

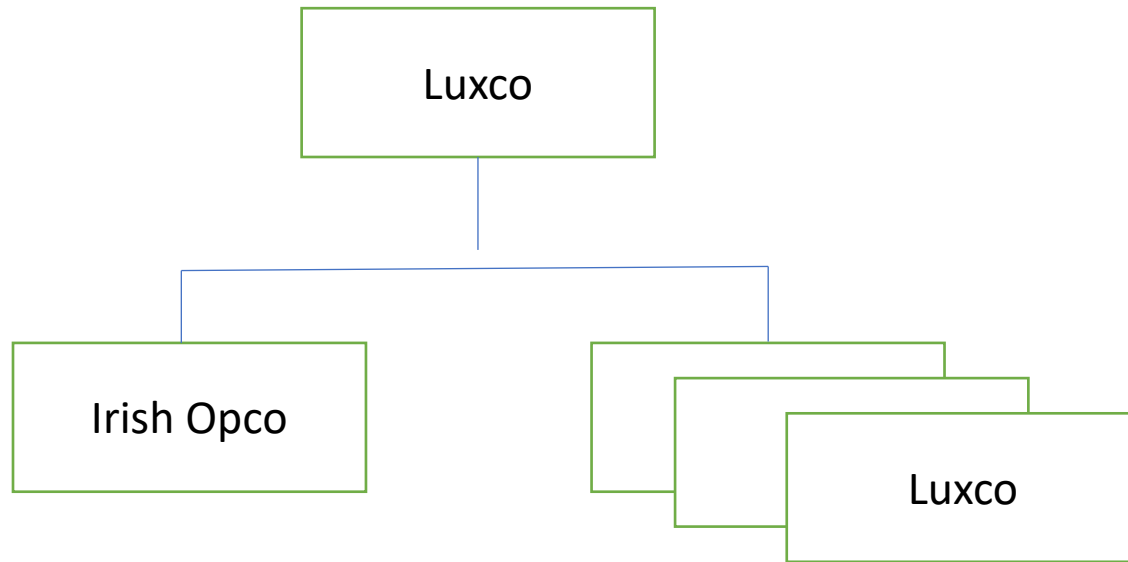
Case Study

Cross Border Dissolution

October 2023

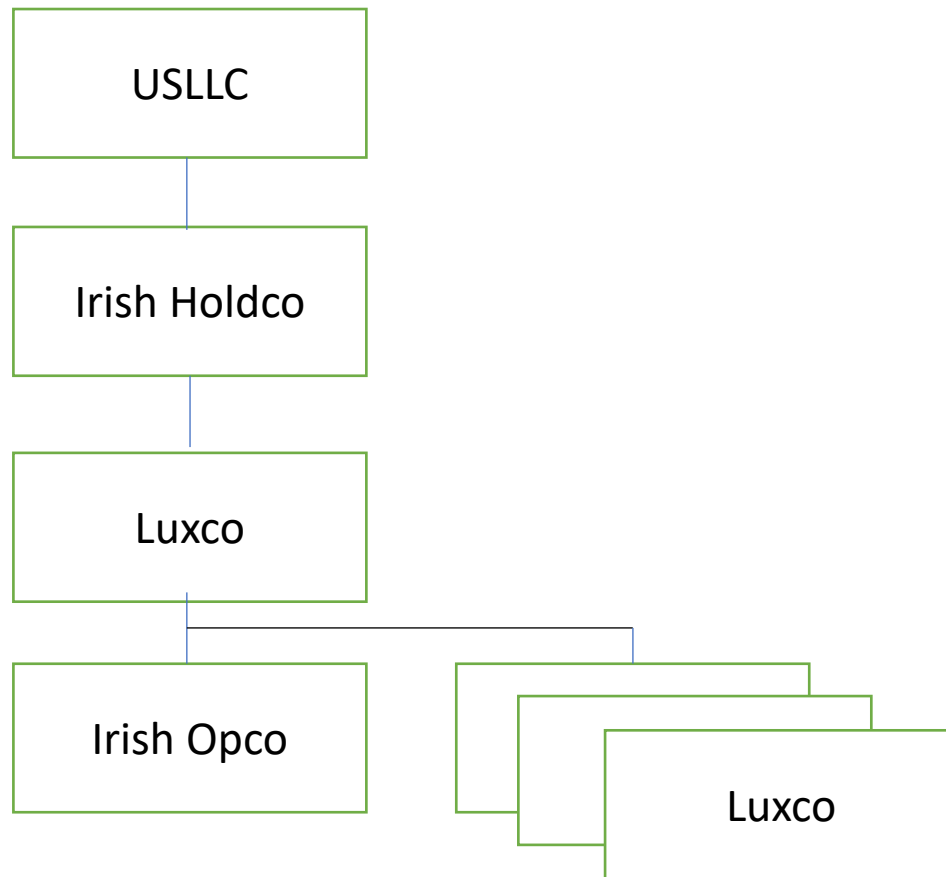


Initial structure



- Client is in the patent business – acquires patents and then seeks compensation for infringement
