



INTERNATIONAL TAXATION

Investment in India – International & Israeli Aspects

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TAX

Important facts for Israeli investors

Key Facts in India:

- Corporate tax rate – 33.99%. Tax incentives for certain investments (100% tax holiday). Corporate tax liability not less than Minimum Alternative Tax (MAT) – 11.33% calculated on book profits.
- Capital gains tax on sale of fixed assets – short term (up to 36 months): 42.23%; long term (above 36 months) – 21.12%.
- Dividend Distribution Tax (DDT) – 16.995%. DDT is at corporate level (not WHT) and is not deductible for tax purposes. Distributions can be made only after compulsory transfer to reserves.
- Capital gains tax on unlisted shares – short term: 42.23%; long term: 21.12%. Israeli treaty won't help.
- WHT on interest – 21.12%, royalties, technical fees – 10.56%.
- No thin-cap rules.

Important facts for Israeli investors

Key Facts in Israel:

- Corporate tax rate – 29% for 2007 (reduced to 27% for 2008; 26% for 2009; 25% for 2010 and on).
- Dividends from abroad are subject to:
 - 25% tax rate with direct tax credit; or
 - corporate tax rate (25%-29%) on the “grossed-up” dividend with underlying tax credit. This option is applicable only on dividends from second-tier subsidiary, and subject that the Israeli parent owns at least 25% of a first-tier subsidiary, which in turn owns at least 50% of second-tier subsidiary.
- Capital gains tax – 25%.
- CFC legislation.

Important facts for Israeli investors

Key Facts in Israel:

- Tax treatment of buy-back of shares or capital redemption -
 - Indian perspective:
 - Capital gain to the shareholders. Buyback of shares at face value should not trigger tax.
 - If the shareholder is a non-resident, the benefits, if any, of the relevant tax treaty can be availed.
 - Israeli perspective:
 - The law is not clear. Circular 10/2001 on the issue of buyback of shares by an Israeli company.
 - Default classification of buyback of shares out of reserves - triggers capital gains in the hands of the shareholders.
 - As an exception to this rule, in case the buyback is made *pro-rata* from all the shareholders it will be classified as dividend in the hands of the shareholders.
 - If buy buyback is done not out of reserves it is generally considered a capital reduction – generally triggering capital gain in the hands of the shareholders.

Investment considerations

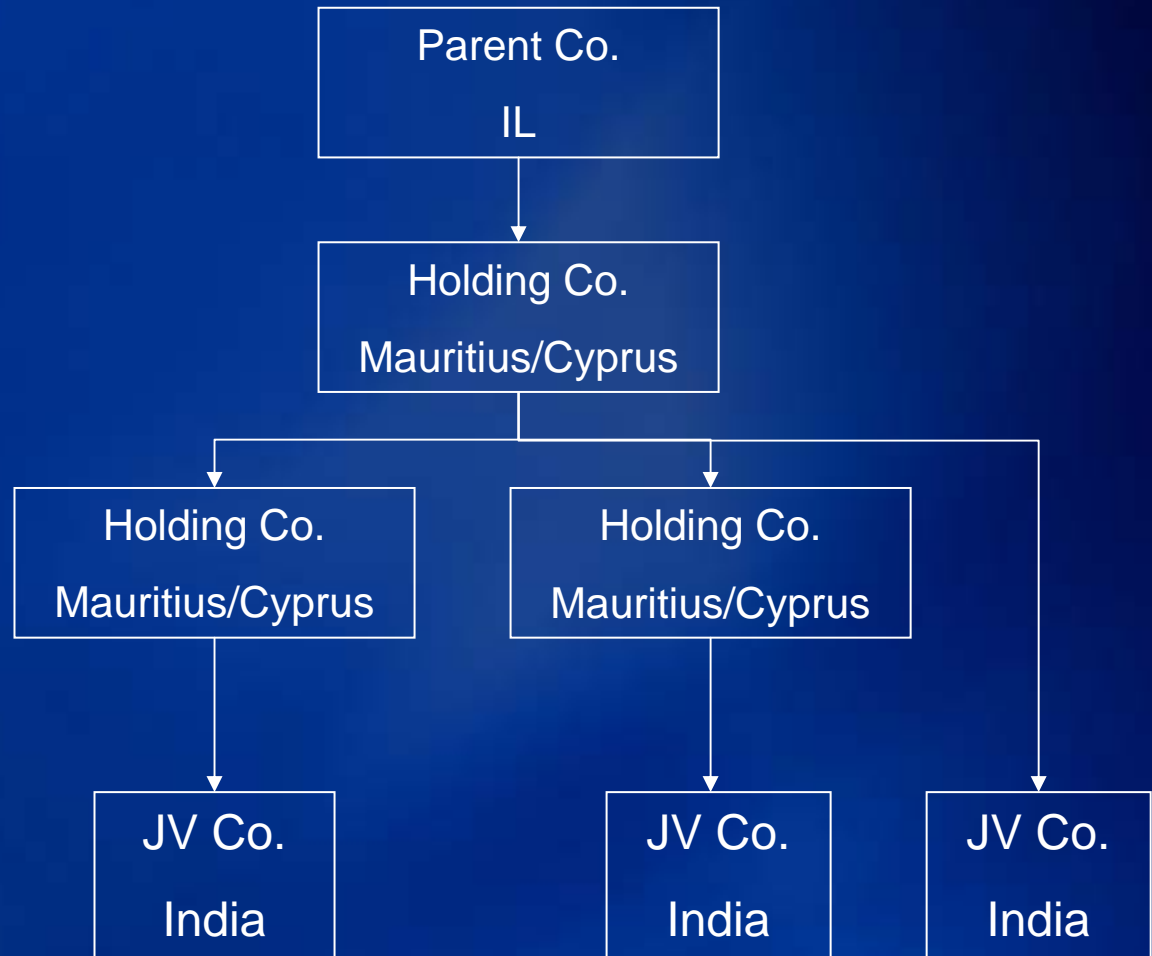
Generally, since corporate tax is higher in India than in Israel, you should consider:

- Shifting income from India to Israel.
- No intrinsic disadvantage in direct holding from Israel, as there is NO withholding tax on dividends in India. Total tax of app. 43%.
- In order to benefit from an underlying tax credit – only one intermediary should be imposed.
- Possibility to use intermediate holding company (consider Mauritius, Cyprus or Netherlands), while funds are kept abroad or reinvested in other jurisdictions, without being considered as Israeli CFC income.
- Depending on your Exit consider single/multiple holding companies structure.

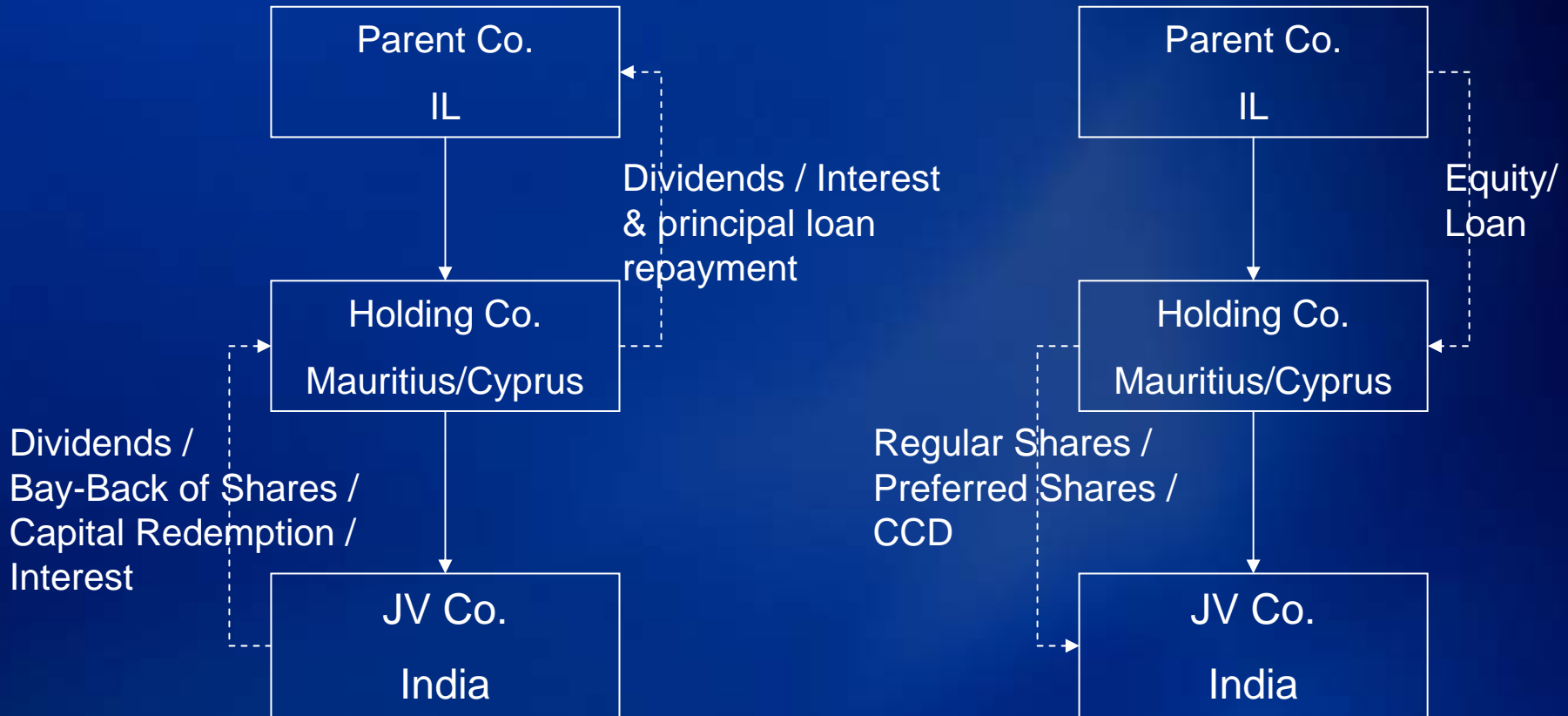
Structure illustration

Pros / Cons:

- + Capture value in one company; Flexibility for IPO
- + Flexibility and tax efficiency on exit
- + Reduced tax burden: Capital gains can be eliminated; reduced WHT on interest
- Greater Administrative Costs (especially in context of proposed changes to tax treaties)



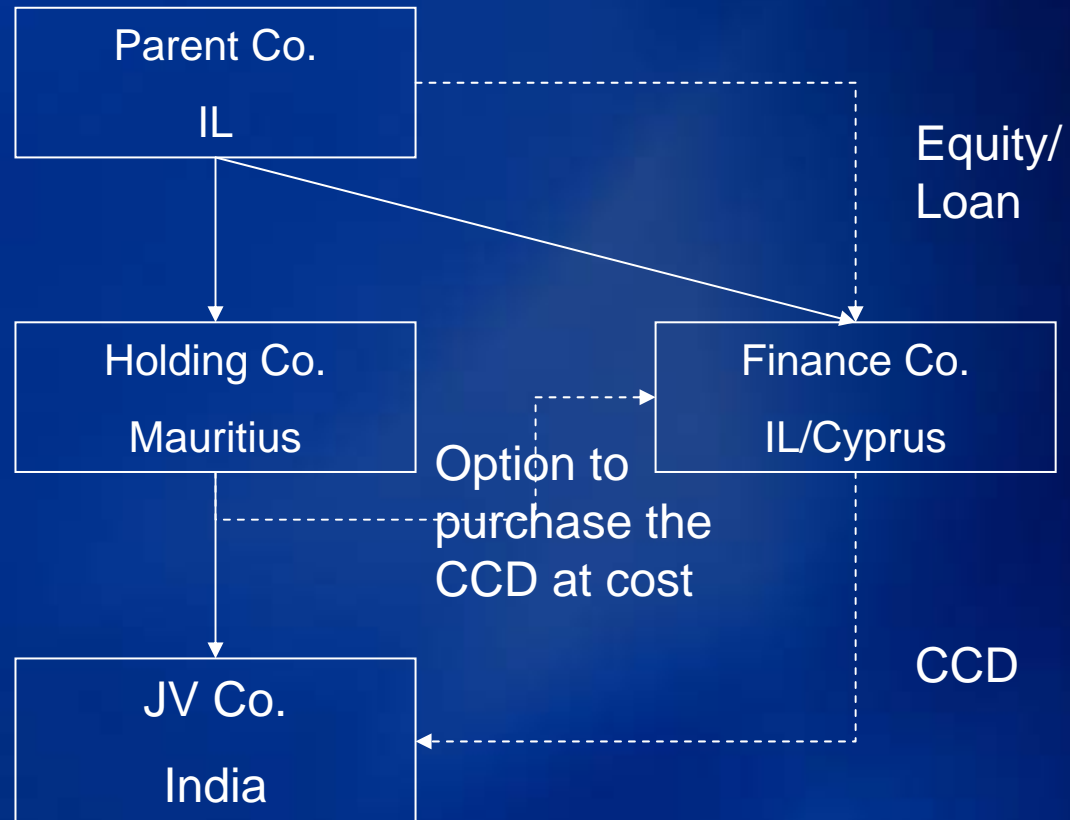
Structure illustration



Structure illustration

Consider:

- + Reduced WHT on interest to Israel/Cyprus (beneficial owner)
- + Possibility to assign/transfer the CCD at cost
- + Avoid capital gain tax in India
- Consider TP issues
- Watch out for artificial transaction



Holding Company Location

Particulars	Israel	Cyprus	Mauritius	Netherlands
Corporate Tax	25%-29%	10%	3% (15% less deemed foreign tax credit of 80%)	25.5%
Dividends				
Tax on foreign dividends	25% direct tax credit; regular rates – underlying tax credit	Exempt under certain conditions	15% with direct tax credit; regular rate with 80% deduction – effectively 3%	Exempt under certain conditions – Participation Exemption
WHT on dividends to Israeli shareholders	Intercompany dividends are exempt	Exempt	Exempt	5%/15% according to DDT
Capital Gains				
Capital gains tax in India from sale of shares	Real Estate shares are taxed in India	Exempt*	Exempt*	Real Estate shares are taxed in India
Capital gains tax in Seller jurisdiction from foreign participations	25%	Exempt	Exempt	Exempt under certain conditions – Participation Exemption

Holding Company Location

Particulars	Israel	Cyprus	Mauritius	Netherlands
Interest				
WHT on interest paid by Indian Co.	10%	10%	20.91%	10%
VAT				
VAT rates	15.5%	15%	No VAT	19%



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