# CZECH AND SLOVAK ENTITIES AS VEHICLES FOR INTERNATIONAL TAX PLANNING AND ASSET PROTECTION

1. *INTRODUCTION TO THE CORPORATE AND TAX REGIME*

2. *TYPICAL TAX PLANNING AND ASSET PROTECTION STRUCTURES*

PROTTECO

TRUST COMPANY

PRAGUE I BRATISLAVA I NICOSIA I ANGUILLA

# About us

## PROTTECO TRUST COMPANY

- part of a financial and international tax consulting group formed in Prague in July 1992,
- based in the Czech Rep., Slovakia and Cyprus,
- largest provider of shelf companies in the Czech Rep. and Slovakia (more than 6,000 companies sold),
- licensed administrative services provider in Cyprus and Anguilla,
- employs 120 tax, legal, corporate and administration specialists.

# Our services

- international tax planning and asset protection consulting,
- creation of structures fit to clientele from particular countries,
- company formation and administration in the Czech Republic, Slovakia, Cyprus and Anguilla,
- secretarial services, nominee director/shareholder services,
- bookkeeping and audit services,
- trustee services (Czech trusts, Anguilla foundations).

# Our services (2)

## Typical clients

- professional intermediaries (tax advisors, lawyers, offshore consultants, corporate services providers),
- from Ukraine, Kazakhstan, Russia, Poland, Hungary etc.

## Most requested "product"

- Czech/Slovak shelf companies with already opened bank accounts in a Czech/Slovak bank,

## Most requested structure

- Czech/Slovak companies acting as agents in international trade,

# Czech Republic and Slovakia – general information

- former states of Czechoslovakia that split peacefully in 1993,
- situated in the Central Europe,
- civil law countries,
- EU members since 2004,
- OECD members since 1995/2000,
- Currency in the Czech Rep.: CZK,
- Currency in Slovakia: EUR.

# Czech Republic and Slovakia – general information (2)

| LIMITED LIABILITY COMPANY | CZECH REPUBLIC | SLOVAKIA |
|---|---|---|
| **Minimum number of directors** | One individual or a legal entity | One individual or a legal entity |
| **Requirements as to directors** | None<br>(no limitations on the country of origin)<br><br>In case of a foreign individual, a duly certified police record (criminal clearance) must be presented.<br><br>In practice, residence of directors has no impact on the tax residence of the company. | Director of the Slovak company (or of a corporate director of a Slovak company) must be a OECD resident.<br><br>In case of a foreign resident, a duly certified police record (criminal clearance) must be presented.<br><br>In practice, residence of directors has no impact on the tax residence of the company. |
| **Supervisory Board** | Not obligatory | Not obligatory |
| **Minimum number of shareholders** | One individual or corporation | One individual or corporation |
| **Requirements as to shareholders** | None | None |

# Czech Republic and Slovakia – general information (3)

## TAX REGIME

- same background and many similar attributes due to historical consequences,

- implementation of EU tax directives:
    - EU Parent-Subsidiary Directive,
    - EU Interest and Royalties Directive,
    - EU $6^{th}$ Directive (VAT),
    - EU Savings Directive.

- broad network of DTTs
    - Czech Republic – 83 DTTs including Ukraine,
    - Slovakia - 64 DTTs including Ukraine.

- both countries compliant with the automatic exchange of information under the OECD Common Reporting Standard since 2017.

# CZECH REPUBLIC – Corporate Taxation

## Tax residence

- resident companies are subject to tax on their worldwide income,
- company is treated as resident if it has its legal seat or place of effective management in the Czech Rep.,

## Tax period

- the taxpayer can elect a fiscal year, although a calendar year is a standard,
- the initial tax period can be either longer than 12 months (max. 15 months), if the company is incorporated during last quarter of a year.

## Corporate income tax rate

- 19% (effective taxation can be decreased in case of the use of agent structures),

## VAT

- standard rate of 21%,
- reduced rates of 15% and 10% (food, pharmaceuticals, accommodation etc.)

