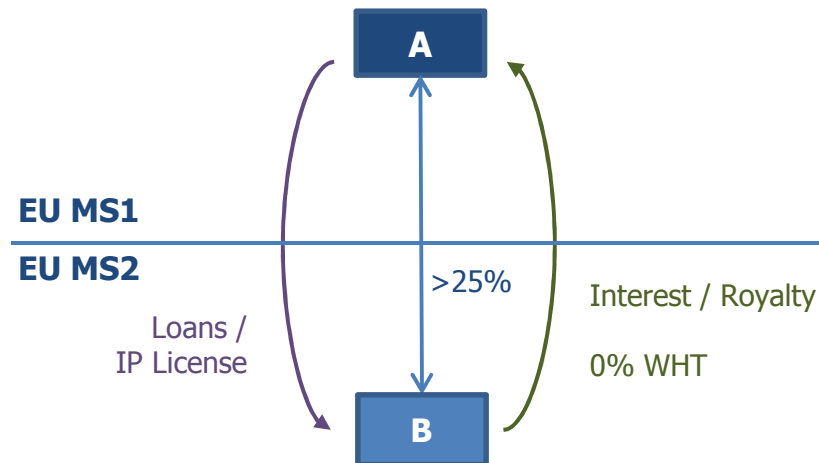
Spanish Tax Efficient Devices

Spain as EU Member State: Parent-Subsidiary Directive (cont'd)



Spanish Tax Efficient Devices

Spain as EU Member State: Interest & Royalties Directive

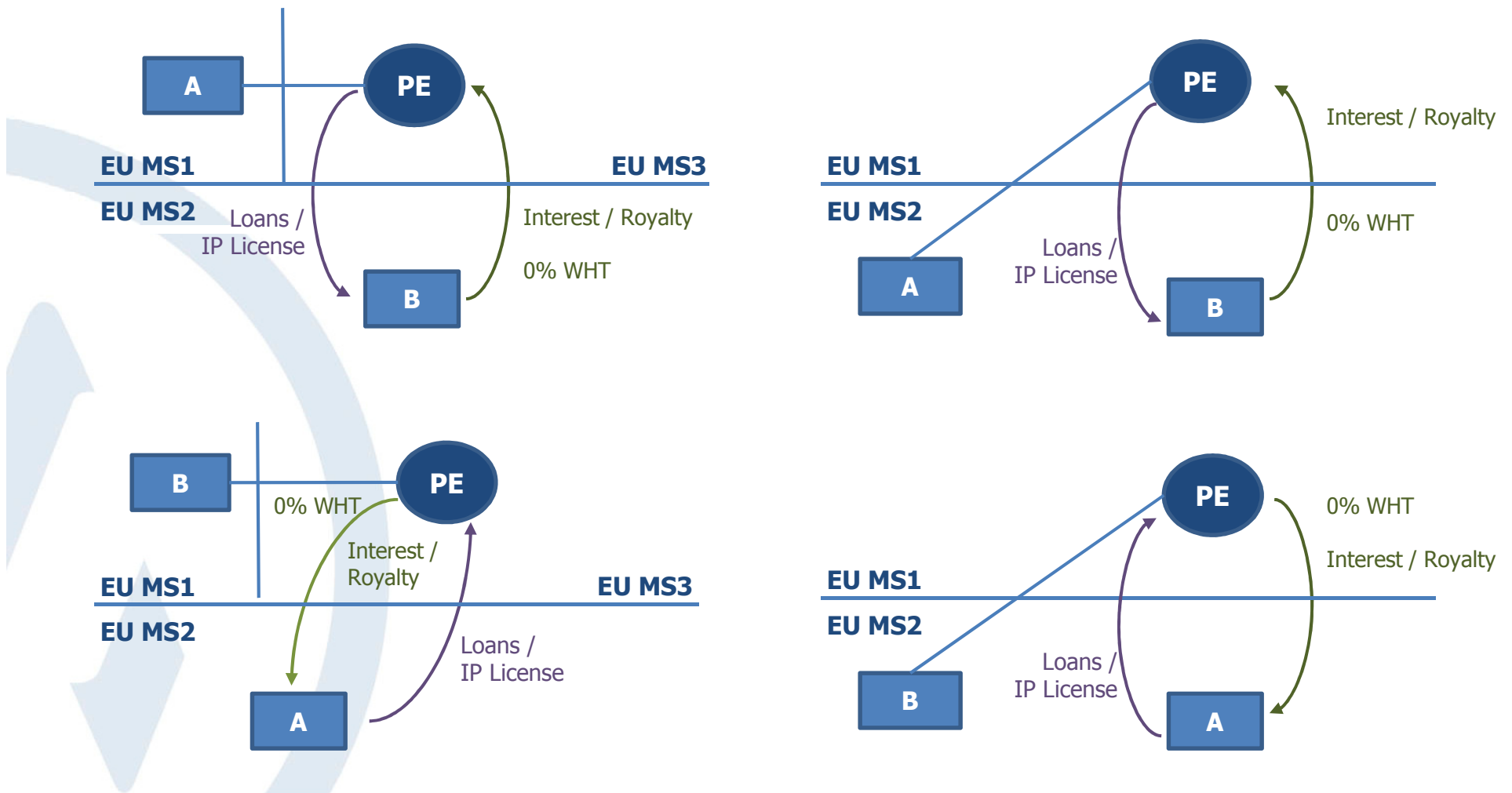


Requirements:

- ❖ Be EU companies and take one of the legal forms listed in Annex → almost all-encompassing list;
- ❖ Be tax resident in EU Member States (even under tie-breaker rule of DTC with non-EU countries); and
- ❖ Be subject to CIT in their respective countries (without an option of being exempt) → also applies to PEs
- ❖ Applicable to I & R payments between EU companies and their EU PEs
- ❖ Payee must be the beneficial owner of the I & R payment
- ❖ Payments must be between “associated” EU companies
 - Direct ownership of at least 25%
 - Sister companies with common parent with direct ownership of at least 25%

Spanish Tax Efficient Devices

Spain as EU Member State: Interest & Royalties Directive (cont'd)





Spanish Tax Efficient Devices

Spain as EU Member State: Mergers Tax Directive

⇒ Neutrality regime → tax deferral on capital gains arising upon cross-border:

- ❖ Exchanges of shares
- ❖ Mergers
- ❖ Divisions
- ❖ Contributions of branches of activity

