



8. Schweizer Private Equity & Corporate Finance Kongress

Steuerliche Entwicklungen im Private Equity



Agenda

01 Addressing Tax in a wider world

02 Taxation of Swiss Funds / Managers

03 Affidavit Procedure

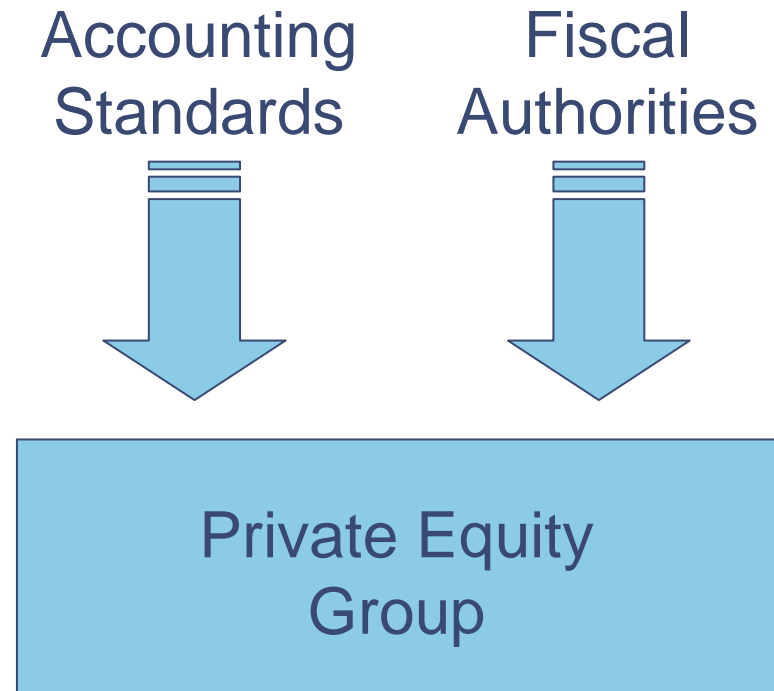
04 Stamp Duty

01



Addressing Tax in a wider world

The changing global tax environment: Fund related issues



The changing global tax environment

Accounting standards are starting to drive tax issues

- Impact of the implementation of FIN48
- Convergence of US GAAP and IFRS

What does this mean?

Capital gains derived from the sale of shares in German companies are subject to corporate income tax if the direct or indirect investment amounted to at least one percent of the nominal share capital within a period of five years preceding the sale of the shares

- Unexpected tax revenue's for the German authorities
- Highlights to tax authorities areas of non compliance

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Should the board of the fund be concerned?

Whose responsibility is this?

The primary responsibility to file a tax return and pay the tax rests with the board of the fund.

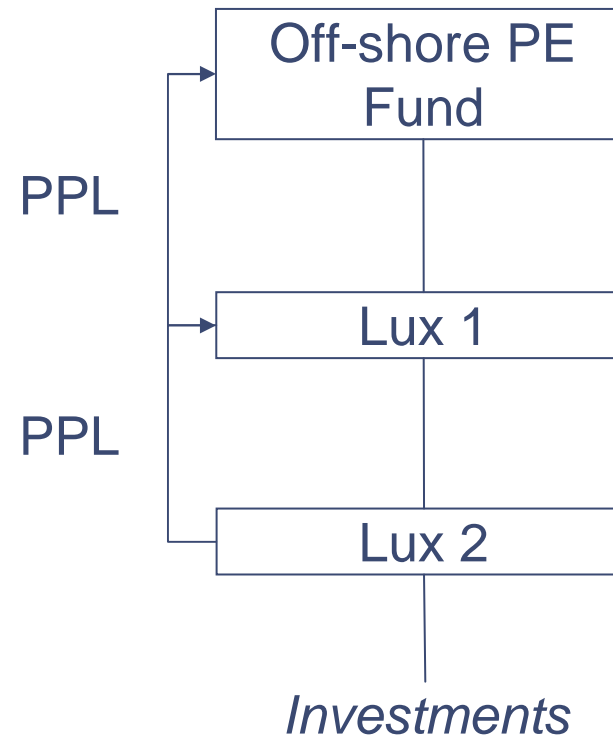
- These are not withholding taxes and therefore not delegated to the invested company
- What policies do you have in place to identify these issues?

A question of substance Why does this matter?

Many funds now use investment platforms to mitigate withholding tax on:

- Interest
- Dividends
- Onshore capital gains tax

How effective are these structures in the new global environment?



The substance issue

What is substance?

- Offices and infrastructure
- Employees
- Bank accounts

What does this mean?

