



The asia-pacific energy and natural resources tax forum

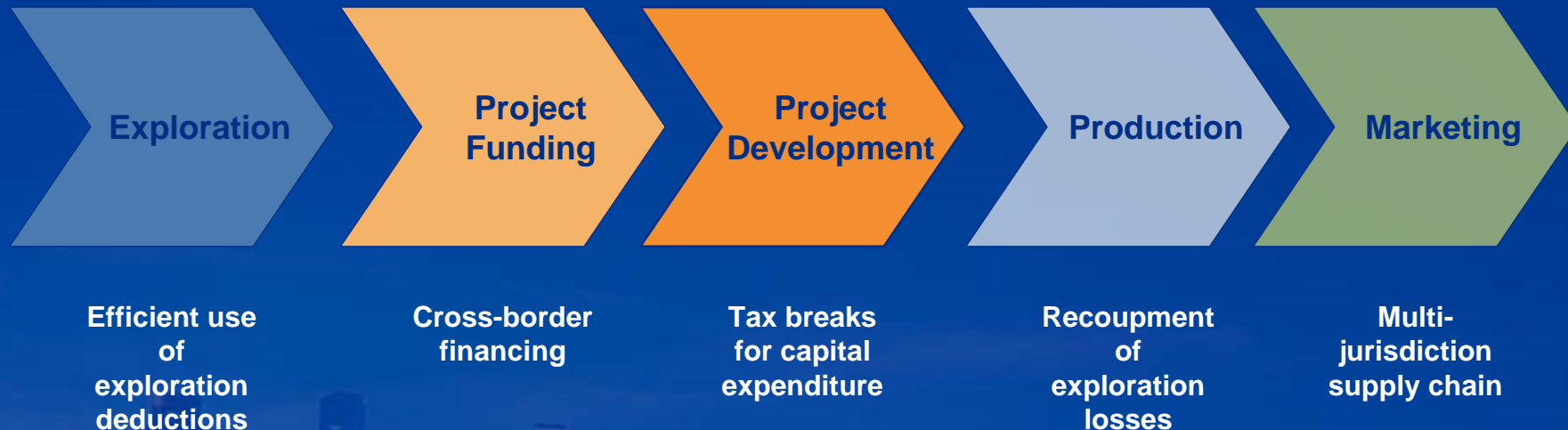
20 November, 2008

TAX

Agenda

- Country Updates
- **Lifecycle of typical global resources project**
- International Holding Structures for Resource Project
- Structuring Exploration Activities into a New Country
- Funding the Development of Resource Projects
- Holding and Developing a New Mine or Oil Well
- Marketing the Output from the Resource Project

Life Cycle of a Global Resources Project



Taxation issues need to be considered every step of the way

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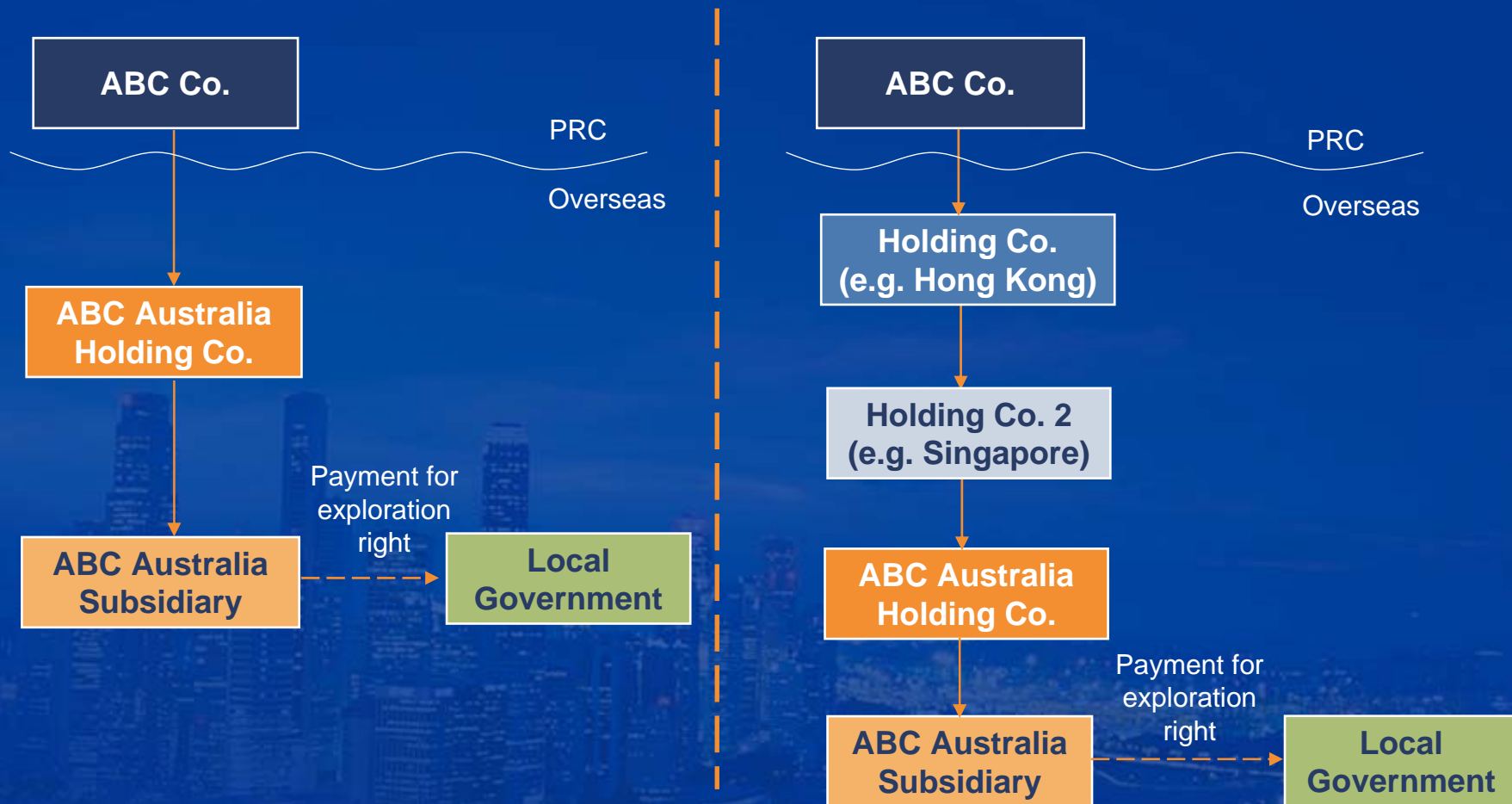
International Holding Structure