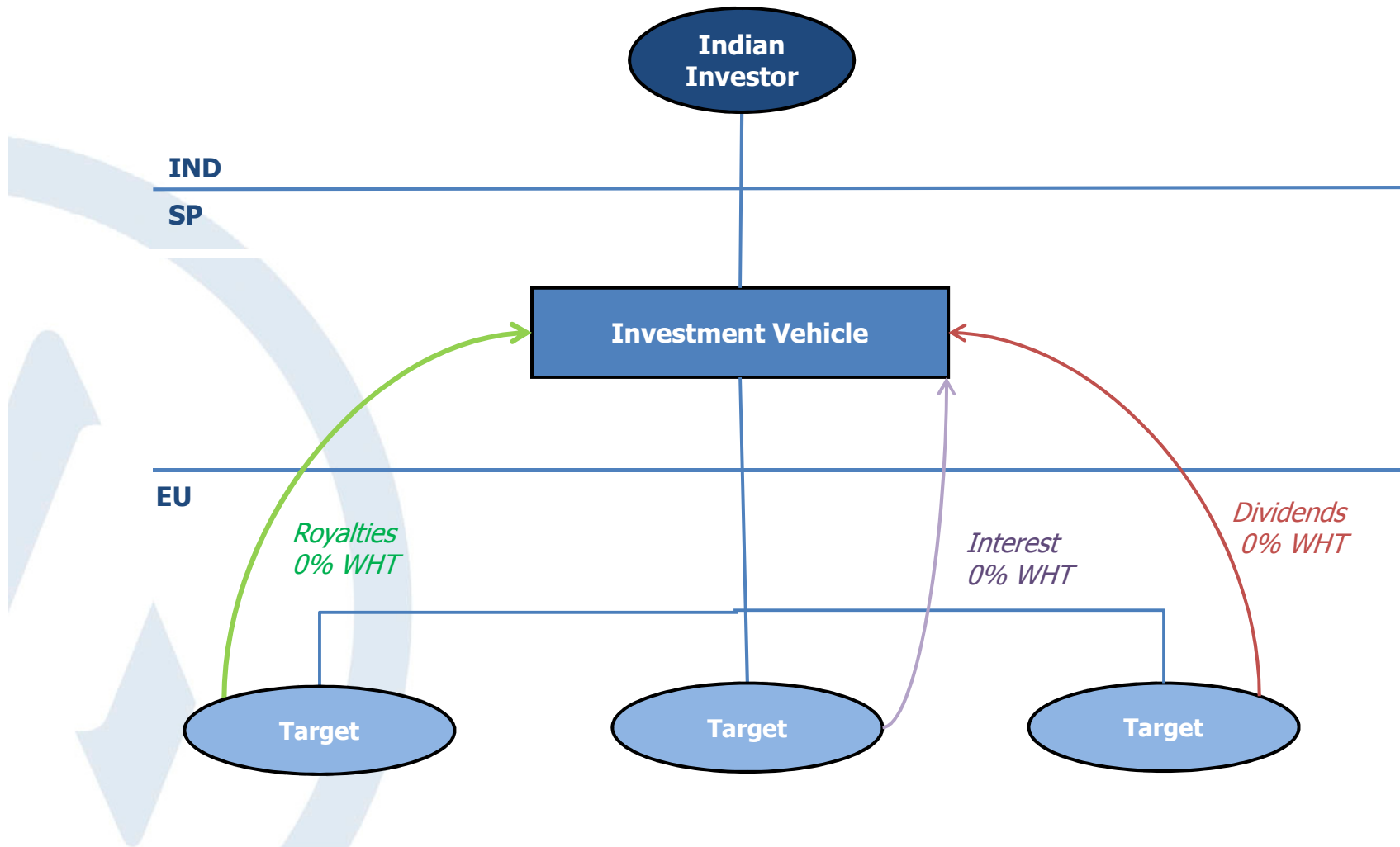
} Provided that a PE remains in the EU Member State of the transferring company

