Structuring investments into and through Australia

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Structuring investments into and through Australia

Summary

1. Inbound investment into Australia

- Foreign investors can leverage their Australian acquisitions (within prescribed limits) and, in appropriate circumstances, achieve a 'step up' in the tax basis of Target's underlying assets

2. Australia as a regional holding jurisdiction

- Foreign investors can use an existing Australian subsidiary to hold other offshore subsidiaries with active businesses
- Foreign dividends or branch income earned by the Australian holding company should not be taxed in Australia and these profits can be repatriated to the foreign investor without any further Australian taxes
- The Australian holding company may be able to benefit from Australia's network of double tax agreements to reduce withholding tax leakage on its foreign dividend income
- Any capital gains derived from the disposal of active offshore subsidiaries or foreign branch assets should also be tax free in Australia and these profits can be repatriated by the Australian holding company to the foreign investor without any further Australian taxes

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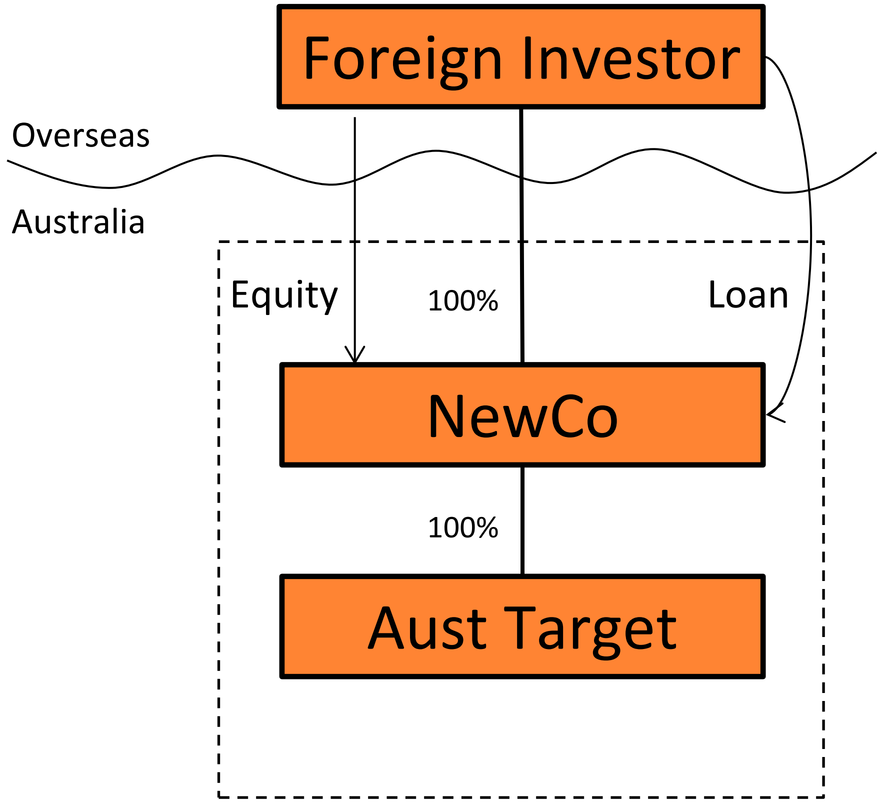
Inbound investment into Australia

<u>Investment Steps</u>

- Foreign investor incorporates NewCo in Australia
- Foreign Investor funds NewCo with a combination of equity and interest bearing debt
- NewCo uses funds to acquire Aust Target
- NewCo elects to form a tax consolidated group with Aust Target (note: additional structuring may be required if Aust Target is the Head Company of an existing Australian tax consolidated group)

<u>Australian Taxation Issues</u>

- Interest deductions may be claimed by NewCo on loan from Foreign Investor (subject to thin capitalisation limits – broadly debt to equity ratio of 1.5:1 – and transfer pricing rules)
- Withholding tax (WHT) applies to interest payments at 10%
- Consolidation may result in step up (or down) of cost basis of underlying assets and therefore increase (or decrease) future tax deductions (e.g. on depreciable plant & equipment but not goodwill) in Target
- Dividends paid by NewCo to Foreign Investor should not attract WHT to the extent they are franked (i.e. paid out of after tax profits)
- No Australian capital gains tax liability on capital gain from disposal of NewCo by Foreign Investor, unless the value of NewCo's assets is primarily derived from Australian real property interests



