

Behind the Offshore Structure

A case-based approach to identifying hidden beneficial ownership and lack of economic substance

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Three things

1

Incorporation is not entitlement.

That a company exists, and that it is entitled to a treaty benefit, are two different questions.

2

The legal owner is not automatically the beneficial owner of the shares.

Holding the title does not decide who is entitled to the dividend.

3

Substance is not a statement, a lease and a headcount.

It is functions performed, decisions taken, and money actually used.

How ownership gets hidden

Layers

Each company in the chain sits in a different register. No single register shows the whole picture — what is visible in one country is invisible two steps up.

Professional officers

Directors and the company secretary are supplied by a firm serving many clients at once. The names on the register belong to people whose business is to appear on registers.

Nominees

Somebody is registered as the owner who is not the owner. Informally, or formally under a written declaration that the shares are held for another person.

None of this is unusual, and none of it is unlawful in itself. You will see all three in this case.

Two tests, not one

Article 10(2)

Beneficial ownership

A test about the income.

Who has the right to use and enjoy this payment? Answered by looking at obligations — legal, contractual, or found in the facts.

MLI Article 7(1)

Principal purpose test

A test about the arrangement.

Was obtaining the benefit one of the principal purposes? Answered from the whole history of the structure.

0 %

treaty rate claimed by HoldCo

5 %

Armenian domestic rate

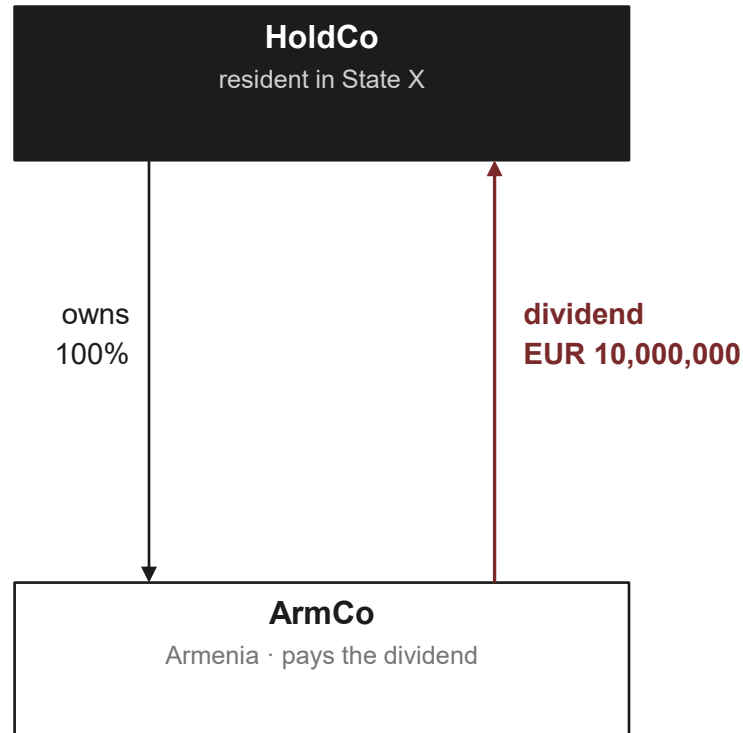
EUR 500,000

the amount in dispute

Run both. They can give the same answer — but they fail differently under challenge.

The claim on the desk

The structure as presented



What the file contained

- A certificate of tax residence in State X — genuine, issued by the competent authority
- Evidence of the shareholding
- Evidence of the amount invested in the capital

Every formal condition of Article 10 is satisfied.