# CZECH REPUBLIC – Corporate Taxation (2)

## Taxation of incoming dividends

- EU Parent-Subsidiary fully implemented, i.e. dividends tax exempt if standard conditions are met (10% shares, 12 months),
- exemption applies also to dividends from non-EU subsidiaries which
  - a) are tax resident in a country having a DTT with the CZ,
  - b) are in a legal form comparable to a Czech joint-stock company or Ltd,
  - c) in its country of residence, it is subject to a CIT at a rate of at least 12%,
  - d) 12 months, 10% ownership.

## Participation exemption

- applicable, i.e. sale of shares in EU as well as non-EU subsidiaries, under the same conditions as for the tax exemption of dividend income,
- if the conditions are not met, the income from the sale of assets is generally included into other taxable income and taxed by the regular corporate income tax.

# CZECH REPUBLIC - Withholding taxes

**Dividends / Interest / Royalties**

- exempted under the EU PS Directive (10% share, 12 months), or
- reduced under the respective DTT.

otherwise WHT applies:

- 15% for EU residents and qualified non-EU residents ,
  *(i.e. existence of a DTT or TIEA between CZ and the country of residence)*
- 35% for non-qualified non-EU residents.

# CZECH REPUBLIC x UKRAINE

- Agreement on the mutual promotion and protection of investments (1995, 2008),
- Agreement on the legal assistance in civil matters (2002, 2008),
- DTT (1999),

| | Dividends | Interest | Royalties |
|---|---|---|---|
| **WHT rates** | 5 / 15% | 5% | 10% |

# SLOVAKIA – Corporate Taxation

## Tax residence

- resident companies are subject to tax on their worldwide income,
- company is treated as resident if it has its legal seat or place of effective management in Slovakia,

## Tax period

- the taxpayer can elect a fiscal year, although a calendar year is a standard,

## Corporate income tax rate

- 22% (effective taxation can be decreased in case of the use of agent structures),

## VAT

- standard rate of 20%,
- reduced rate of 10% (foodstuffs, pharma products, accommodation services etc.).

# SLOVAKIA – Corporate Taxation (2)

**Tax licence**

Tax licence represents a minimum tax payable by each tax payer.

- 480 EUR if the tax payer is not a VAT payer with revenues up to 500 000 EUR,
- 960 EUR if the tax payer is a VAT payer with revenues up 500 000 EUR,
- 2 880 EUR If the tax payer has annual revenues higher than 500 000 EUR.

Tax licence will not apply to first year tax payers.

# SLOVAKIA – Corporate Taxation (3)

## Dividends

- INCOMING DIVIDENDS ARE NOT SUBJECT TO TAX, irrespective of the country of residence of the subsidiary, ownership share or period of ownership.

*NB:*

- *Slovakia (like other EU countries including Cyprus) has adopted <u>the anti-abuse amendment</u> (2015/121/EU) of the EU Parent-Subsidiary Directive. According to it, incoming dividends might become subject to the Slovak income tax in case that the main purpose or one of the main purposes of the respective holding structure was to obtain a tax advantage.*

- *at the same time, the anti-abuse provision says that "dividends are subject to tax in case that the main purpose or one of the main purposes of the arrangements is getting an advantage that is contradictory to the subject or purpose of the Slovak Income Tax Law". In other words, <u>the use of a Slovak company for the purpose of achieving the tax exemption of dividends, is NOT in contradiction with the purpose of the Slovak Income Tax law.</u>*

- *too early to draw conclusions (no practical experience, court cases, disputes, guidelines).*

## Capital gains

- participation exemption non applicable,
- capital gains form part of the income of the company, and are liable to the standard corporate income tax.

# SLOVAKIA - Withholding taxes

**Dividends**

Dividends paid by a Slovak company are not subject to any withholding tax, irrespective of the country of residence of the individual owner or the parent company.