Fiscal authorities need to raise tax revenues

Corporate tax is unlikely to raise sufficient revenues in the foreseeable future so where will they look?

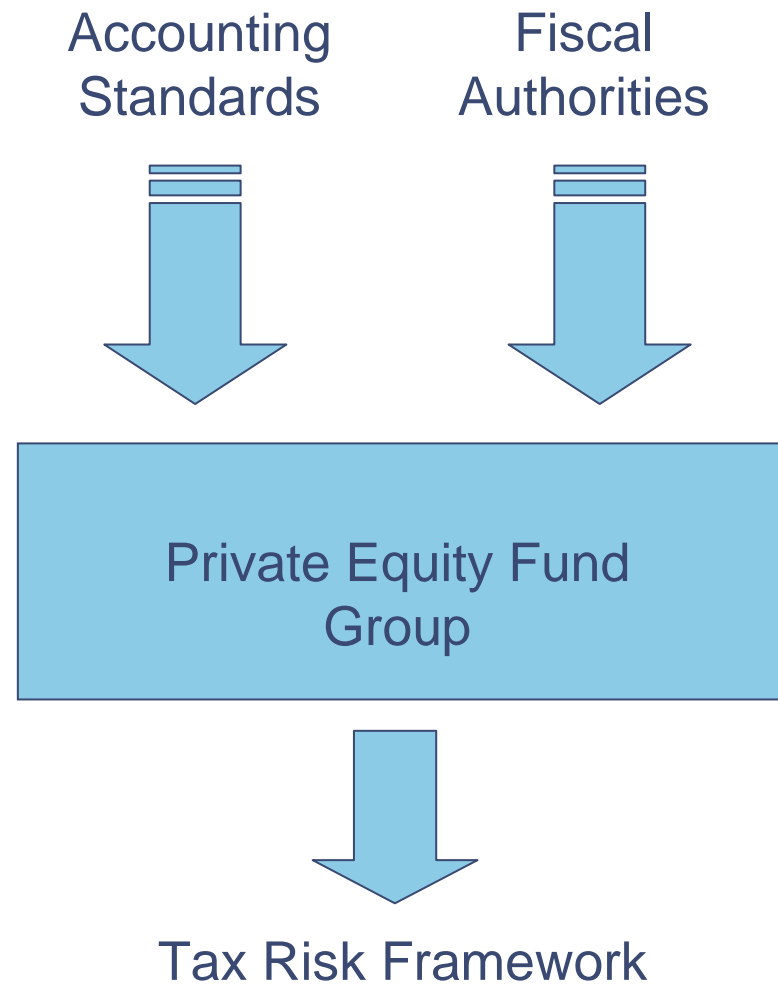
- Irrecoverable withholding tax
- Onshore capital gains taxes

What should you do?

It is essential for the board of the fund to have in place a properly documented tax risk management policy

Even this is not enough:

- The policy must be adhered to;
- Subject to periodic review; and
- Updated as required.