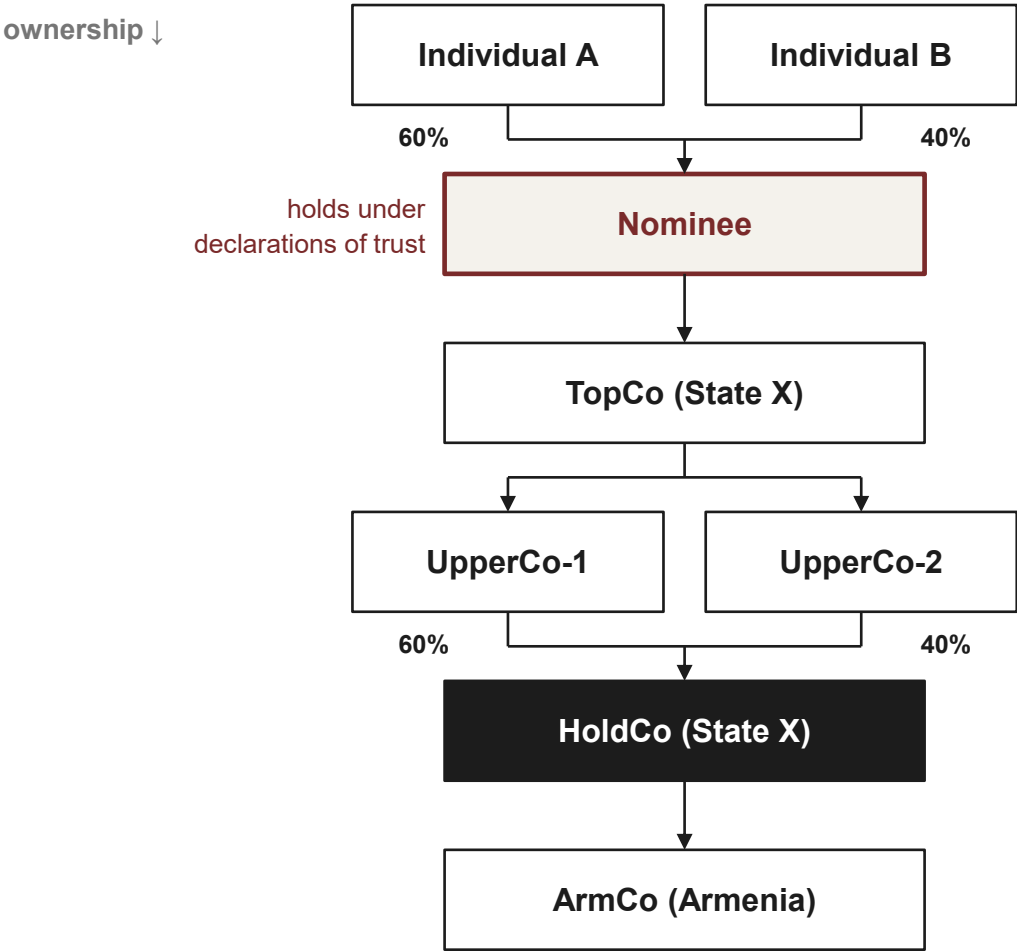
If your only question is “are the documents in order?”, you refund the tax and close the case.

We asked a different question: who ends up with this money?

Four sources, and what the register showed

- 1 **Our own registers**
the beneficial ownership declaration filed for ArmCo
- 2 **Open sources**
corporate registers, published decisions, company websites, audited accounts
- 3 **Our own tax databases**
withholding returns, payment history, intra-group loans
- 4 **The partner administration**
exchange of information — the fourth source

An open source is a lead, not a finding. It becomes a finding when it is confirmed against register or internal data.



Four layers between the operating company and the two individuals.

Created, refused, re-layered, approved

- **Formed**

HoldCo and the companies above it are incorporated in State X within days of each other, shortly before the acquisition they were built for.
- **Refused**

A change-of-control application is refused — because the ultimate beneficial owner of the acquiring company could not be identified.
- **A layer added**

The sole shareholder transfers his shares upward to a company owned by a second individual, connected to the same corporate-services provider.
- **Approved**

A second application, filed a few days later, is approved.

It was not the tax administration that first could not find the owner — it was another State authority, applying a different law.

Conduit company, not the beneficial owner

Reached on domestic and open sources alone. No information from abroad.

Conduit company

Reduced rate refused. Five per cent withheld by ArmCo as tax agent.