**Interest / Royalties**

- exempted under the EU R/I Directive (10% share, 12 months), or
- reduced under the respective DTT,

otherwise WHT applies

- 19% for EU residents and qualified non-EU residents (i.e. existence of a DTT or TIEA between Slovakia and the country of residence),
- 35% for non-qualified non-EU residents.

# SLOVAKIA x UKRAINE

- Agreement on the mutual promotion and protection of investments (1994),
- Czech-Soviet Union agreement on mutual legal assistance (1982),
- DTT (1996).

| | Dividends | Interest | Royalties |
|---|---|---|---|
| **WHT rates** | 10% | 10% | 10% |

# Summary of relevant benefits

- **participation exemption** available in the Czech Republic,
- **tax exemption of dividends** available in Slovakia,
- broad network of DTTs, including DTTs with UA,
- **tax residence certificate** issued automatically.

# Summary of relevant benefits

- Czech Republic / Slovakia = "**white-listed**" **jurisdictions,**
- stable and reliable **banks, with accounts for Czech/Slovak companies easily available,**
- recognition of **a trading agent scheme,**
- **absence of registered agent / secretary.**
  (i.e. a clearly identifiable person obliged to identify a client and carry out a due diligence on his behalf)

# Typical structure with Czech or Slovak companies

1. Czech / Slovak trading agent company
2. Czech / Slovak payment services provider (PSP)
3. Slovak holding structure
4. Slovak holding company with a silent partner

# 1. Czech / Slovak trading agent company

- a special purpose company acting as an agent in its own name on behalf of a principal (usually based in a low-tax jurisdiction),

- agent buys goods from foreign suppliers and resells them to final buyers, whereas the goods travels directly,

- suitable alternative to Austrian trading company or UK agent company,

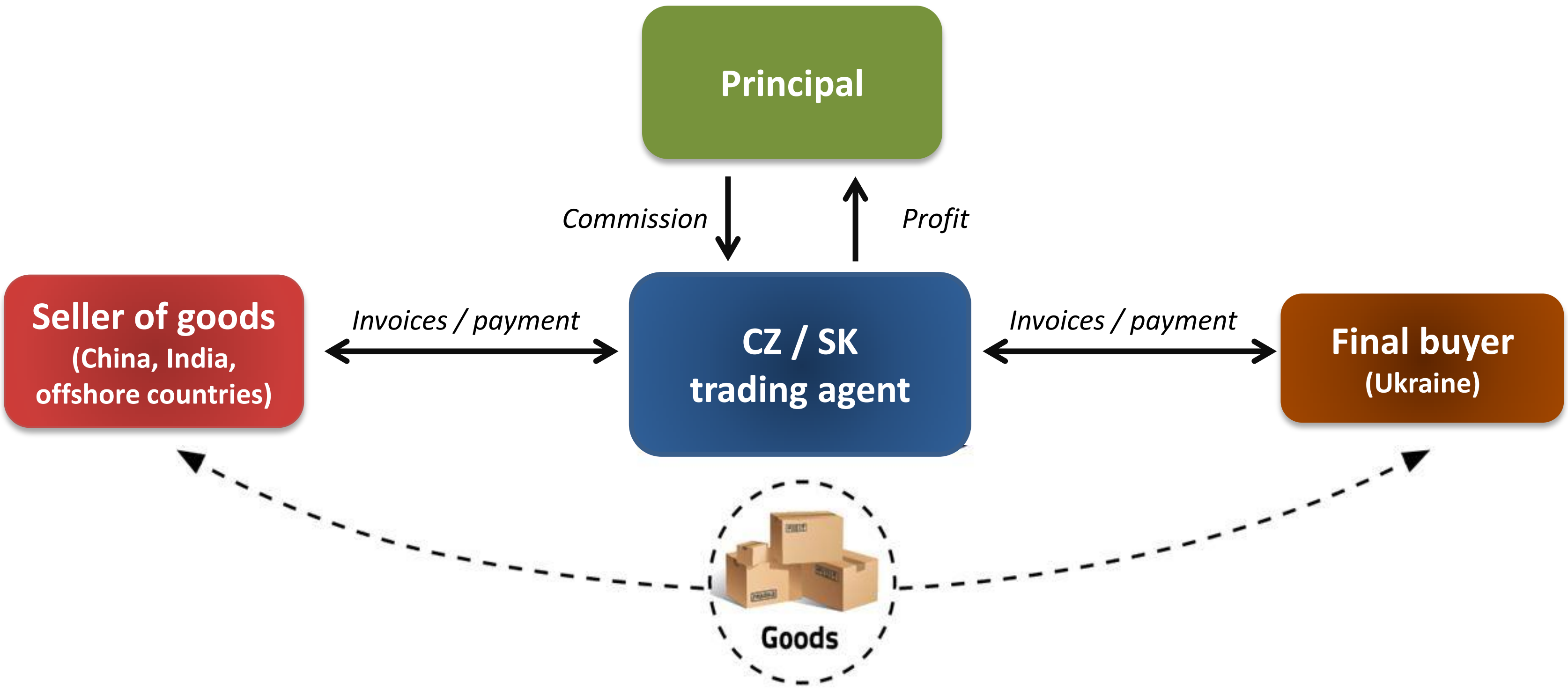
- perfect solution especially for a export from a non-EU country to a non EU-country.