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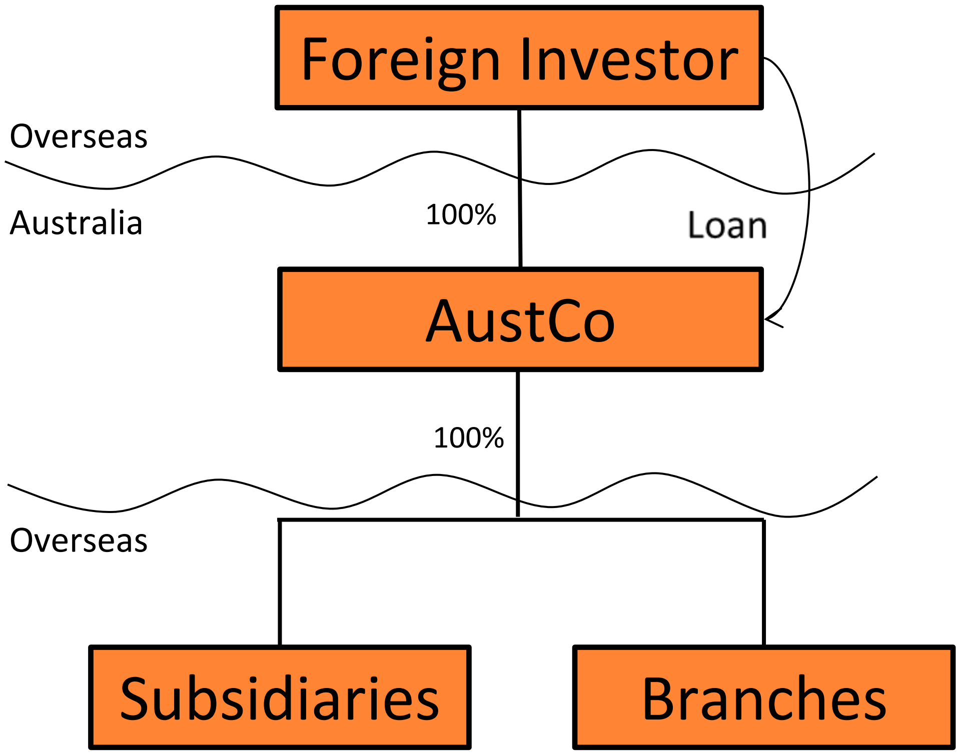
Australia - a tax efficient regional holding regime

Investment Steps

- Foreign Investor owns AustCo, which carries on an Australian business
- Foreign Investor makes interest bearing loan to AustCo (subject to thin capitalisation limits – refer below)
- AustCo uses those funds to acquire overseas subsidiaries
- AustCo also opens overseas branches using its own cash reserves

Australian Taxation Issues

- Interest deductions may be claimed by AustCo on loan from Foreign Investor to the extent that the funds are used to fund foreign subsidiaries (but not branches) (subject to thin capitalisation limits – broadly debt to equity ratio of 1.5:1 – and transfer pricing rules)
- Dividends received from overseas subsidiaries are non-assessable non-exempt (i.e. non-taxable) income in Australia
- Overseas branch profits are non-assessable non-exempt income in Australia
- Need to consider Australia's accruals taxation rules in respect of AustCo's overseas subsidiaries and branches – broadly accruals taxation should not occur where overseas operations are predominantly active in nature
- Under the 'conduit foreign income' rules, dividends from overseas subsidiaries and overseas branch profits may be repatriated by AustCo to Foreign Investor without any Australian dividend WHT
- No Australian capital gains tax liability on capital gains from disposal of overseas subsidiaries or branches to the extent they hold active business assets. Under the 'conduit foreign income' rules, non-taxable gains may be repatriated by AustCo to Foreign Investor without any Australian dividend WHT



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