



Ecofin 13 mai 2003 : l'heure de vérité ?

Evolutions Primarolo Report

**Roger Molitor
KPMG Tax Partner**

- 19th & 20th June 2000: Santa Maria da Feira break through
- 21th January 2003: agreement “of principle” on the tax package
- 13th May 2003: “final” agreement subject to Italy’s consent
- 3rd June 2003 “final” agreement confirmed by 15 Member States ?
- 1st July 2004: Italian presidency
- 1st January 2004: start rollback phase in 15 Member States
- 1st May 2004: 10 new Member States join the EU

- Only EU code of conduct:
 - Luxembourg Finance Companies (tax circular abolished)
 - Co-ordination Centres (tax circular abolished)
- Listed by EU and OECD code of conduct :
 - Provisions for fluctuation of reinsurance companies (rules amended on 31st December 2001)
 - 1929 Holding Companies/ management companies of a mutual fund
 - (Swiss) finance branch

- Definition of harmful features of 1929 holding companies:
 - Exemption of foreign source dividends in circumstances in which the profits giving rise to the dividends:
 - Have been taxed at a significantly lower level in the source country than they would have been if they had arisen in the Member State and
 - Have not been subject to effective anti-abuse or countermeasures (“paragraph L of the code”), CFC legislation

- Existing 1929 Holding Companies: 31.12.2010
- New 1929 Holding Companies... that’s the question !

- => new 1929 Holding regime without harmful features...

- Definition of harmful finance branch:
 - Profits allocated at less than arm`s length rate and
 - Level of taxation in the country of the branch *significantly lower* than in country of head office and
 - Profits have not been subject to effective anti-abuse or countermeasures (“paragraph L of the code”)

 - Possible interpretation (Belgium and others) :
 - “significantly lower”: lower than the lowest level applied by the Member State with the lowest rate
 - Anti-abuse measures: such measures should be applied in conformity with the double taxation conventions
- Grandfathering for existing branch structures:
31.12.2005 (?)
- New finance branches ... that’s the question !
- => new finance branch regime without harmful features...

Questions for discussion

- Luxembourg co + finance branch + non EU => potentially harmful, but
- Luxembourg co + finance branch in Ireland => not harmful... because Ireland and Luxembourg are ok !

- Discuss “Post-Primarolo” financing solutions ..
 - Hybrid instruments
 - Hybrid entities
 - Alternative financing solutions

- Conclusions : our “wishlist” to the Luxembourg Ministry of Finance

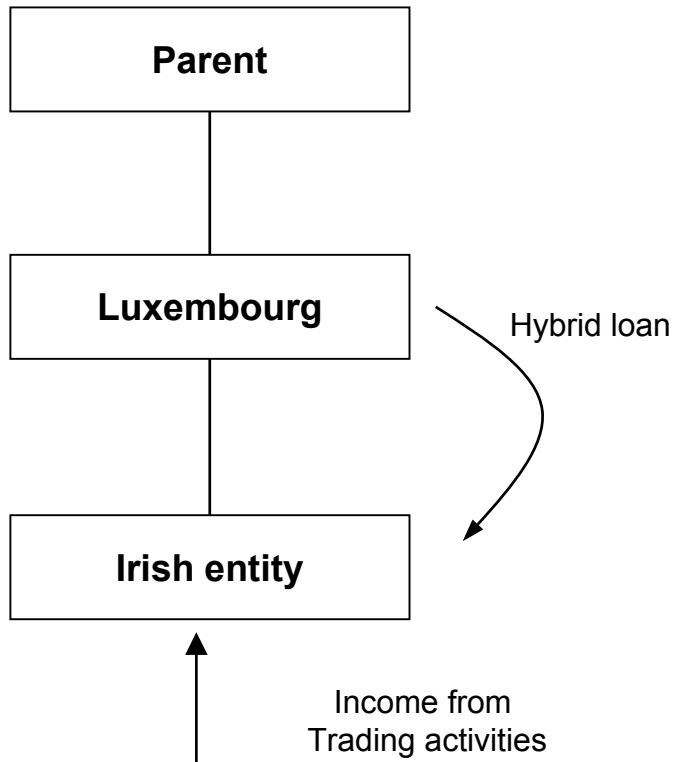
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Evolutions Primarolo Report Luxembourg – Irish structures