N.B.:

- in case of an export from the EU it is essential that the seller sells the goods in the regime of export out of the EU, in order to keep the transaction exempt from VAT,

- can be used only in case that the financal statements fully reflect the movement of goods (the transactions on the bank account correspond with the agreements/invoices/bills of lading etc.).

# 1. Czech / Slovak trading agent company



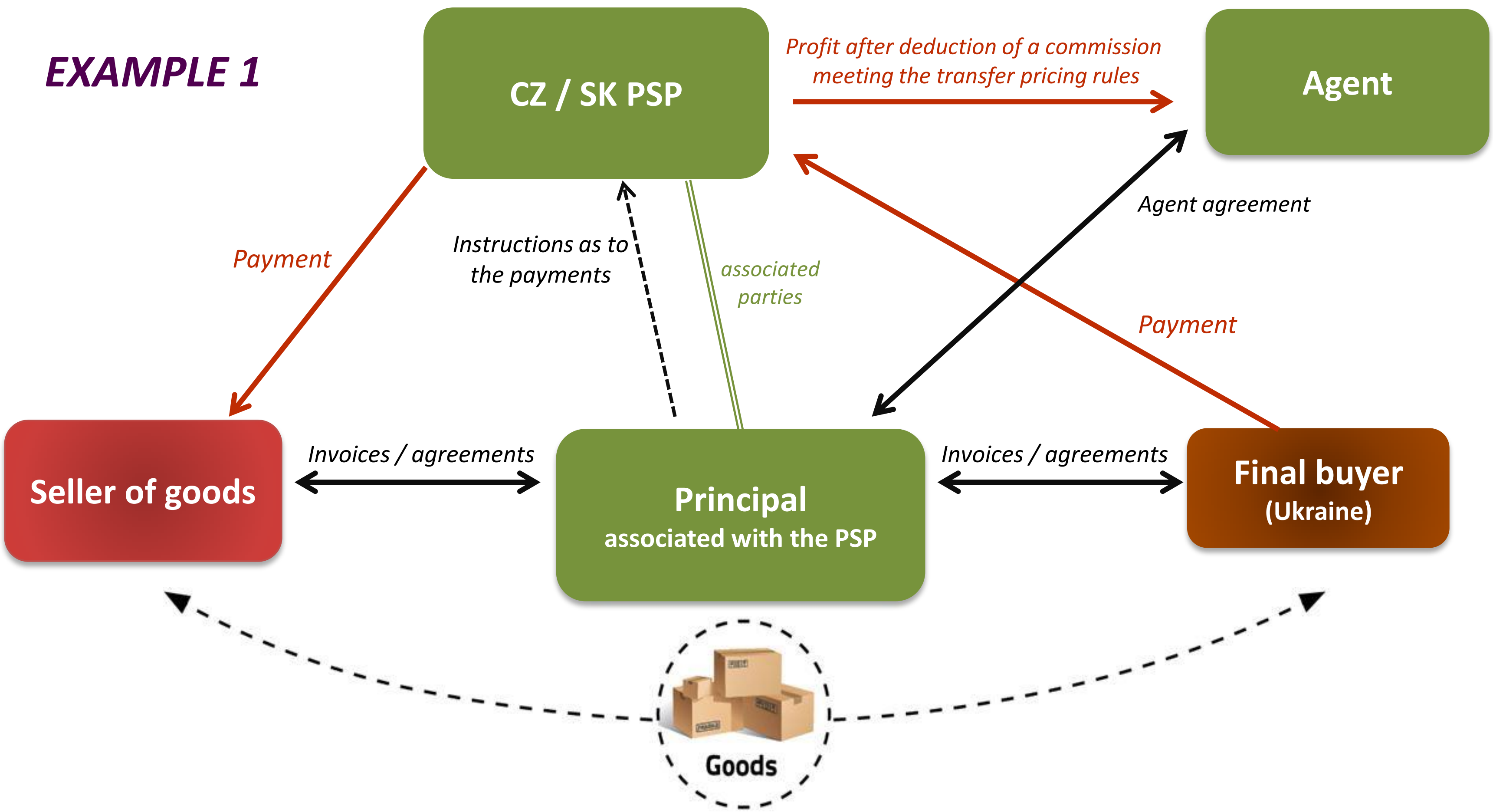
# 2. Czech / Slovak payment services provider (PSP)