Honest about it: this rested on circumstantial evidence. A well-founded suspicion, properly documented — not yet proof. Then the taxpayer claimed a refund.

The four grounds

- 1 Created in a narrow window, immediately before the transaction they were built for
- 2 The first shareholder and director had no financial capacity matching the acquisition
- 3 Officers and secretary all led back to one corporate-services provider
- 4 A layer was added precisely when an authority asked who the real owner was

The substance narrative

A refund claim obliges the taxpayer to explain itself. The explanation was a good one, and these are not absurd arguments.

An office	leased in its own name in State X
A board	directors and an accountant
A seat at the table	a representative on ArmCo’s board, fee paid by HoldCo
Treasury activity	spare cash invested
A strategic plan	a transaction process for a possible sale and listing

A lease. A list of names. A statement that decisions are taken. An assertion of strategy.
None of those is substance. They are the packaging of substance.

An investment company that never invested

Investments made since incorporation

1

One participation, acquired in a single transaction when the structure was created.

A company that calls itself an investment business and has held exactly one thing since the day it was formed is a shareholding with an office.

What was not there

- No second acquisition. No third. No disposals. No portfolio — in any year.
- The only other investment: short-term government paper, bought with the dividend money after it arrived.
- “Pending identification of suitable investment opportunities” reached us for the first time in the answer to our questions — after we had raised substance.

It was not a strategy we discovered. It was an answer we prompted.

Questions built to test assertions

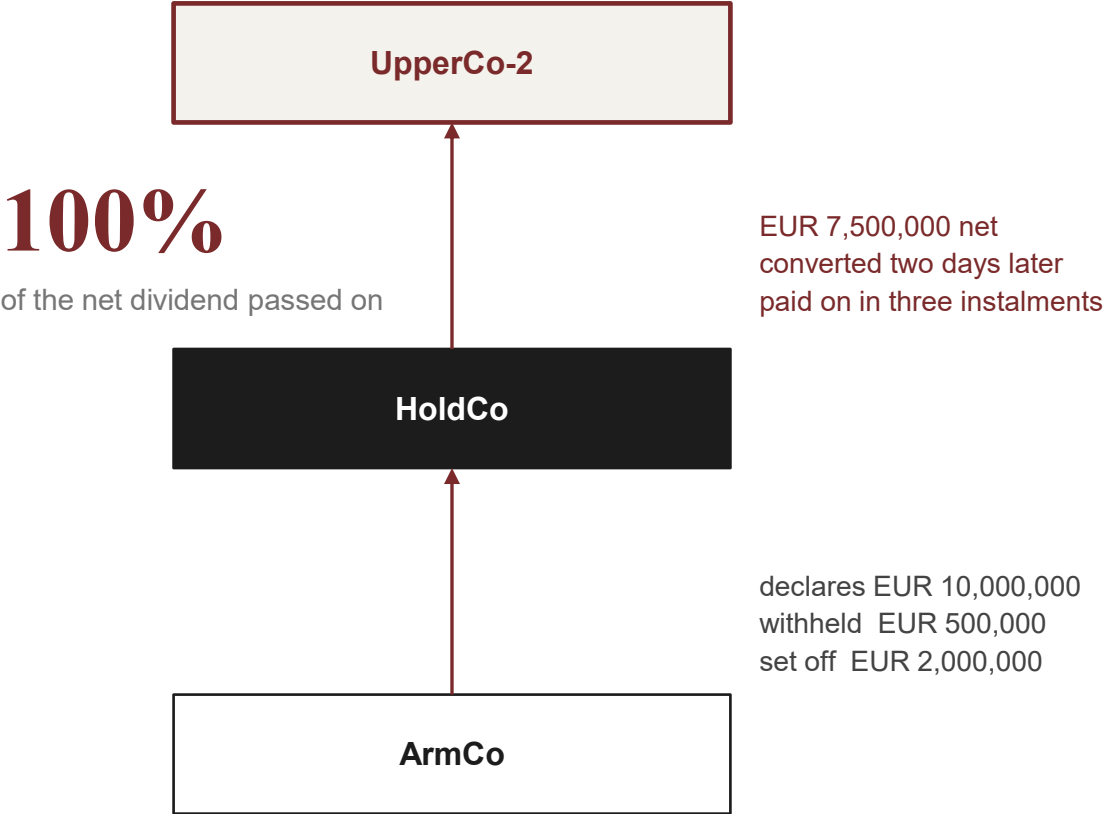
A weak request asks: please provide information about company Y. It produces a weak answer, several months later.