- Luxembourg Holding company with a number of Lux subs as well as an Irish operating entity

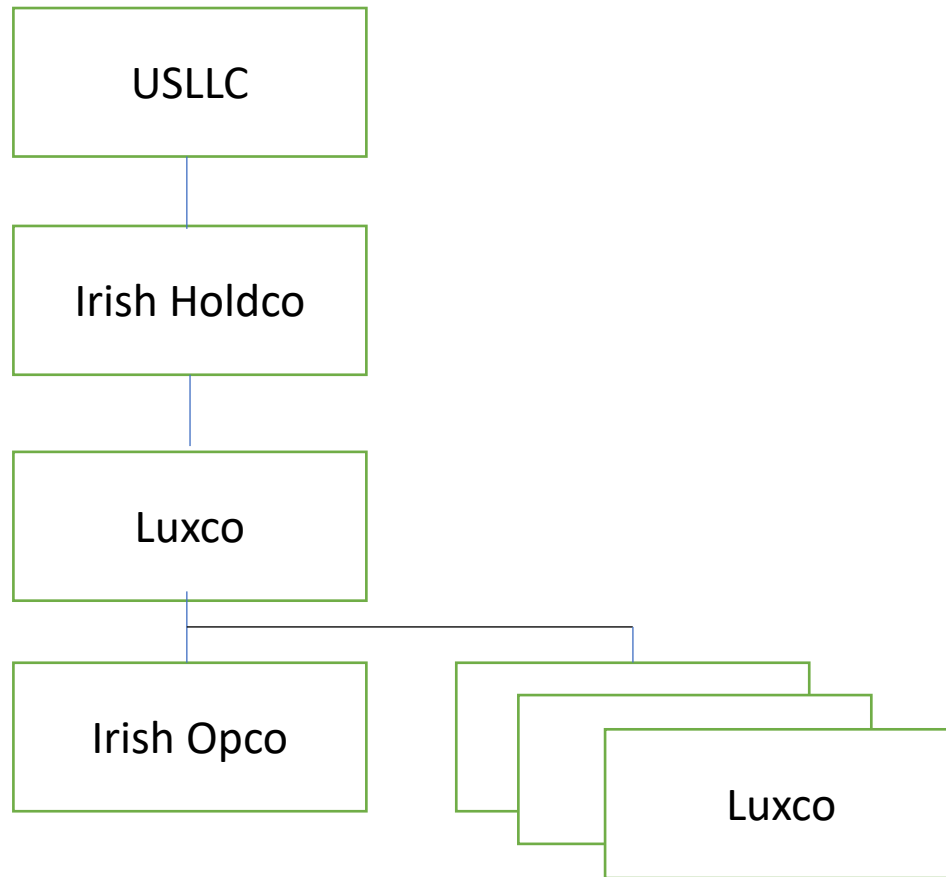
Acquisition



- PE acquisition of the group
- US LLC established an Irish holding company that acquired the Lux holding company
- “Sandwich structure” for Irish purposes