- the payment services provider does not buy or sell goods, merely processes the payments upon instructions of a principal,
- the principal giving the instructions may be either the final buyer in the client’s country of residence, or a trading agent buying/selling goods in the middle of the supplier-customer chain,
- as a result, the company buying/selling goods does not have to have a bank account (and its owner is not subject to the automatic exchange of information under OECD CRS).

N.B.:

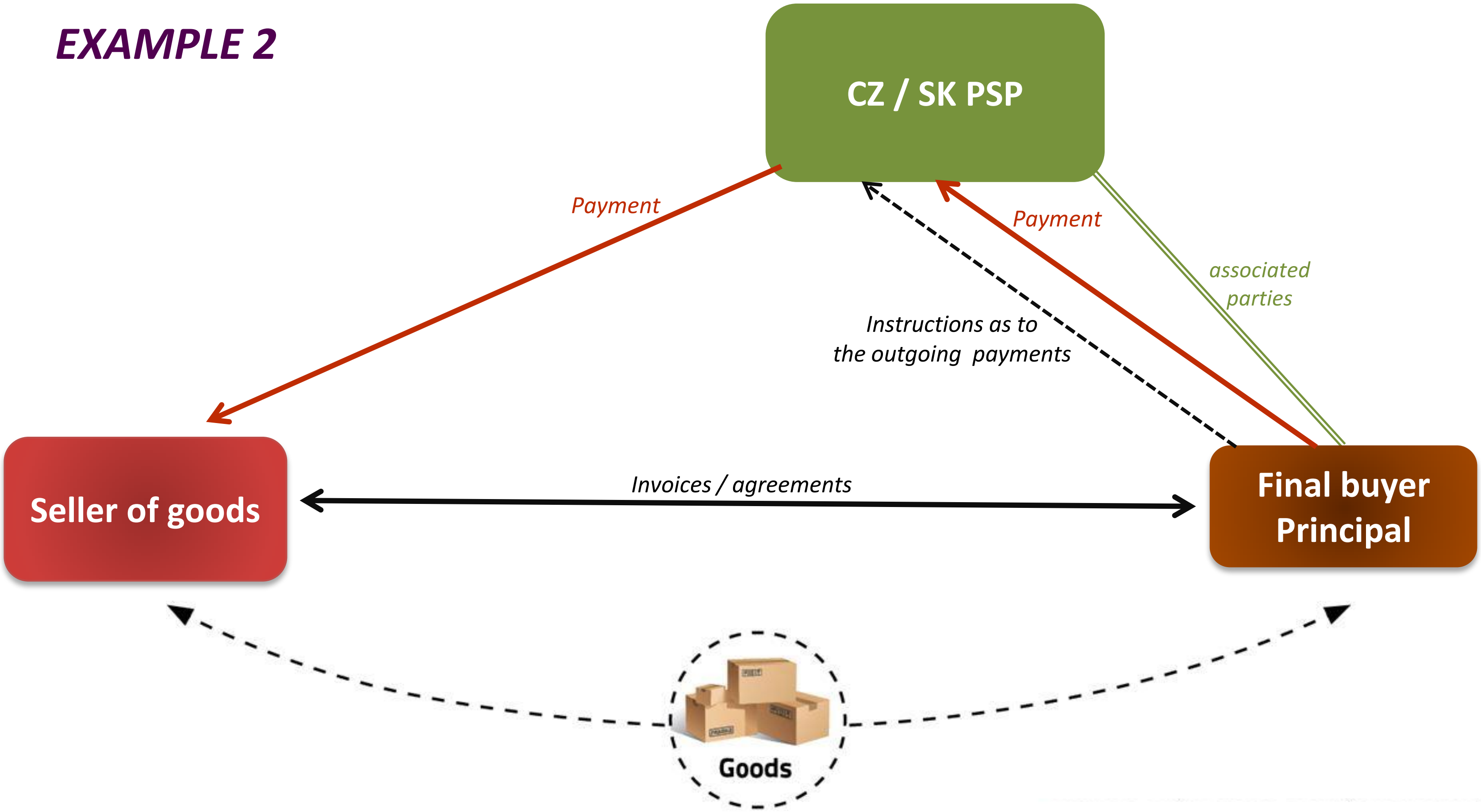
- the provision of payment services provider is a regulated activity in the EU and must be licensed, unless it is provided within a group of associated companies i.e. the PSP and the principal must be in the position of parent-subsidiary, sister companies, or at least to have the same members of a statutory/supervisory body,
- the commission further to the agreement between the Principal and PSP must be determined on at arm‘s length basis.