02

Taxation of Swiss Funds / Mangers



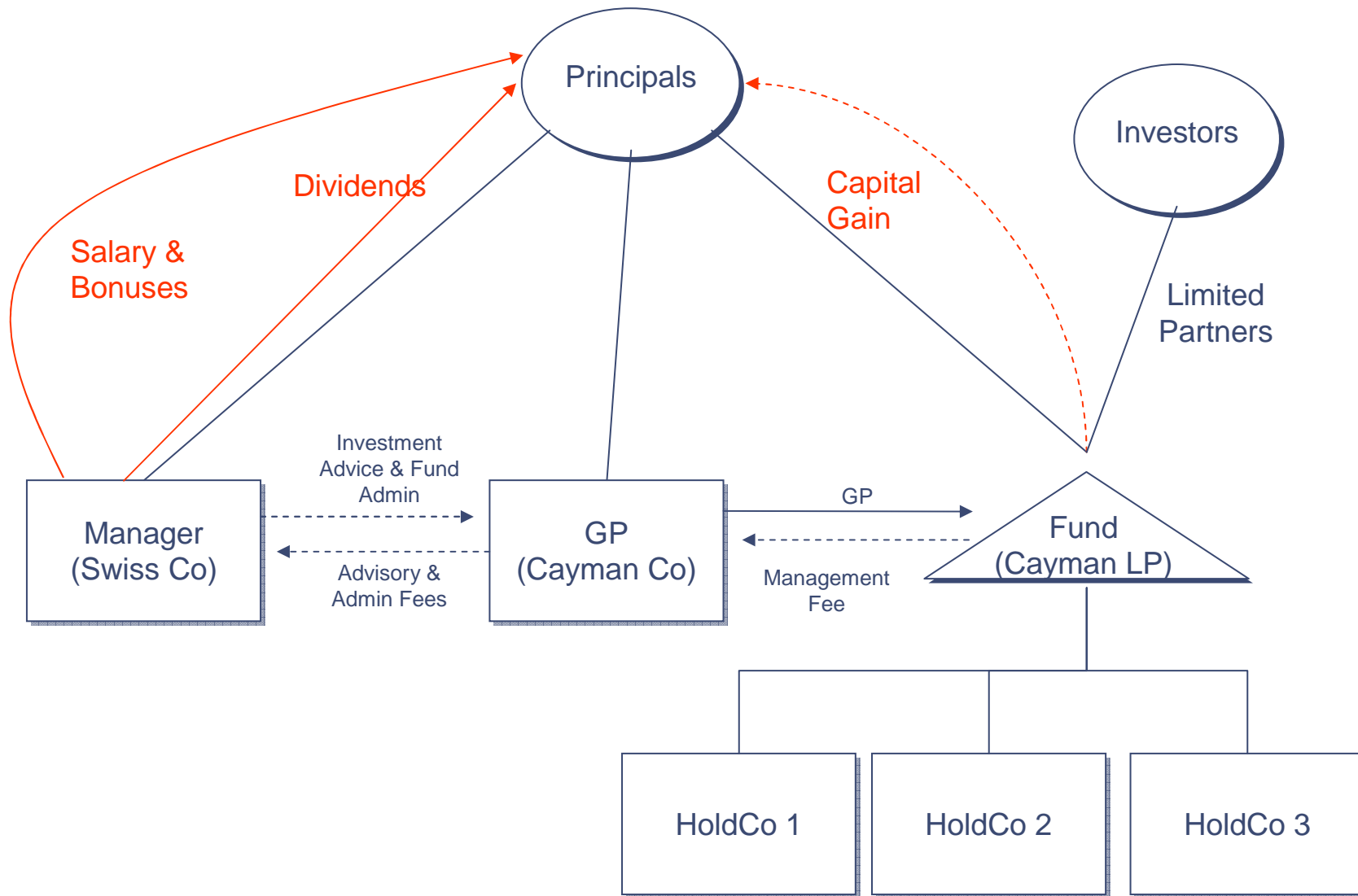
Taxation principles for Swiss Managers

- New draft tax circular on taxation of remuneration of PE and HF Manager expected
- Current Swiss tax legislation is in general highly competitive; however, due to lack of safe harbour rules and guidelines in Switzerland has not yet attracted as many Managers as it could have done.
- The goal of this new circular is therefore to set reliable safe harbour rules on the remuneration of PE and HF Manager.
- No preferential tax legislation for taxation of Managers

Taxation principles for Swiss Managers

- Conditions which qualify the activity of the Managers as self employed – or when a Manager can realise a tax exempt capital gain:
 - To the extent “performance remunerations” are paid to the Manager (either directly or indirectly through a partnership) for his personal direct involvement:
=> such remuneration re-qualifies all his income as self employed income.
 - To the extent the remunerations paid to the Manager by the fund are not qualified as “performance remuneration”:
=> capital gains paid by the fund to the Manager may be realised as a tax exempt capital gains