⇒ Between EU companies



Spanish Tax Efficient Devices

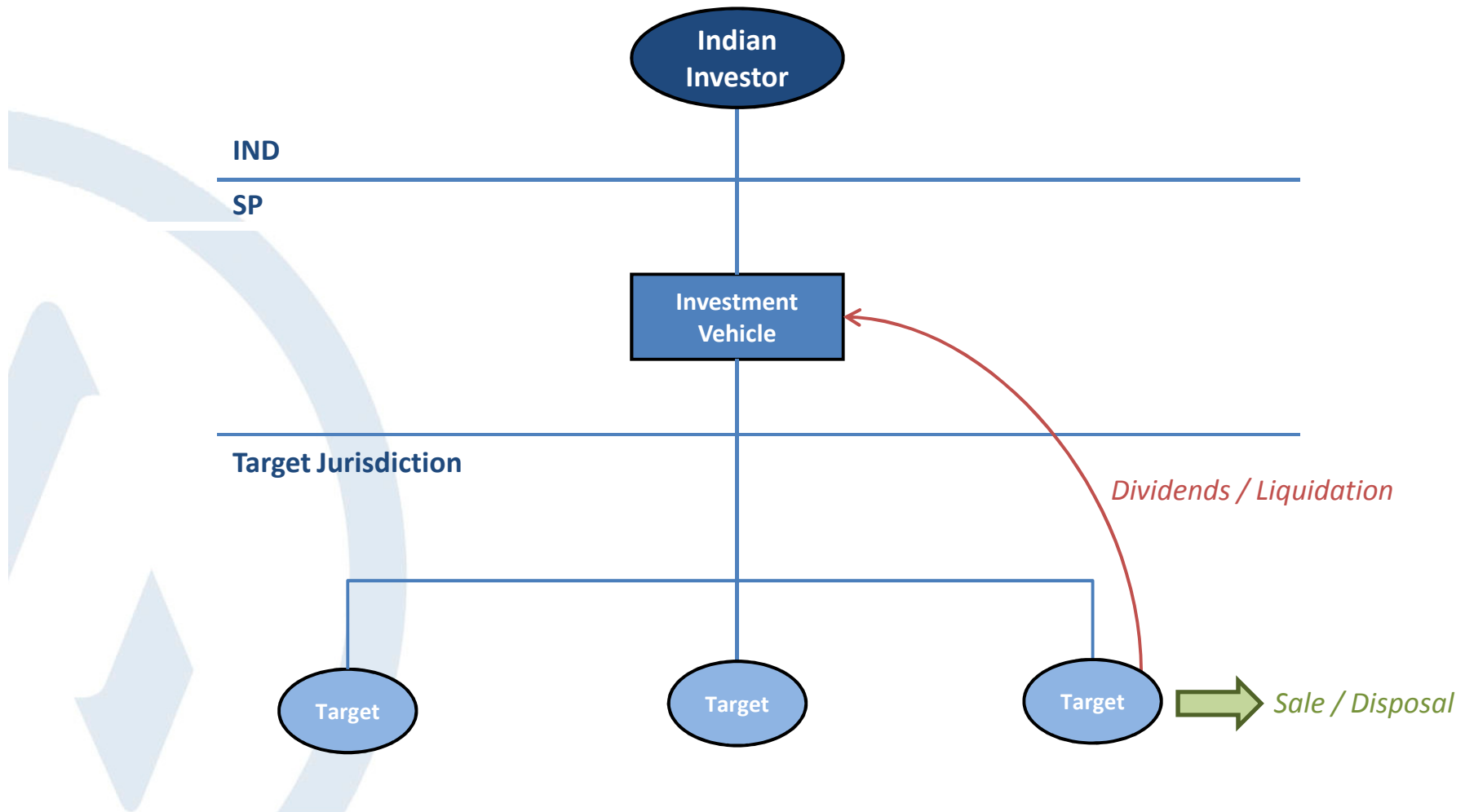
Spain as EU Member State





Spanish Tax Efficient Devices

Spanish participation exemption for inbound dividends / capital gains:




Spanish Tax Efficient Devices

Spanish participation exemption for inbound dividends / capital gains^(*)


QUALIFYING PARTICIPATIONS

Currently

- Minimum holding requirement 
 - ❖ 5% or EUR 6M acquisition cost
 - ❖ 1 year
- Subject-to-tax test → Met if DTC with EOI clause
- Active income test → easy to meet but for portfolio dividends and interest

Tax Reform

01/01/2015

- Minimum holding requirement 
 - ❖ 5% or EUR 20M acquisition cost
 - ❖ 1 year
- Subject-to-tax test → 10% nominal CITR at source
But → met if DTC with EOI clause
- NO active income test

^(*): Applicable to any Spanish corporate taxpayer (not necessarily ETVEs)

Spanish Tax Efficient Devices

Spanish foreign branch exemption^(*)

QUALIFYING BRANCHES

Currently

- Subject-to-tax test → Met if DTC with EOI clause
- Active income test → easy to meet but for portfolio equity and debt instruments

Tax Reform

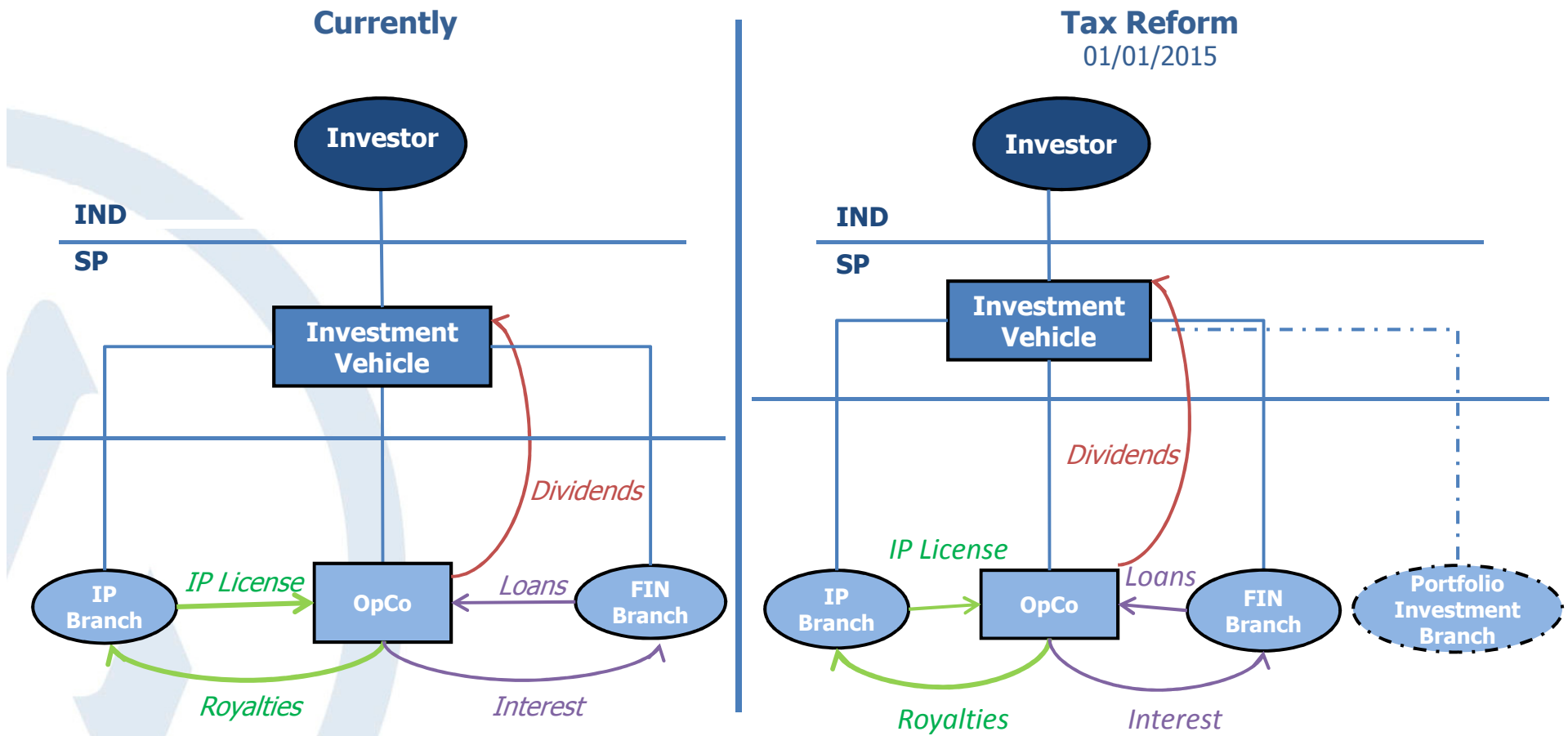
01/01/2015

- Subject-to-tax test → 10% nominal CITR at source
But → met if DTC with EOI clause
- NO active income test

^(*): Applicable to any Spanish corporate taxpayer (not necessarily ETVEs)

Spanish Tax Efficient Devices

Spanish foreign branch exemption





Spanish Tax Efficient Devices

Exemptions on outbound payments – Dividends & Capital Gains

➤ Exemption on outbound dividends/capital gains upon disposal of shares in the ETVE:

○ No Spanish source-based taxation of foreign shareholders:

- No minimum holding requirement;
- No minimum period requirement;
- No subject-to-tax requirement; and
- Applicable to individual/corporate/partnership shareholders

BUT



WhT exemption only applicable to (*tracking system*):

- Dividends paid out from profits exempted under participation exemption/branch exemption at ETVE's level; and
- Capital gains in so far as due to ETVE's exempted retained profits or appreciation of qualifying Subs/foreign branches.