Issues



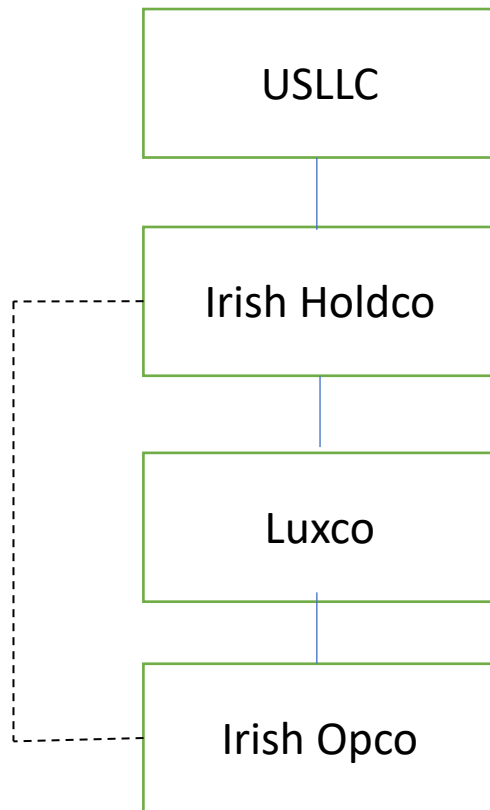
- US client did not like Lux structure- bad experience, very expensive to maintain, substance, changing international tax environment
- Wanted to develop substance in Ireland
- Repatriation of profits from Irish Opco to Irish Holdco via Luxembourg – issue

Dissolution of lower tier Luxcos



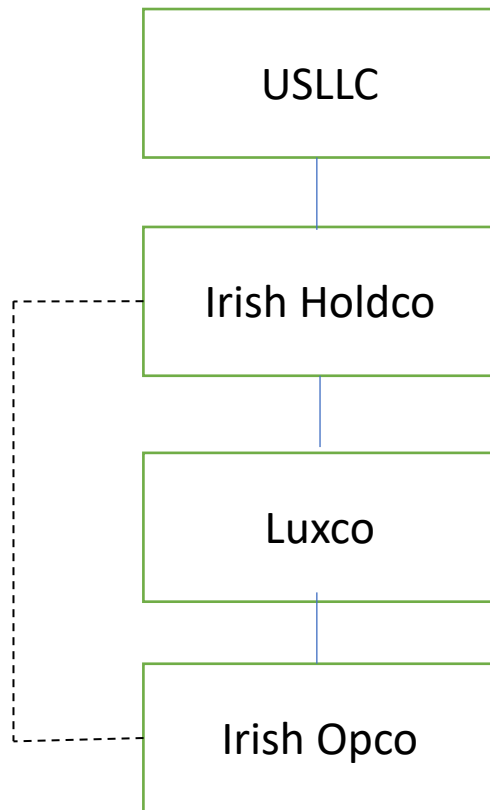
- IP migrated to Irish entity
- Lower tier lux entities dissolved
- Still left with “sandwich” structure and a Lux entity

Dividend Access Share



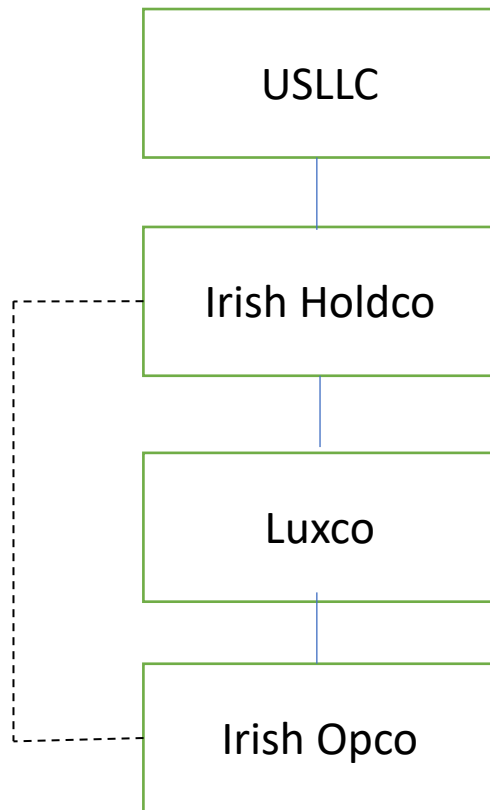
- Franked investment income – exempt
- Routing via Luxco - Converted Irish source income to foreign source income
- Credit for “foreign” tax?
- Allow distribution Ireland to Ireland – exempt
- Short term solution – still left with Luxco