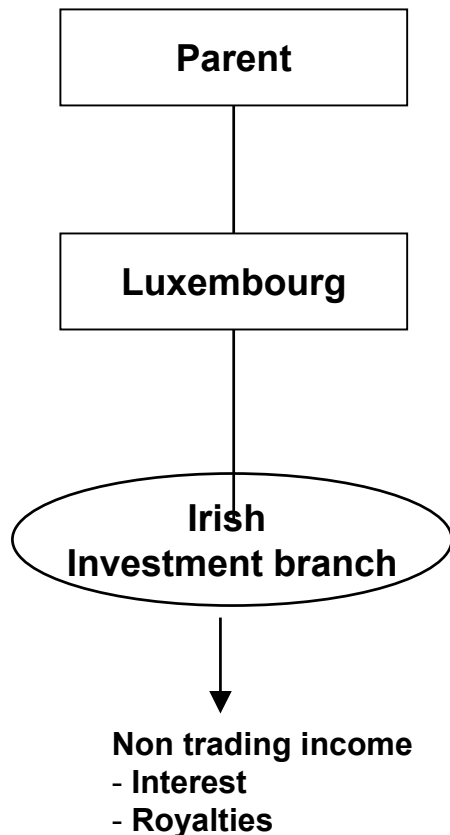
**Sharon Burke/Birgit Höfer
KPMG Tax Partner**

- 12.5% corporation tax rate
 - income from a trade carried on in Ireland
 - all activities and industries
- Phase out of 10% corporation tax rate
 - financial services in IFSC: 2003-2005 depending on project start date
 - “manufacturing activities”: 2010 for existing projects
- Funds
 - 0% tax rate on income and gains

Hybrid loans



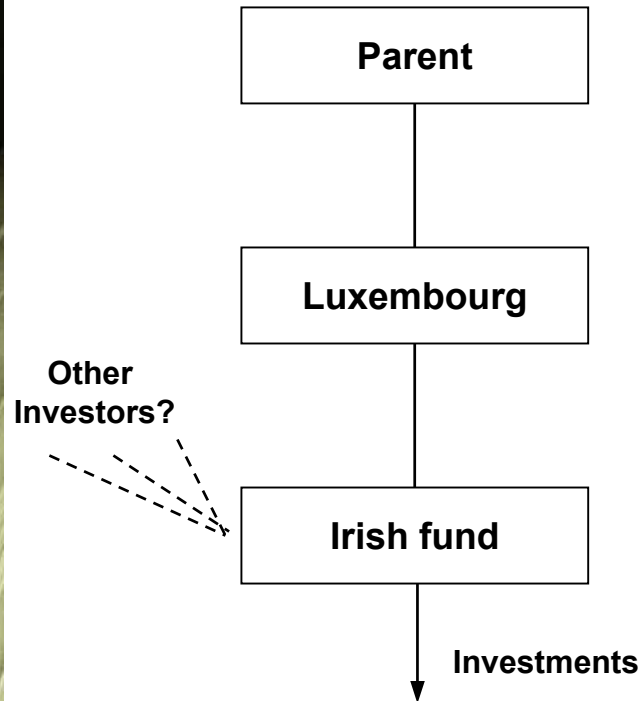
- Achieves:
 - Tax deduction for return on hybrid loan
 - Tax exempt income in Luxembourg
- Useful for income from:
 - Financing/treasury operations
 - Other trading activities
- Substance in Ireland
 - Group personnel in Ireland, or
 - Outsourced to third party service provider



- Achieves:
 - Tax deductions for payments to Irish investment branch by Group members
 - Income received by investment branch exempt from Irish and Luxembourg tax