Shareholder resident in tax havens (*black-listed*) not covered



Spanish Tax Efficient Devices

Exemptions on outbound payments – Dividends & Capital Gains

- Entities qualifying for the ETVE regime (requirements to be met):
 - Tax residence in Spain
 - Object of the company must include holding activities as regards foreign subsidiaries
 - Substance (human and material resources)
 - Capital divided in registered shares (as opposed to bearer shares)
 - Also: formal communication to the tax authority (no need for approval)

Spanish Tax Efficient Devices

Exemptions on outbound payments - Interest

➤ As of 27/06/2014:

0% WhT on interest arising from debt instruments issued by private Spanish companies provided that such debt instruments:

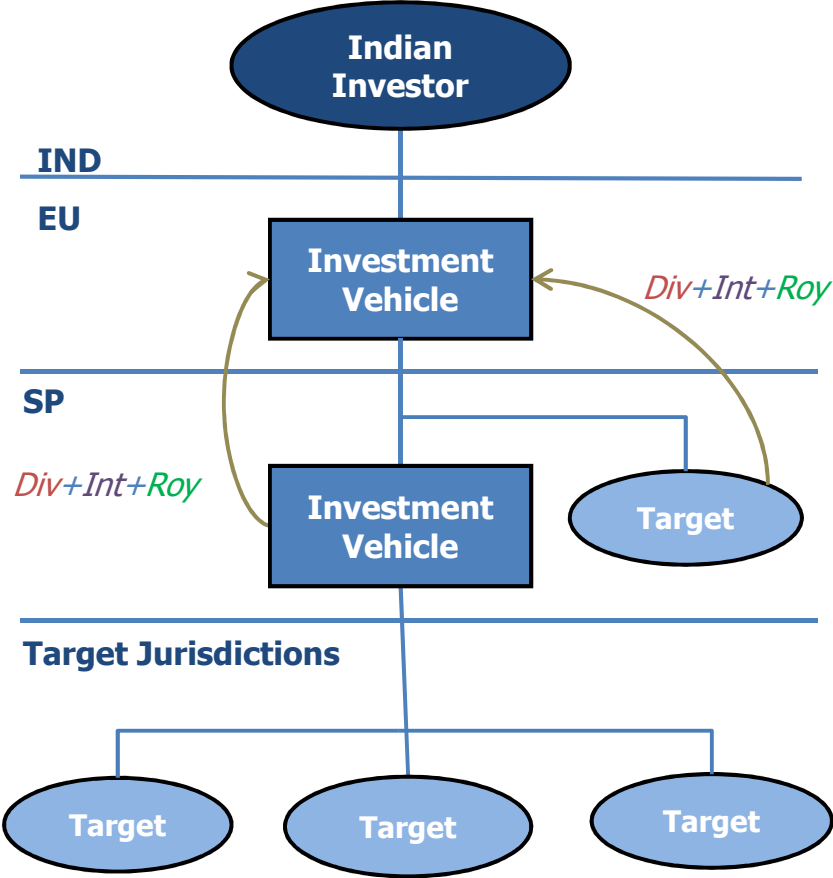
- Are listed for public trading;
- Do not generally confer political rights to the holder; and
- Do not carry a preferred right to new subsequent subscriptions