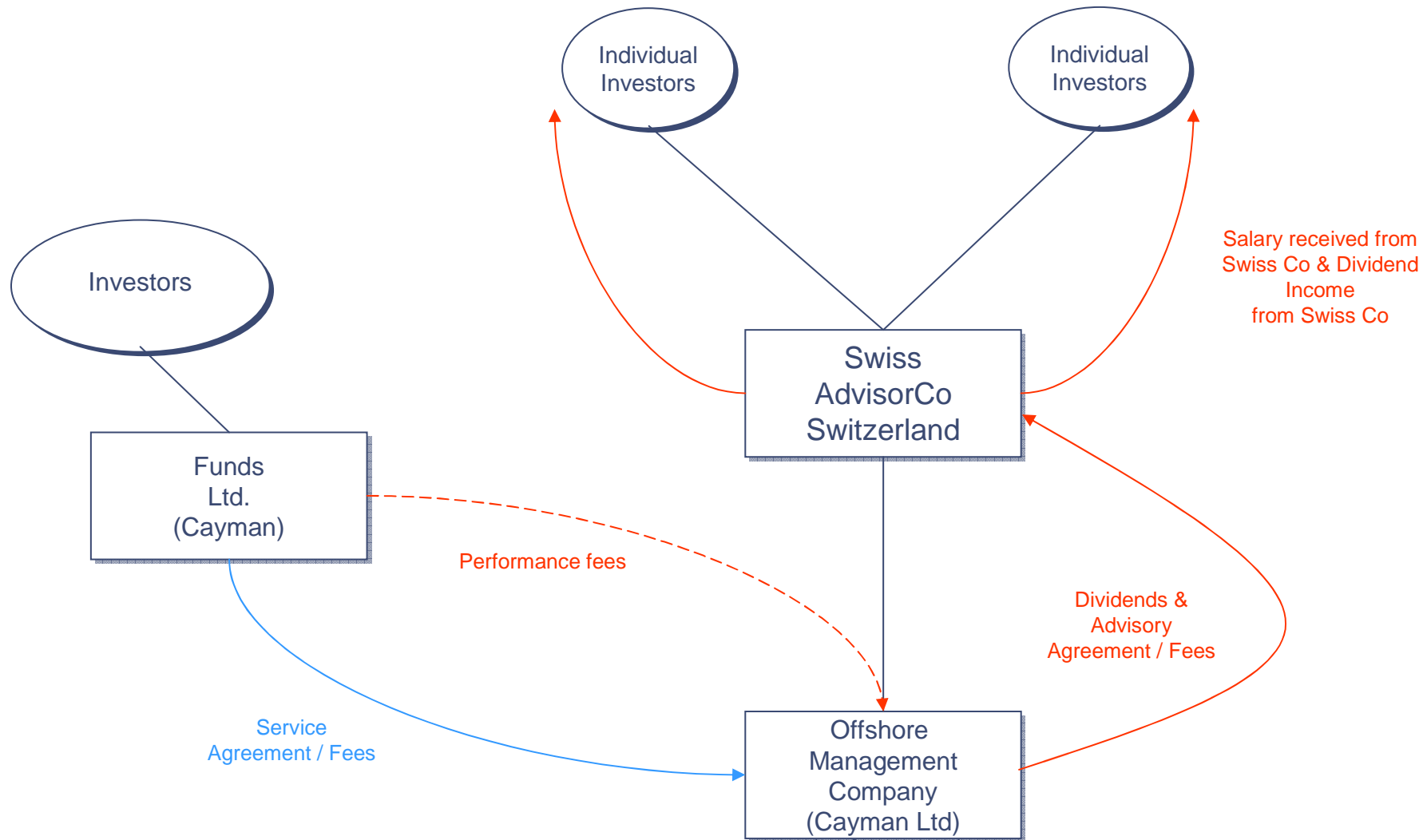
Taxation principles for Swiss Managers



Taxation principles for Swiss Managers

- The circular will further stipulate that on-shore / off-shore structures are acceptable as long as the remunerations for the functions performed in Switzerland are at arm's length (including split between salary payment and profit distributions).
- The expenses booked in all on-shore and off-shore entities correspond with the function performed.
- A capitalisation of future performance elements (with subsequent depreciations) in a Swiss entity would be accepted (even if contributed from a foreign entity) to the extent it is in line with Swiss commercial law.

Taxation principles for Swiss Managers



03



Affidavit Procedure

Taxation principles for Swiss Funds

- Swiss Funds do not have to levy Swiss withholding tax on income, if conditions of the “Affidavit procedure” are met:
 - 80% of income is arising from foreign sources
 - It can be made plausible that the 80% foreign source income is of a long term basis and the income of the Fund will be allocated, booked and/or paid out on behalf of foreign Investors.

Taxation principles for Swiss Funds [cont]

- The accounting of the Fund must allow to separate foreign and domestic income.
- Affidavit procedure can be obtained for special share categories or sub-Funds in Umbrella structures.
- Affidavit declarations can be issued by:
 - a) Regulated Swiss banks
 - b) Foreign regulated bank (on behalf of a Swiss bank only)
 - c) Swiss and foreign regulated custodians
 - d) Regulated Swiss Fund Managers
 - e) Some others

04



Stamp Duty

Definition of foreign Fund according to Stamp Duty legislation

- Why important:
 - Issuance of shares in foreign Funds is a taxable event
 - Foreign Funds qualify as exempt party
- New definition does include the following Funds:
 - Foreign Funds which are regulated in Switzerland
 - Foreign Funds which are regulated abroad (even for single investor Funds if regulated) or if not
 - Are contractual or corporate structured and aim to:
 - Have a collective investment character and
 - Have legal residence abroad and
 - Investors have legal right to redeem their shares at NAV (at least once a year whereas lockup period for max 5 years is not harmful)
- New definition is very wide and therefore includes most PE Funds and Closed end vehicles.

Thank you

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