



Norway - Confronting Treaty Shopping Through Shell Companies

NORWAY • INTERNATIONAL TAX

Norway — in a nutshell

- **Not an EU member, but aligned through the European Economic Area.**
- **Norway has approximately 90 Double Tax Treaties.**
 - Most are based on the OECD model tax agreement.
- **The nominal rate of dividend withholding taxes – 25 %**
- Usually the rate is lowered by way of a tax treaty or participation exemption.
- Norway operates a mixed system where the reduced rate is provided through relief at source and refund applications.

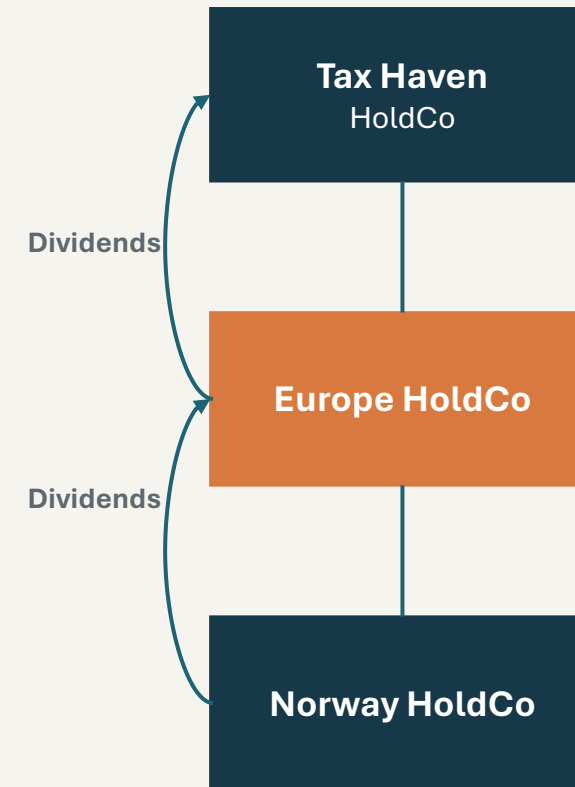
Pre-BEPS era tools

- **With regards to dividends, interest and royalties.**
 - Beneficial ownership
 - Real entitlement to income
- **More generally – GAAR**
 - Employees
 - Management
 - Board activity
 - Economic risk
- **Is there substance in this company?**



Pre-BEPS: the holding-company playbook

- **Assumptions about Europe HoldCo**
 - Access to participation exemption.
 - A beneficial tax treaty
 - 0 % withholding tax
- **Easy to structure substance/beneficial ownership.**



Illustrative ownership chain

MLI: Norway's positions

- **A Principal Purpose Test**
 - Primary anti-treaty-shopping tool
 - **New preamble language**
 - *to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance.*
 - **Strengthening permanent establishment rules.**
 - **Stronger Mutual Agreement Procedure (MAP)**
- **Norway did not insist on a LoB clause.**
 - LoB clauses will instead be included manually through bilateral treaty negotiations.
 - This has already been carried out in a few bilateral treaty negotiations carried out after the MLI.
 - For example with Brazil