- Useful for:
 - High value low volume financing activities
 - Funding acquisitions by Group members
 - Holding of intellectual property

- Substance in Ireland
 - Limited substance needed
 - Group personnel in Ireland, or
 - Outsourced to third party service provider



- Achieves:
 - Tax exempt income from investments

- Useful for:
 - All types of investments in shares, property, other funds, etc. provided QUIF has a policy of diversification of risk

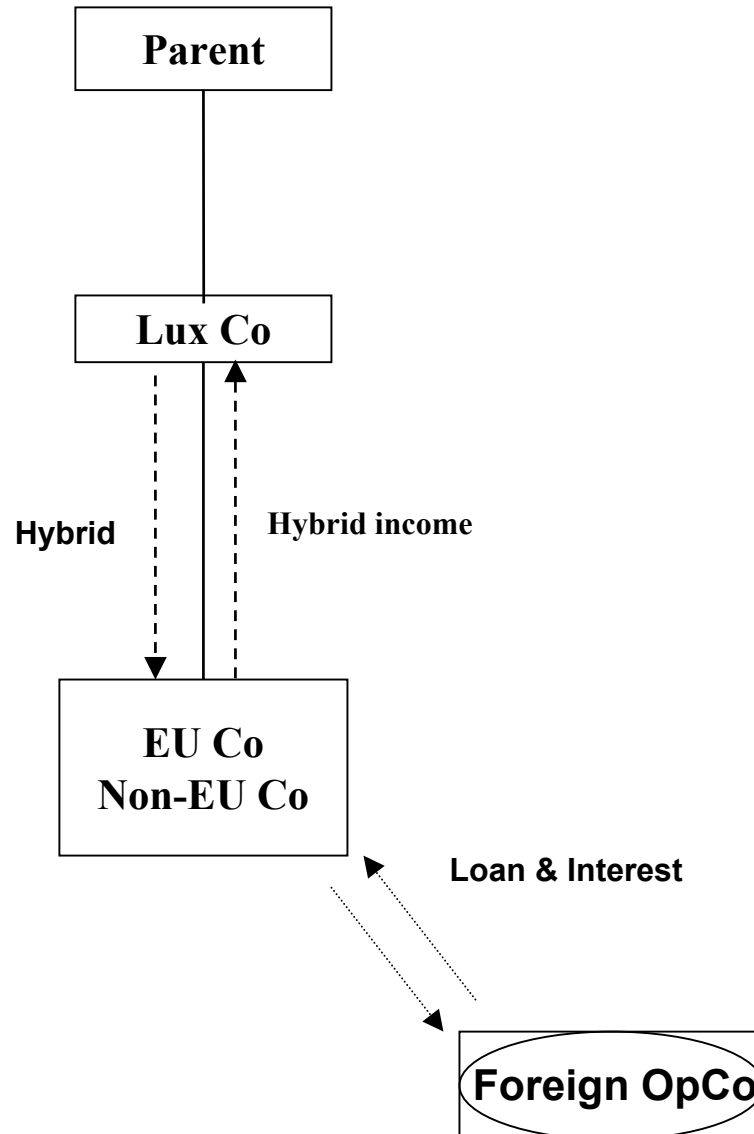
- Regulated in Ireland
 - Promoter could be fund manager

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Evolutions Primarolo Report Examples of certain structures

