IAP Case

Restructuring through migration of place of effective management from NL to Lux

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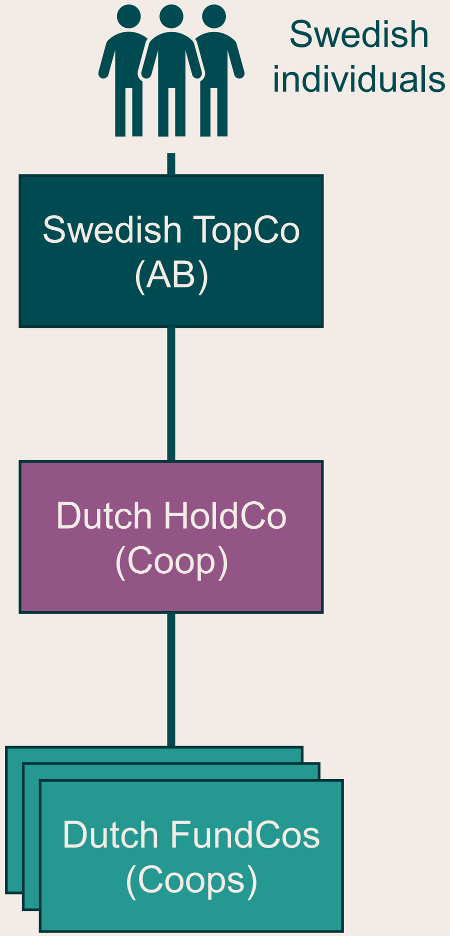
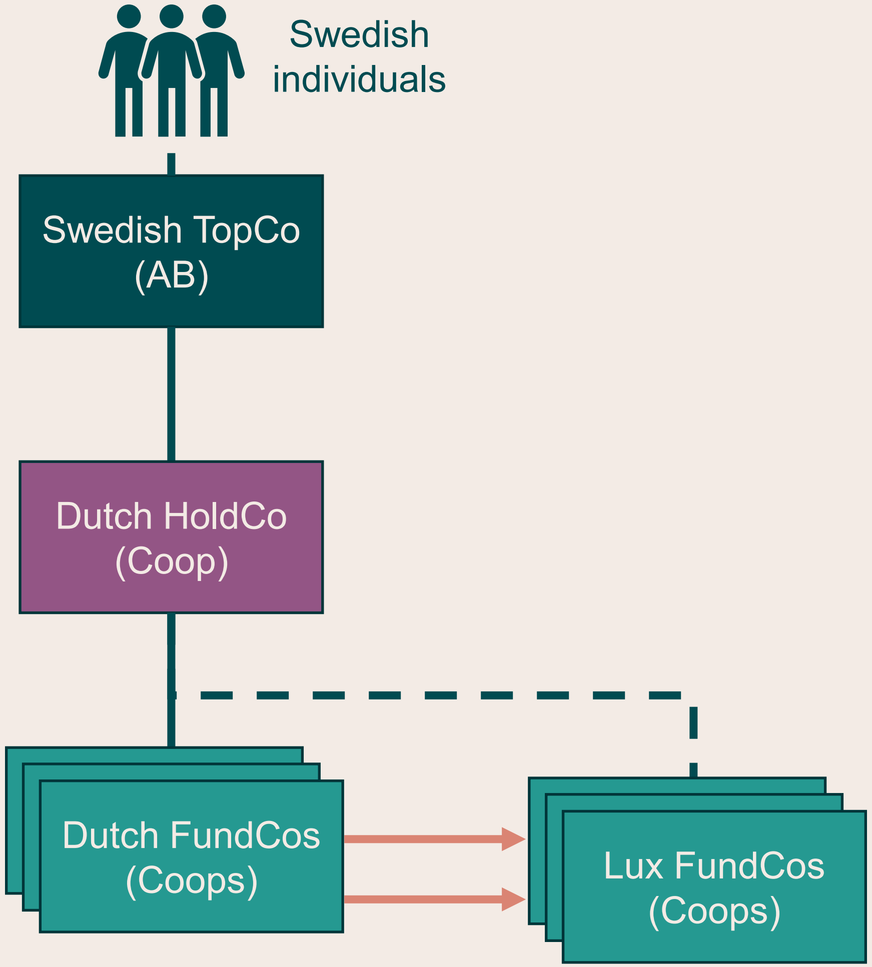
Background