Dissolution without liquidation of Luxco



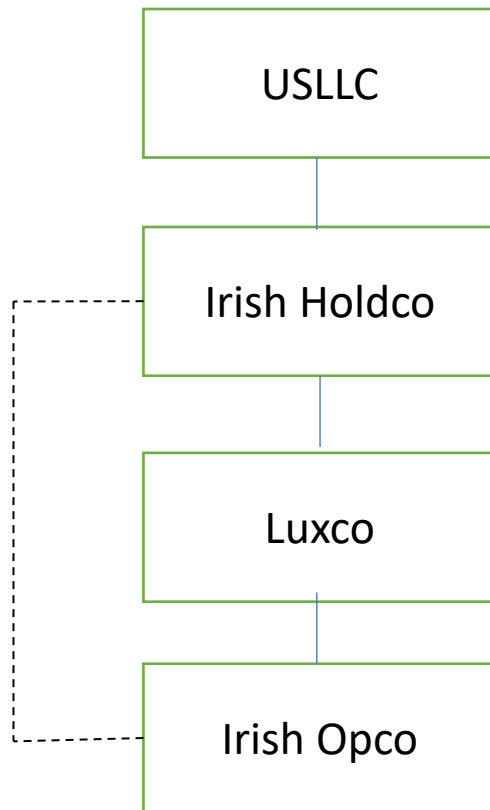
- Possible to either (i) liquidate Luxco or (ii) dissolution without liquidation
- Prima Facie deemed disposal by Irish Holdco – CGT on gain @ 33%
- Substantial Shareholding Exemption (SSE) - Issue of “trading” status of Holdco and group.
- Possible sale – due diligence
- EU Cross border merger Directive

Dissolution without liquidation of Luxco



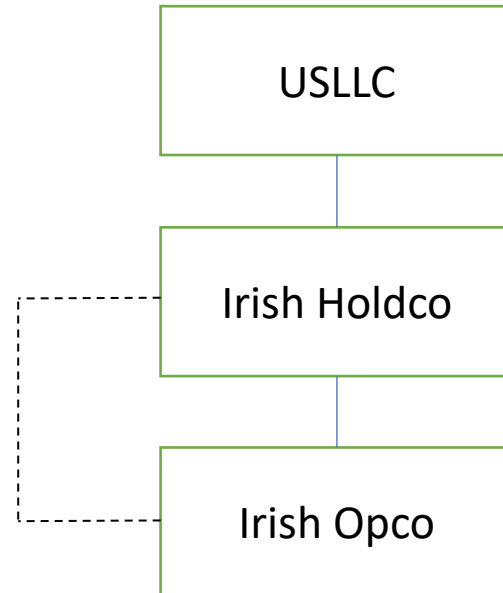
- Pre 2008 it was not possible under Irish law to dissolve a company without its going into liquidation.
- EU legislation in 2008 permitted cross border/dissolutions.
- Under Article 7 of the Mergers Directive requirement that dissolutions without liquidation are not taxable
- Ireland implemented the Directive into Irish domestic
- Directive incorrectly transposed - restricted restricting the exemption to the transfer “of the whole or part of the trade” rather than all assets and liabilities

Dissolution without liquidation of Luxco



- FA 2021- amended Irish legislation to bring it in line with the EU Directive
- Finance Bill 2021 published in October 2021 proposed an amendment to ensure that where a company is dissolved without going into liquidation and transfers all its assets and liabilities to its 100% parent it shall not be treated as involving a disposal by the parent of the share capital of the company.
- Finance Act passed on 21 December 2021 – change effective from 1 January 2022.
- Lux dissolution second week of January

Final Structure





Thank you