# 2. Czech / Slovak payment services provider (PSP)



# 2. Czech / Slovak payment services provider (PSP)

***EXAMPLE 2***



# 3. Slovak holding company

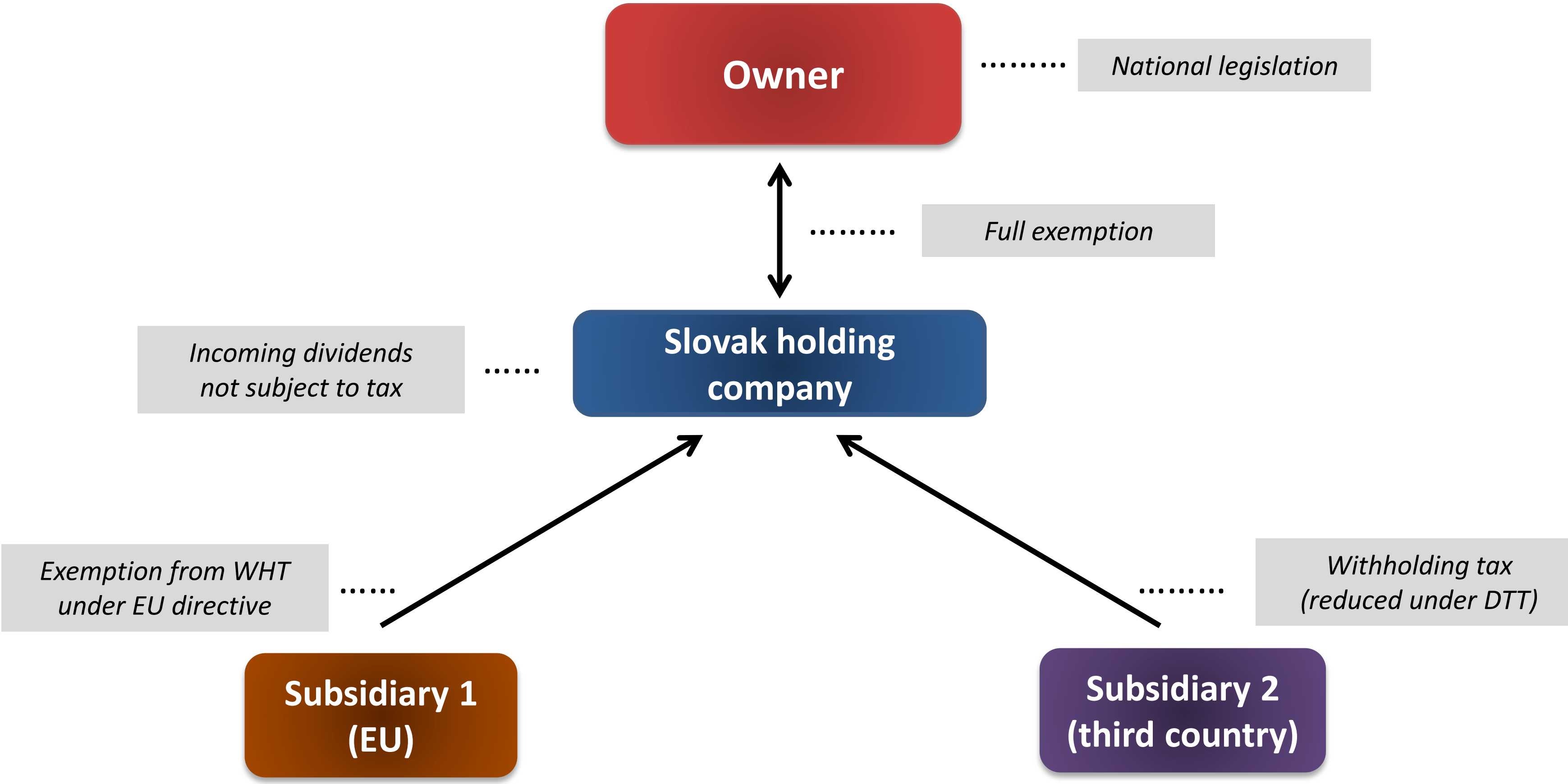
- dividend income received by the Slovak company is not subject to corporate income tax,
  *(N.B.: the implemented clause of the 2015/121 EU Directive aimed at artificial structures, however should not affect Slovak holding companies)*

- dividends distributed to the individual or corporate shareholders not subject to the Slovak withholding tax,

- only taxation potentially applying to the dividends would be the withholding tax applying in the country of the subsidiary
  *(unless exempt or reduced under a DTT)*,

- in case of Ukraine, the WHT would be 10%.