Rationale behind the restructuring



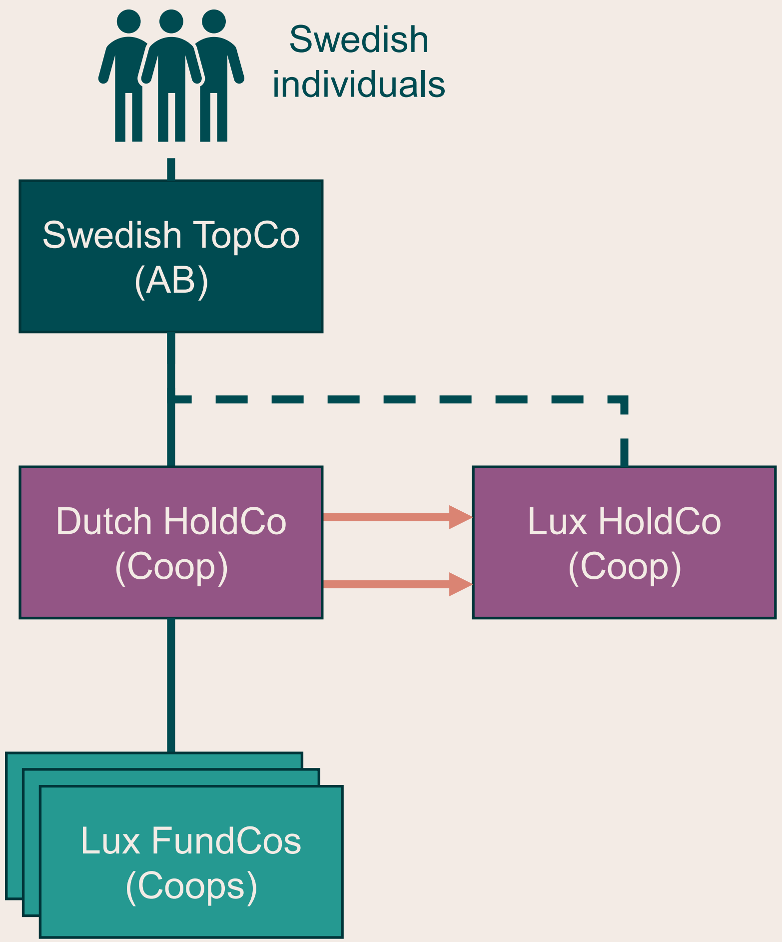
- A group of Swedish individuals held shares in a Dutch fund structure, consisting of Dutch Coops and Dutch BVs ("Dutch FundCos"), managed by an external Fund Manager
- The investments were held through a wholly owned Dutch Coop ("Dutch HoldCo").
- New Dutch case law in 2025 created uncertainty whether dividend distributions from a Dutch HoldCo would be exempt from WHT.
- Due to the new Dutch case law, the Fund Manager wanted to migrate the FundCos
- This created the choice of whether to migrate the Dutch HoldCo in a similar fashion to the FundCos, or if the holdings in the Dutch FundCos should be transferred from the Dutch HoldCo to another Swedish AB before the migration of FundCos.
- The Fund Managers' decision forced Swedish individuals to act quickly to explore their restructuring options.