**Louis Thomas
KPMG Tax Partner**

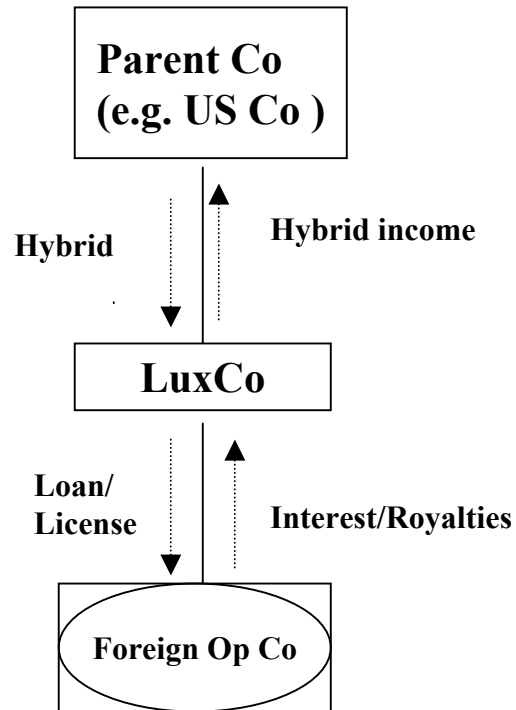
Hybrid Instruments (1)



- Achieves:
 - Tax deduction for return on hybrid loan
 - Tax exempt income in Luxembourg

- Useful for income from:
 - Financing/treasury operations
 - Other trading activities
 - Royalties

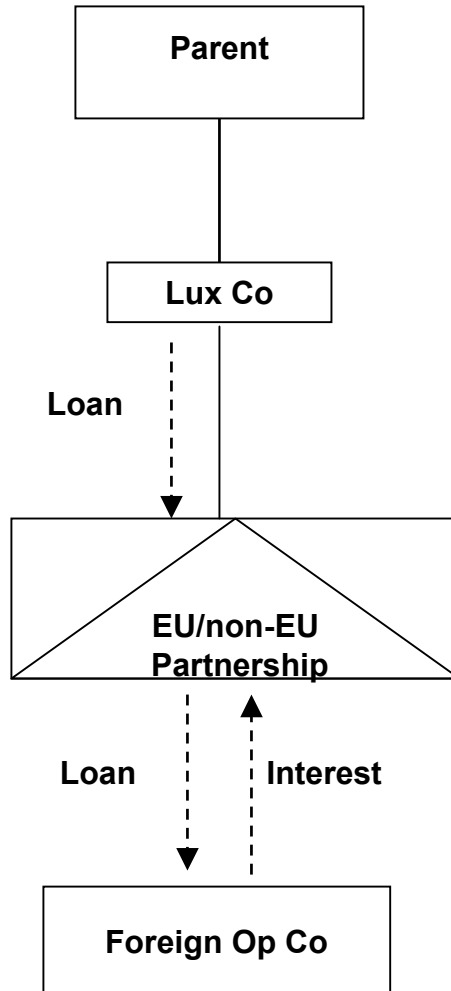
Hybrid Instruments (2)



- Achieves:
 - Tax deduction for return on hybrid loan
 - Tax exempt income in Luxembourg

- Useful for income from:
 - Financing/treasury operations
 - Other trading activities
 - Royalties