What they asserted	What we asked for	What it tests
“We have employees.”	A list with job titles, start and end dates — and whether any of them are simultaneously employed by other companies. Does the company use outsourced personnel?	<i>Turns a headcount into evidence.</i>
“We are an investment company.”	Active investment activity, holdings in other entities, and the economic substance of the participation itself.	<i>Tests the character it claims.</i>
The money.	Bank statements showing receipt of the dividend and its subsequent movement. Was it taxed in State X — if not, under which provision?	<i>Beneficial ownership, and the tax outcome the PPT needs.</i>
The loan.	Why was it taken, and how were the borrowed funds used?	<i>Whether the dividend was a repatriation already effected.</i>

The reply came in about two months.

The money trail

money ↑



Taxed nowhere

Exempt in State X under the participation exemption, and from the secondary levy. Add the 0% claimed in Armenia.

Staff after the event

Five names given — four appointed after the dividend was paid. Two are shareholders in the firm supplying the company’s own accounting.

Financed by its own subsidiary

HoldCo had borrowed EUR 30,000,000 from ArmCo — 3 times this dividend — and used it to repay its own shareholders.

The dividend was not the beginning of the cash flow. It was the settlement of a cash flow that had already happened.

Not the beneficial owner

An obligation to pass the payment on “will normally derive from relevant legal documents but may also be found to exist on the basis of facts and circumstances”.

OECD Commentary on Article 10, paragraph 12.4

The obligation need not be written down. You are entitled to find it in the facts — which is what lets a money trail do the work of a contract.

- 1 The whole amount passed on within a short period
- 2 An intermediate position in a four-layer structure
- 3 A nominee shareholder above
- 4 Loans from the very subsidiary that paid the dividend, applied to shareholder debt

Not a weapon against holding companies — a test that a real holding company passes.

The principal purpose test

Was obtaining the benefit one of the principal purposes of the arrangement? Not the only one — a lower threshold than many taxpayers assume.

- Timing of the incorporations
 - Layers and a nominee
 - A 0% rate under that treaty
 - Non-taxation on the other side
 - Financing out of the subsidiary
 - The set-off
 - The whole dividend passed on
-

The saving clause

Nothing established that at the time of payment the company had the independent activity, functions, resources or decision-making autonomy to explain the structure and the cash flows commercially.

0% denied. 5% stands.

The refund is refused. Both grounds reach the same figure, which makes the assessment much harder to dismantle.

Indicators, and three method points

Formation and timing

- Entities created within days of each other, shortly before the transaction they serve
- A structure that changes by adding a layer when an authority asks who owns it

People

- An owner with no economic capacity matching the investment
- A nominee under a declaration of trust
- Directors appointed after the income was received
- Officers who are partners in the firm supplying the company’s own accounting

Money

- Income passed on almost in full within days
- The recipient financed by the subsidiary that pays it
- Exemption on the other side, so the benefit produces tax nowhere

1 Combine your sources

No single fact was decisive.

2 Design the question first

A request converts suspicion into a finding only if each question tests a specific assertion.

3 Test proportion, not existence

Office EUR 15,000 a year, one director’s fee EUR 50,000 — against a EUR 10 million dividend.

Thank you

1 Incorporation is not entitlement.

A certificate of residence proves residence. It proves nothing about who is entitled to the income.

2 The holder of the legal title is not automatically the beneficial owner.

Ask what the recipient is obliged to do with the money — and remember the obligation may be found in the facts.

3 Substance is not a statement, a lease and a headcount.

It is functions, decisions and money — and most of the testing has to be done through your colleagues in the other administration.