Spanish Tax Efficient Devices

Exemptions on outbound payments – Dividends & Interest & Royalties

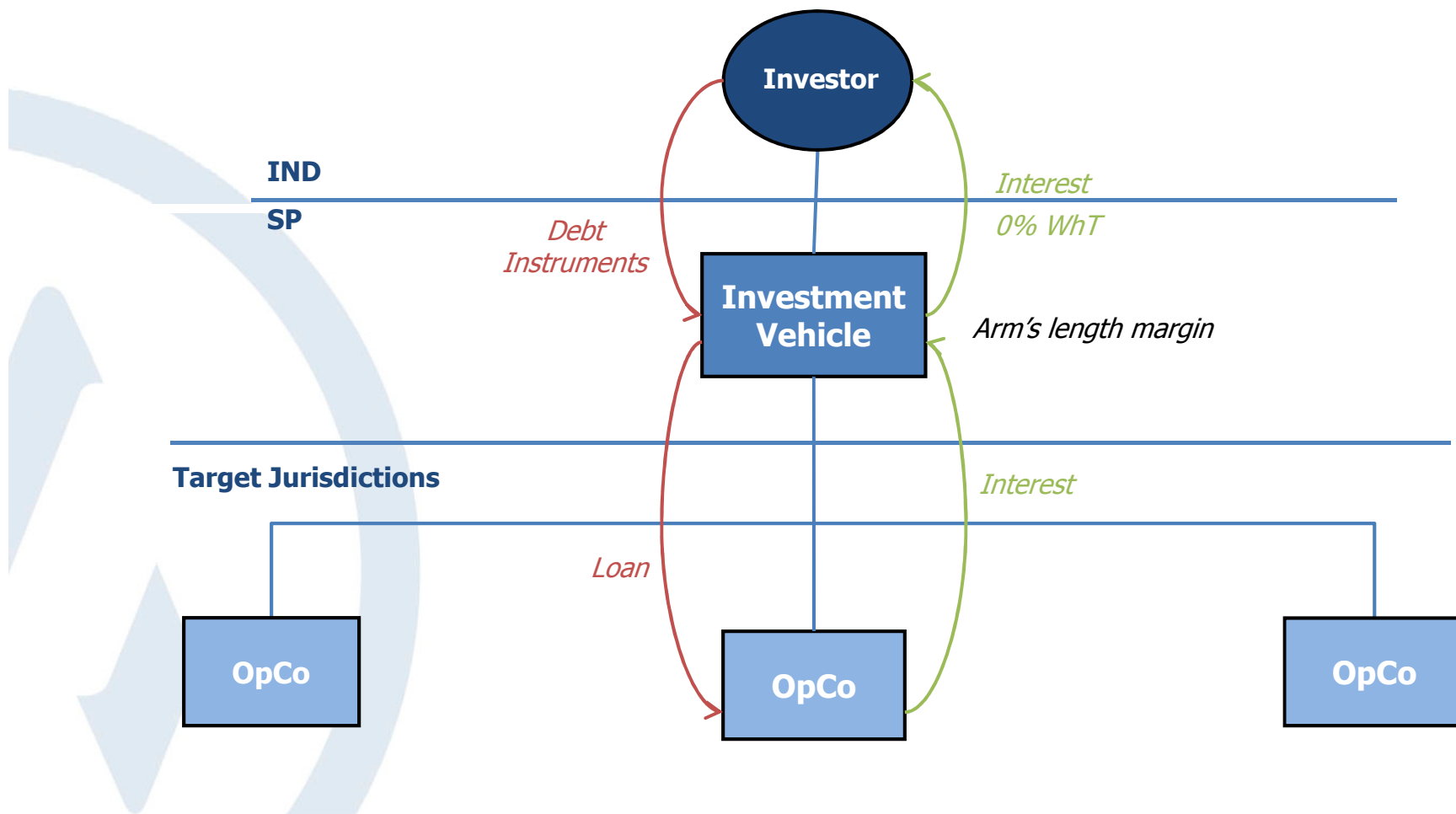


- Parent-Subsidiary EU Directive
- Interest & Royalties EU Directive



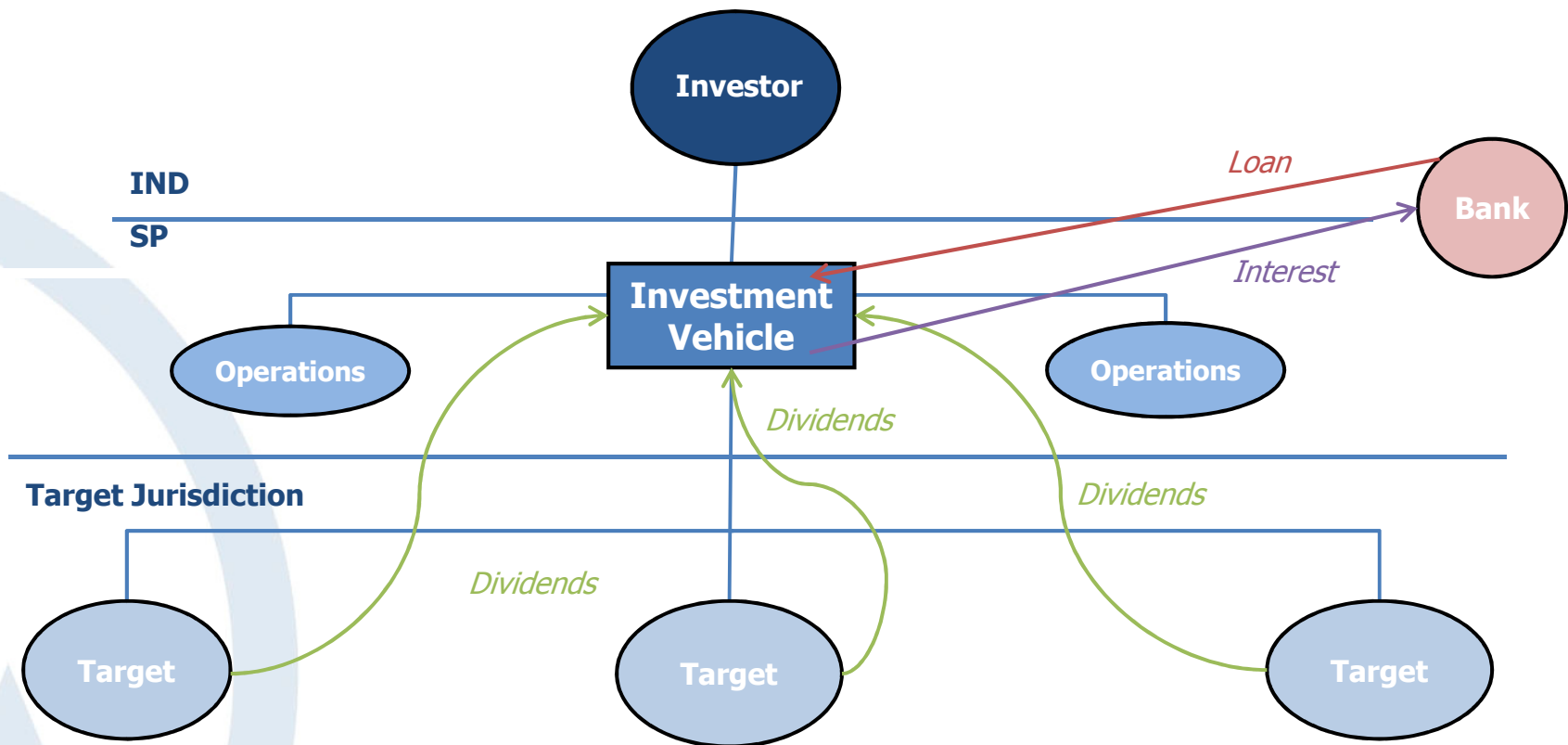
Spanish Tax Efficient Devices

Holding activities & Intra-group financing



Spanish Tax Efficient Devices

Interest deduction on leveraged acquisitions

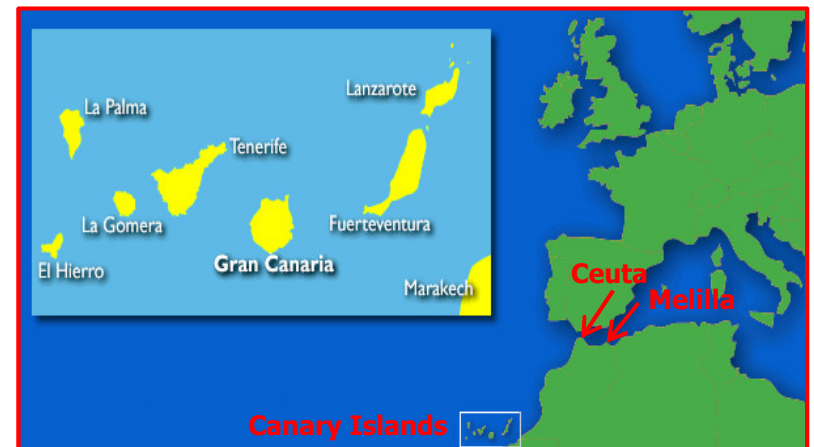


➤ **Limitation on Interest Deduction → 30% (EBITDA + DIVIDENDS)**

Spanish Tax Efficient Devices