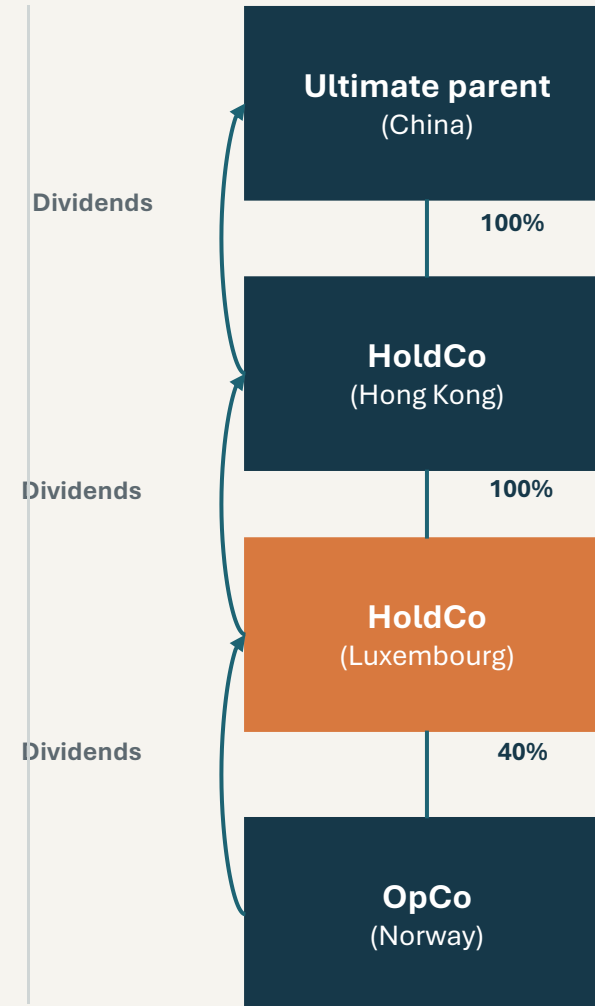


PPT Case

Norway

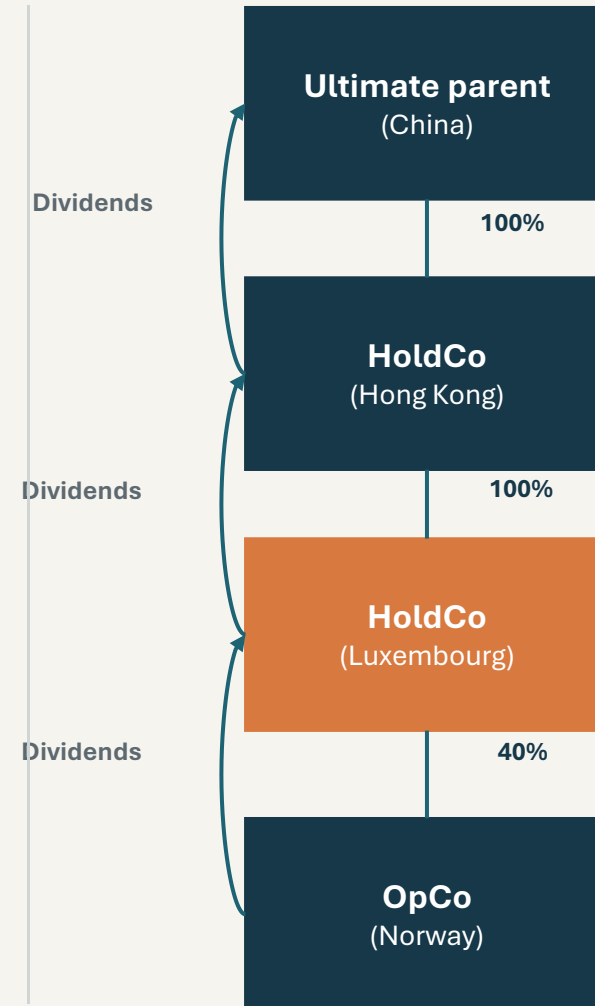
PPT case (1 of 4)

- Norwegian OpCo is a large Norwegian industrial firm.
- A significant shareholding was acquired by a state-owned Chinese enterprise through holding companies in Luxembourg and Hong Kong.
- Norwegian OpCo has subsequently distributed significant dividends to the Luxembourg HoldCo in 2022.
- The Luxembourg HoldCo claimed a reduced dividend withholding tax rate by way of participation exemption, and the Luxembourg-Norwegian tax treaty.
 - Participation exemption rate – 0 %
 - Special treaty rate – 5 %



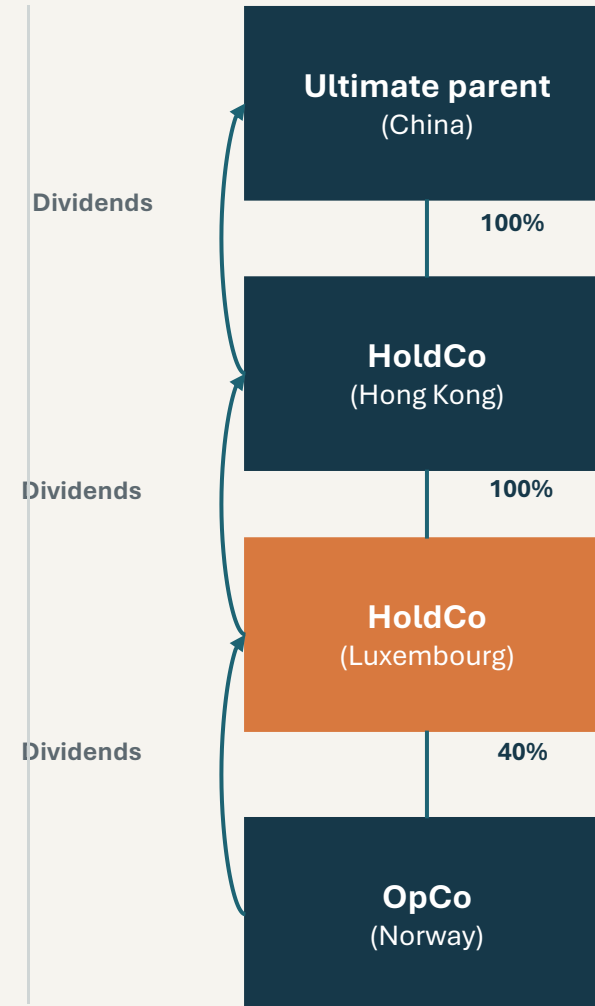
PPT case (2 of 4)