Migration of Dutch FundCos to Luxembourg



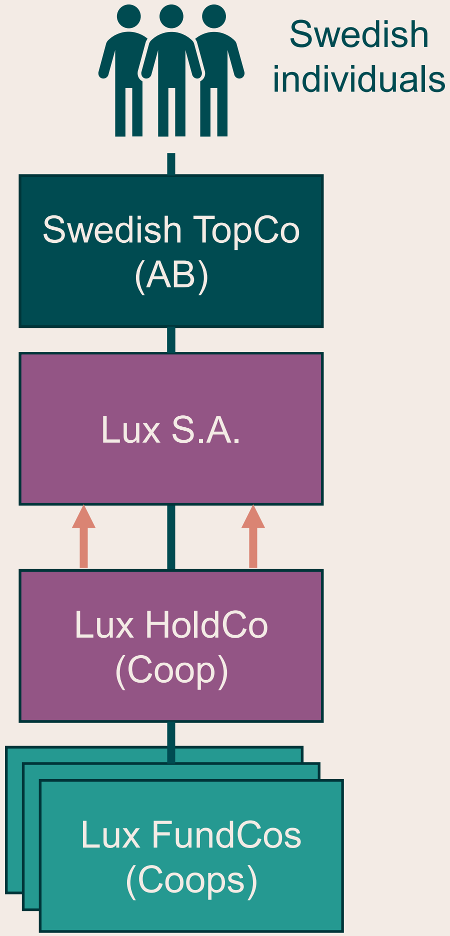
- The Fund Manager decided to migrate the FundCos consisting of Coops to Luxembourg by moving POEM and corporate seat to Luxembourg.
- Upon transferring the POEM, the Dutch FundCos are deemed to have realized all their assets and liabilities. Any capital gains resulting from Dutch HoldCo's investment in other Coops should be exempt under the Dutch participation exemption.
- Dutch/Lux FundCos (Coops) would still be subject to CIT and WHT in the Netherlands based on the "incorporation fiction". However, Dutch FundCo's should be tax residency in Luxembourg according to NL-LUX Treaty.
- In Lux, the LuxFundCos will become subject to CIT, MBT on worldwide income and to NWT.

Migration of Dutch HoldCo to Luxembourg



- A migration of Dutch HoldCo was intended to be carried out by transferring the place of effective management (”**POEM**”) and its corporate seat to Luxembourg, similar to FundCos.
- There remained a risk that the Netherlands may still levy WHT if a successful application of the anti-abuse provision is made under both the NL-SE and NL-LUX Treaties, effectively disregarding the migration.
- There is currently no anti-abuse provision in the NL-SE Treaty, the risk that the migration would be disregarded for Dutch WHT purposes should be low.
- The anti-abuse provision effectively created a “best before date” for the holding structure.

Severing of ties to Netherlands through merger



- In order to mitigate the exposure from a future introduction of anti-abuse provisions into the NL-SE Treaty, an intermediary Lux S.A was intended to be inserted between Swedish TopCo and the existing Lux HoldCo (Coops) in order to facilitate a future merger.
- This was intended to be carried out by:
    - Setting up newly established Lux S.A.
    - The Lux S.A thereafter subscribed for shares in the Lux HoldCo (Coop). This is due to the shares in the Lux HoldCo (Coop) only being transferable to another partner.
    - Lastly, Swedish TopCo transferred all its shares in Lux HoldCo (Coop) to the Lux S.A.
- The Lux HoldCo (Coop) was to be merged into the Lux S.A. in order to effectively sever all ties to the Netherlands. This is a taxable event for Lux HoldCo (Coop) but the latter can either rely on a tax exemption or rollover provision.

Lessons learned

Some key takeaway

- Changes in applicable laws may trigger the need for structures to be revisited and potentially restructured
- In a structure such as the one described, a fund's independent decision may have consequences for the entire structure, also its investors, to ensure consistency and manage the international implications
- The choice of the new investment jurisdiction needs to make sense from an economic, legal and tax perspective
- A decision to restructure involving cross-border movements must be discussed and fine-tuned between the advisers and the client sufficiently in advance
- Realistic timeframes must be discussed in advance
- Reliance or dependence on double tax treaties in conjunction with drawn-out timeframes may create undue uncertainty, especially with regards to the anti-abuse provisions