Trading activities within Ceuta, Melilla and/or the Canary Islands

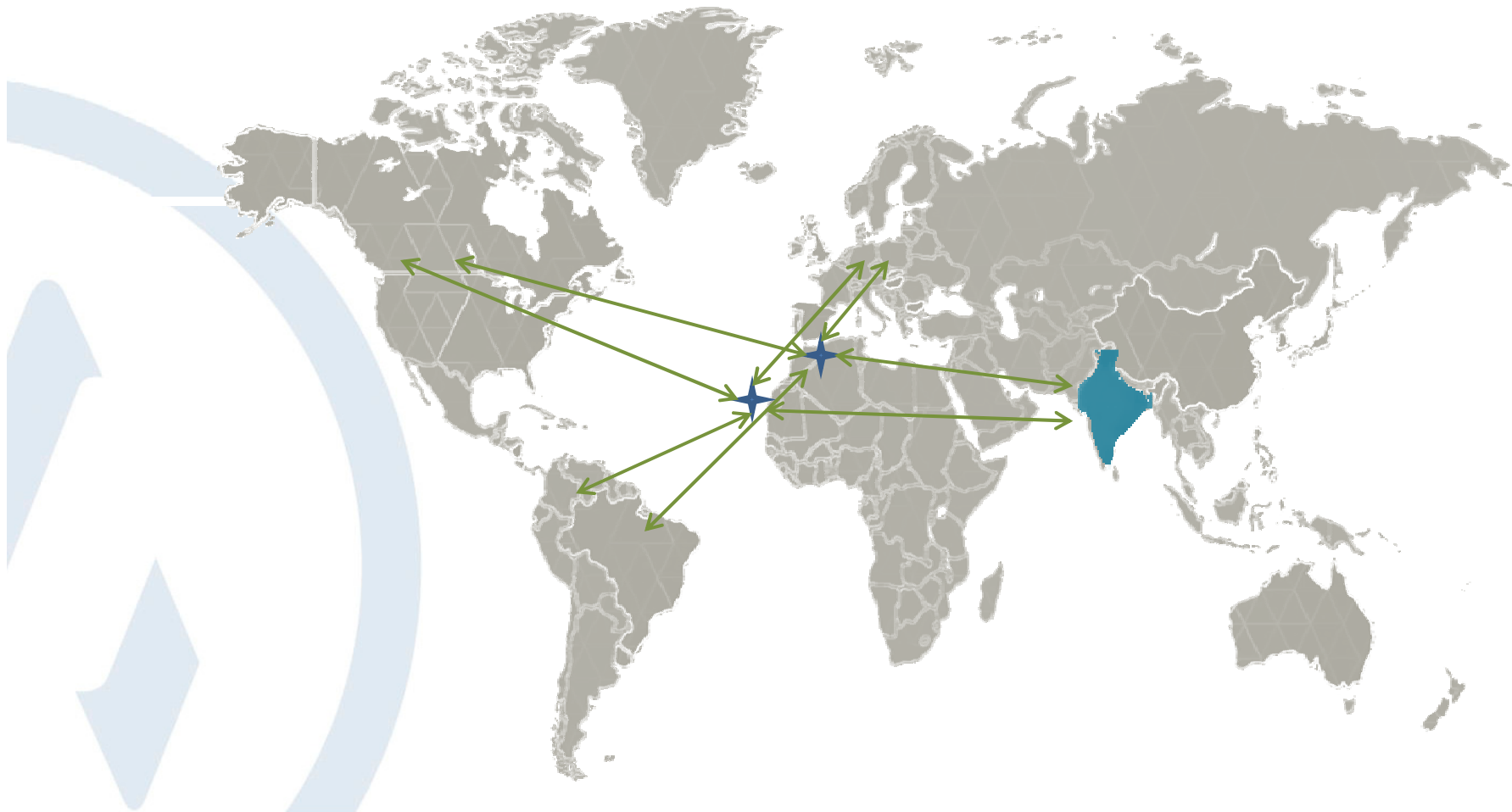
- Privileged geostrategic position between 3 continents
- Gateway to Northwest Africa, Europe and LatAm
- Important tax incentives and special tax regimes which offer an unparalleled low tax location for investors
- Further tax benefits granted by EU Directives
- Good infrastructures, strategic commercial benefits, highly qualified professionals, foreign language speakers at a lower cost compared to other EU locations