- The position of the NTA is that the **Principal Purpose Test** was applicable for the dividend distribution.
- Article 7(1) of the MLI took effect for the Luxembourg-Norway treaty on 1 January 2020. Hence, 2022 is within the rules.
- **In our view, three tests must be met before a benefit can be denied under the treaty:**
 - Is there a tax benefit directly or indirectly?
 - Is it reasonable to conclude, considering all the circumstances, that obtaining this benefit was a principal purpose of the arrangement?
 - If the principal purpose of the transaction was to obtain said tax benefit, is it still in accordance with the object and purpose of the treaty and its provisions to grant the benefit?



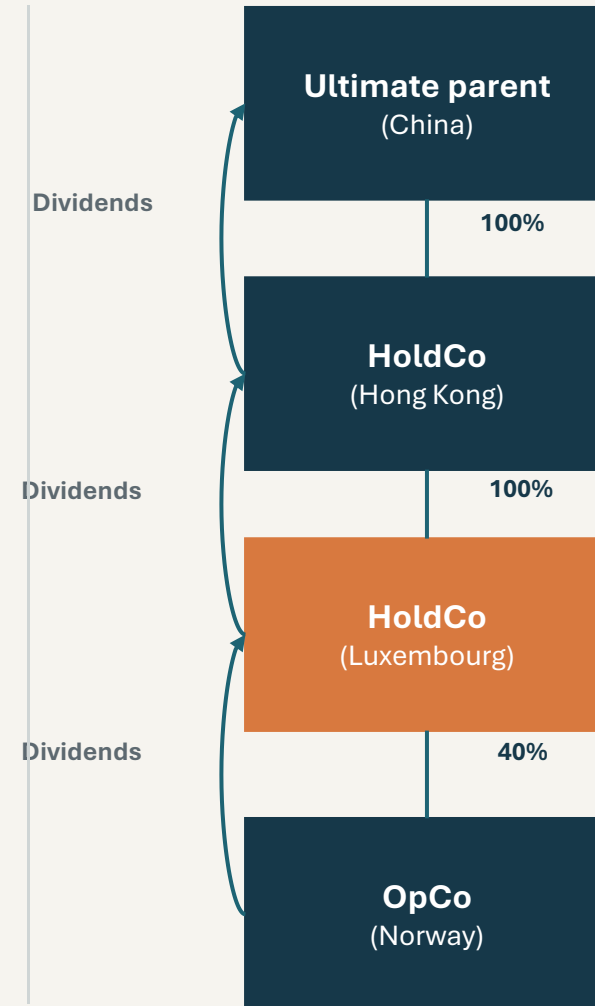
PPT case (3 of 4)

- **Is there a tax benefit?**
 - Yes. Reduced dividend withholding tax.
- **Is it reasonable to conclude, considering all the circumstances, that obtaining the benefit was a principal purpose of the arrangement?**
 - Activity in Luxembourg?
 - No employees
 - Not much income other than dividends from the Norwegian investments.
 - A sister company was present in the jurisdiction earlier.
 - Occasionally, dividends are paid directly to Hong Kong, bypassing Luxembourg altogether.
 - The taxpayer argued that Luxembourg was chosen because it is a known and preferred jurisdiction for Chinese investors.
 - According to the taxpayer, Luxembourg was supposed to be used for further investments in Europe.



PPT case (4 of 4)

- If the principal purpose of the transaction was the tax benefit, would granting it be consistent with the purpose and provisions of the treaty?
- **What is the purpose of the Treaty?**
- Avoidance of double taxation and facilitation of cross-border trade.
- New preamble following the MLI: The treaty should not create opportunities for treaty shopping, double non-taxation or tax avoidance.



Considerations

The use of the Principal Purpose Test
in targeting treaty-shopping
arrangements



A change of perspective

- **Previously**

- What is the substance in this company?
- Alternatively, is this company the beneficial owner of the dividends?

- **Under the PPT**

- What is the purpose of this company?

- **Tensions**

- What is the principal purpose?
- What is the interplay between the tax purpose and commercial purposes?
 - Can a benefit under a treaty be set aside even if the arrangement to a significant degree is commercially motivated?
 - To what extent will the traditional «substance» doctrine be taken into consideration?

The future of treaty-shopping cases

- **The PPT might entail a new future for treaty shopping cases.**
 - The PPT principally involves taking a different perspective than under previous substance based approaches.
 - A company may have employees, a board and real activity.
- Still, it might face challenges under the PPT.
 - **Can a company be genuine and still fail the PPT?**