# 3. Slovak holding company

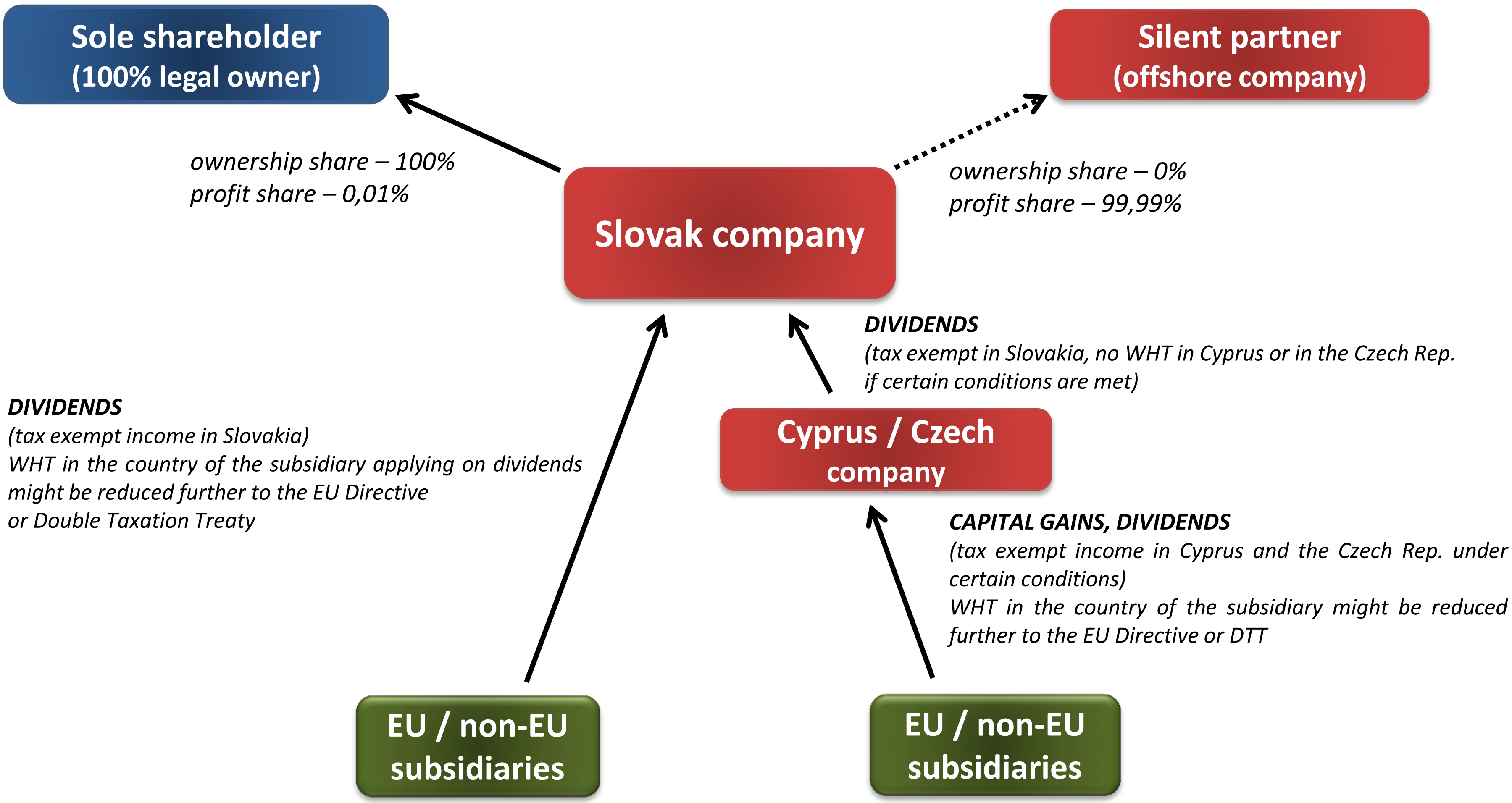


# 4. Slovak holding company with a silent partner

**SILENT PARTNER (usually an offshore company)**

- enters into a confidential agreement with the shareholder,
- its identity is not known to the public,
- provides the capital into the company (funds, shares etc.),
- is entitled to the 99% of the profit generated by the Slovak company,
- the distributed profit is exempt from the Slovak WHT.

# 4. Slovak holding company with a silent partner



# THANK YOU FOR YOUR ATTENTION!

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