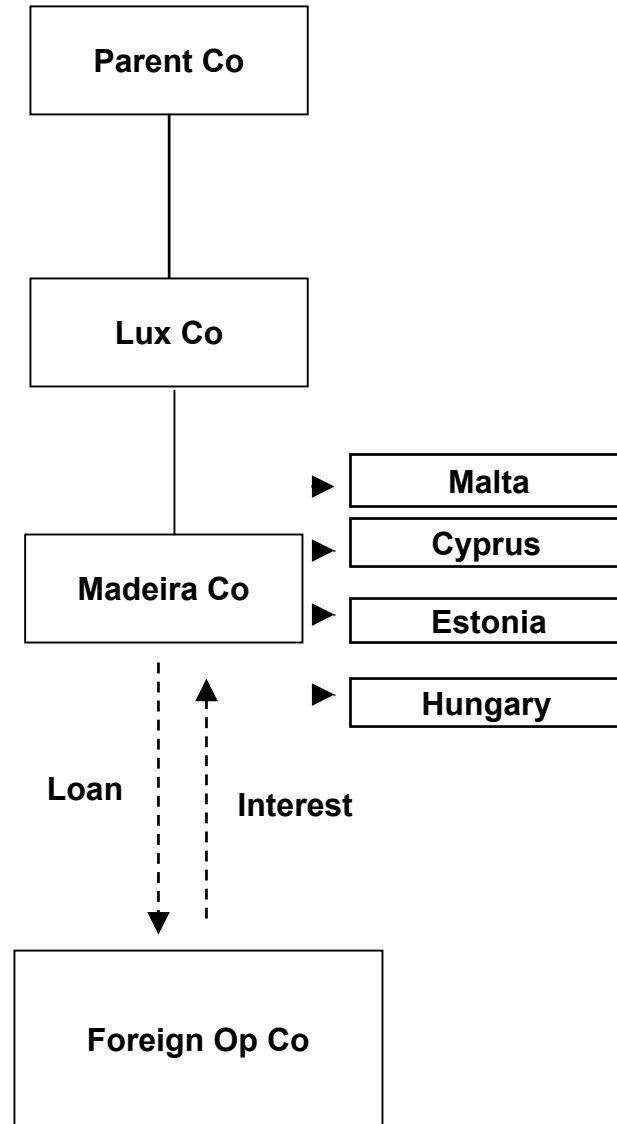
Hybrid Entity



- Achieves:
 - Tax deduction for return on loan
 - Tax exempt income in Luxembourg

- Useful for income from:
 - Financing/treasury operations
 - Other trading activities

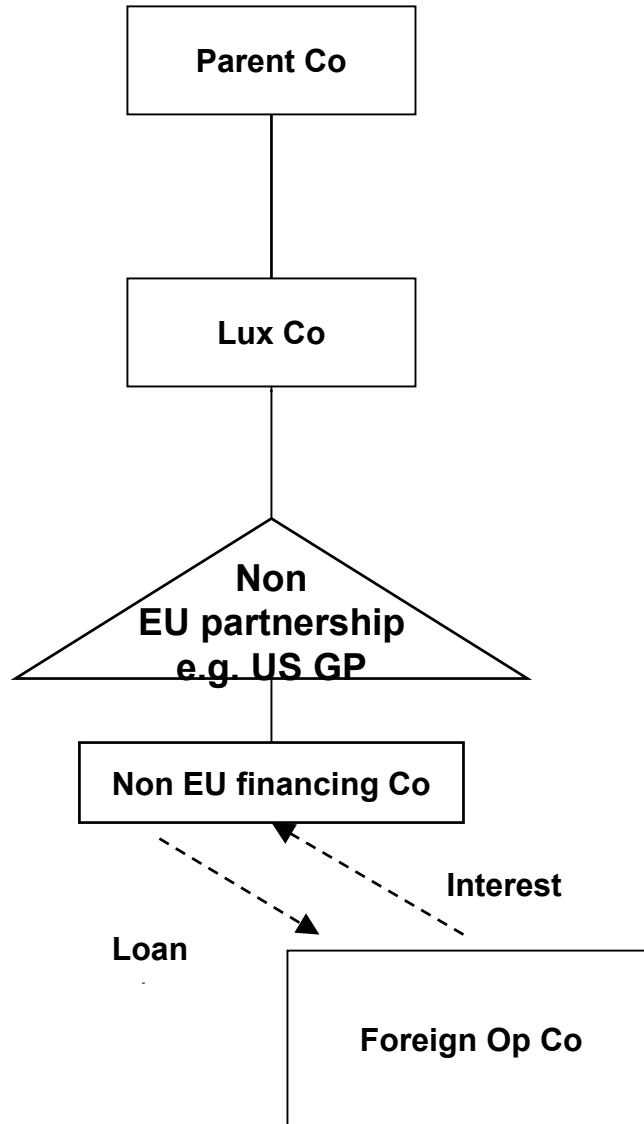
Corporate alternatives



- Achieves:
 - Low taxation of income through participation exemption

- Useful for income from:
 - Financing/treasury operations
 - Royalties

Partnership alternatives



- Achieves:
 - Low taxation of income through PE exemption

- Useful for income from:
 - Financing/treasury operations
 - Royalties