Spanish Tax Efficient Dvices

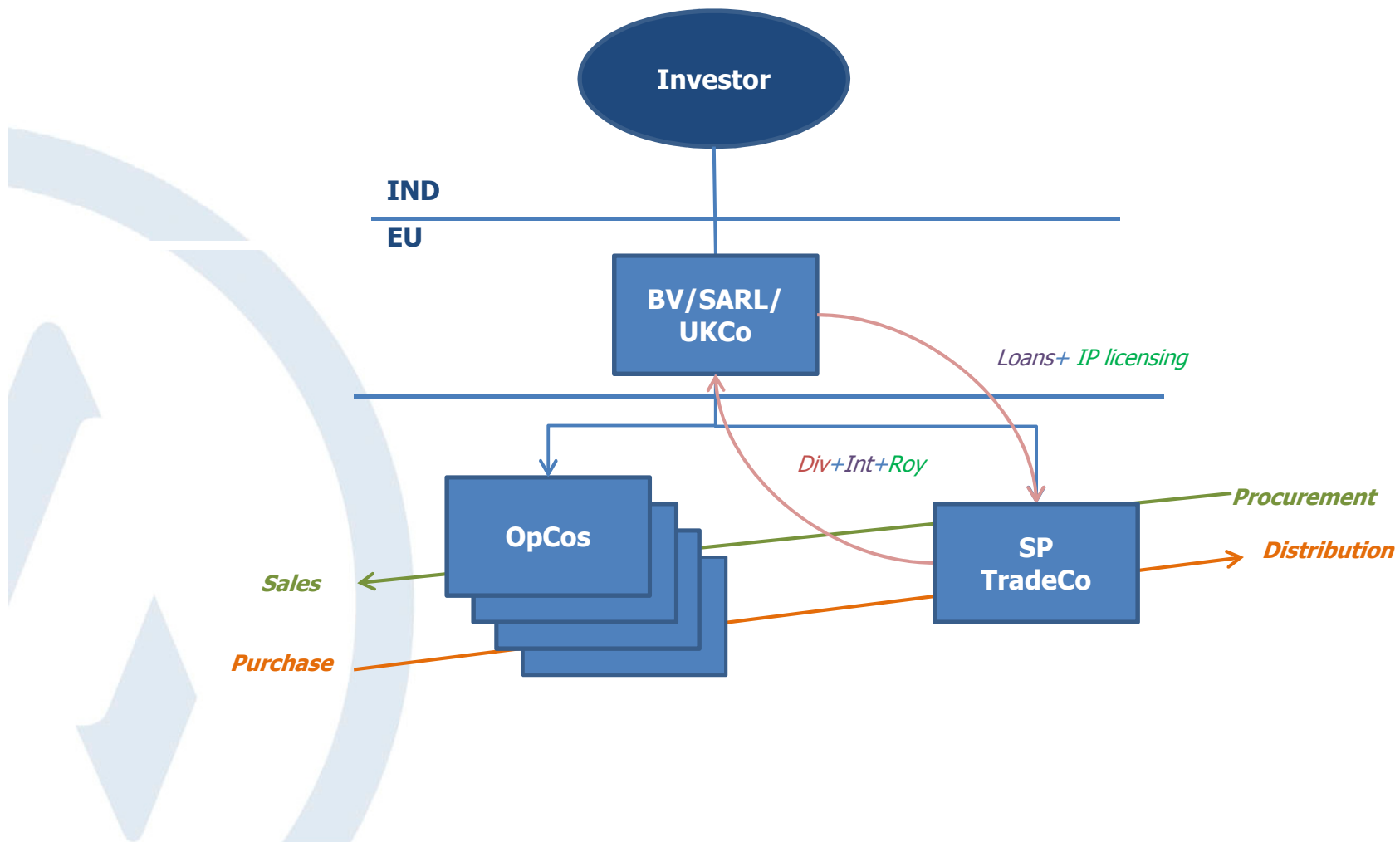
Trading activities within Ceuta, Melilla and/or the Canary Islands





Spanish Tax Efficient Devices

Trading activities within Ceuta, Melilla and/or the Canary Islands





Spanish Tax Efficient Devices

Special Tax Regime for expats working in Spain

- Foreign individuals moving to Spain for work. Requirements:
 - become a Spanish tax resident who has not been a Spanish resident during the 10 years prior to the assignment to Spain
 - the assignment to Spain is derived from a labor contract / appointment as director of a company
 - the services are performed physically in Spain and are rendered for a Spanish resident company or a PE located in Spain

- Tax benefit:
 - 24% fixed tax rate on employment income for the first EUR 600,000
 - Exemption of foreign-sourced income

- Period: The year in which the Spanish tax residence is obtained and the following 5 years.

- Compulsory communication. No approval required.



Spanish Tax Efficient Devices

Advantages of Investing in Spain

- 13th largest economy by nominal GDP in the world and 5th within the EU
- Economic recovery
- Foreign capital currently investing in Real Estate and IT start-ups
- Spanish SMEs internationalized and more competitive
- Access to 45 million consumers, cultural and language proximity, privileged geostrategic location; high quality infrastructures and technology; legal certainty; highly qualified professionals; competitive costs.

Investing in Spain

SOCIMIS – Spanish REITs

- Spanish entities with the following features:
 - Listed companies
 - Main purpose: acquisition and promotion of Real Estate for rent (directly or through other REITs)
 - 80% of assets must be real estate for rent (directly or indirectly held)
 - 80% of income must derive (directly or indirectly) from such rental activities
 - Real estate must be held and rented out for at least 3 years
 - Obligated to distribute a major part of the profits: 80% profits from rental income; 100% profits from dividends distributed by Subs (REITs); 50% profits from capital gains upon disposal of real estate and Subs (REITs)
 - Minimum share capital: EUR 5 MM (single class of shares)

Investing in Spain

SOCIMIS – Spanish REITs

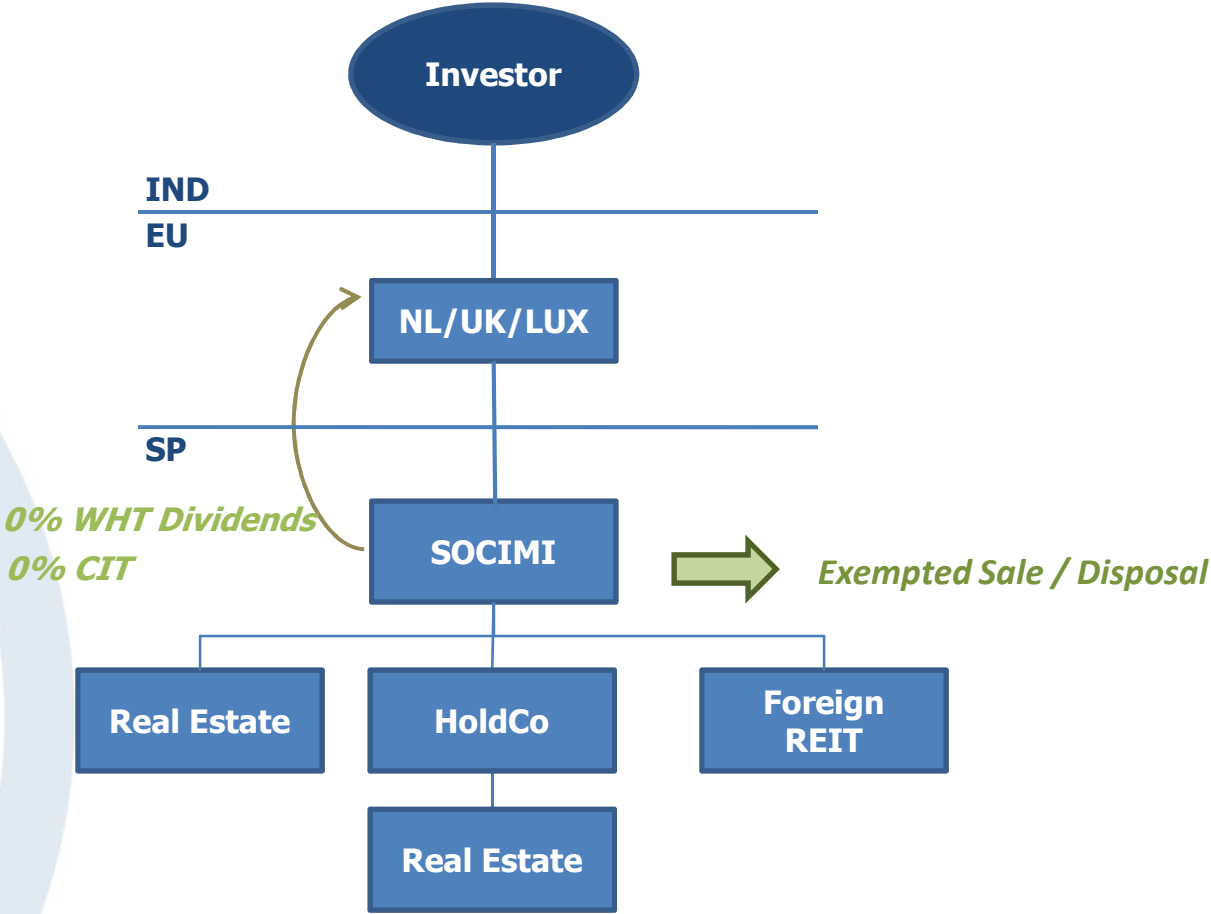
➤ Tax regime:

- 0% CITR
- 19% CIT levied on profit distributions to shareholders:
 - Holding 5% stake or more; AND
 - Subject to less than 10% CITR (wherever their residence is)
- Outbound dividends and capital gains upon disposal of shares in SOCIMI are subject to Spanish taxation unless restricted by:
 - DTC; or
 - P-S Directive
- Lux, NL, UK: feasible intermediate jurisdictions



Investing in Spain

SOCIMIS – Spanish REITs



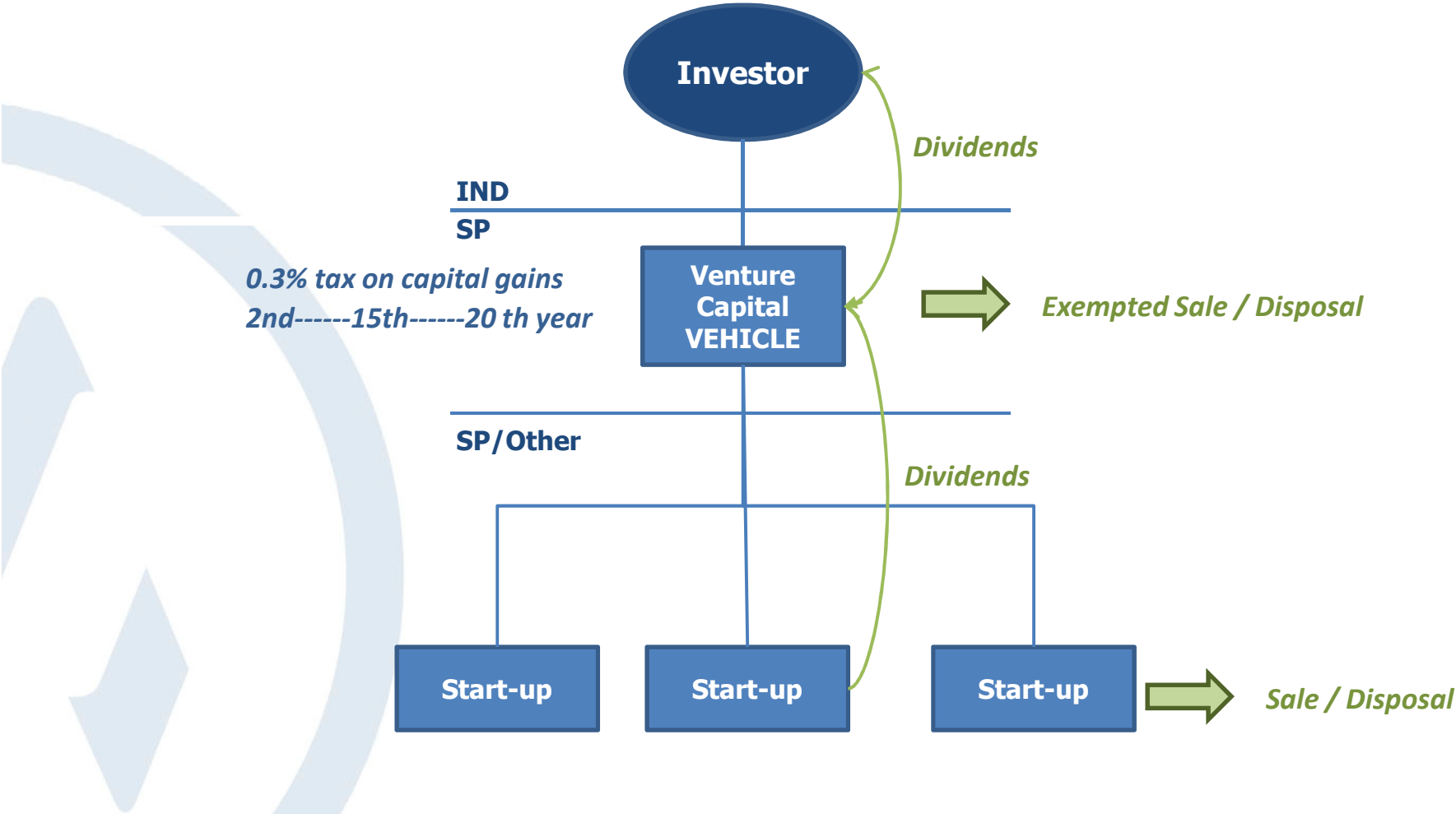
Investing in Spain

Venture capital – Spanish Venture Capital Entities

- 
- Tax Regime at the level of the Spanish Venture Capital Entity (VCE):
 - 99% exemption on capital gains upon disposal of shares (provided that the disposal occurs between 2nd-15th year after acquisition)
 - 100% exemption on dividends (either foreign or domestic) regardless of holding size and period. For foreign-sourced dividends, subject-to-tax test must be met.
 - Tax Regime at the level of foreign shareholders (provided they do not reside in a tax haven):
 - No taxation on capital gains upon disposal of shares in VCE
 - No taxation on outbound dividends distributed by the VCE

Investing in Spain

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Thank you

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