Issues to Be Considered

- Direct investment structure vs. holding company structure
- Tax residency of SPV
- Tax and dividend distribution
- Funding structure
- Capital gain on exit
- Set up procedures and costs
- Maintenance cost and ongoing compliance procedures

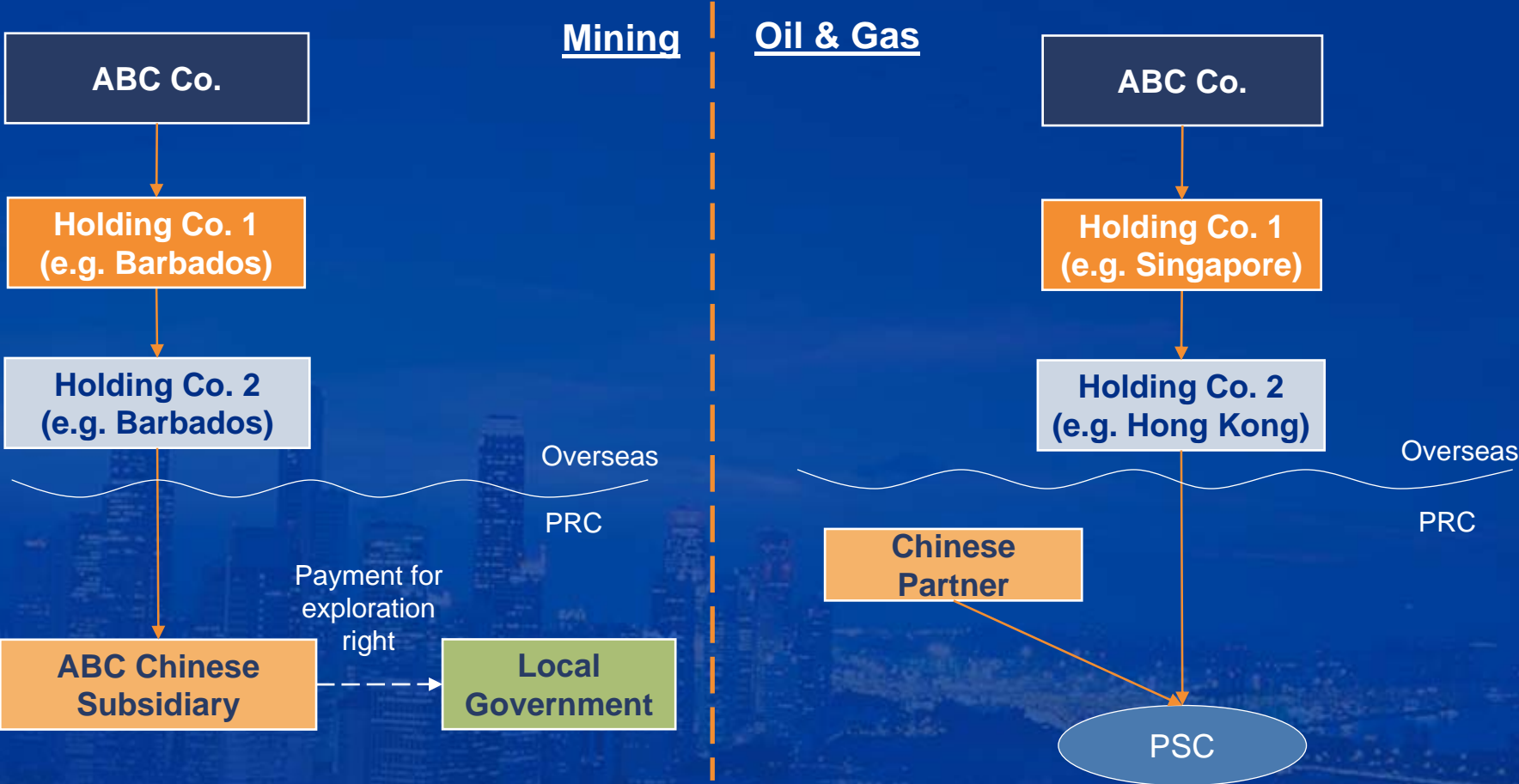
International Holding Structure

Example – China into Australia



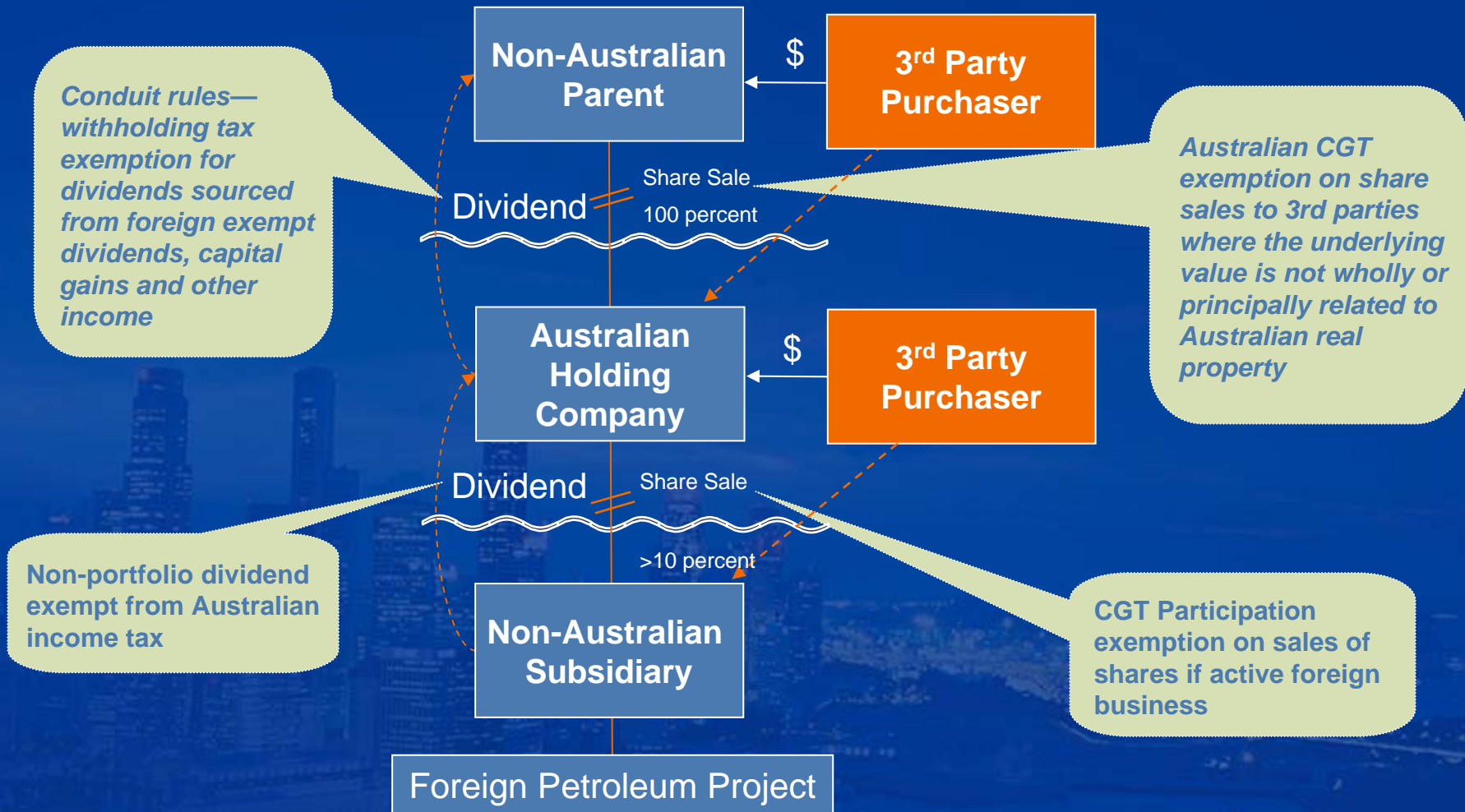
International Holding Structure

Example – Foreign enterprises into China

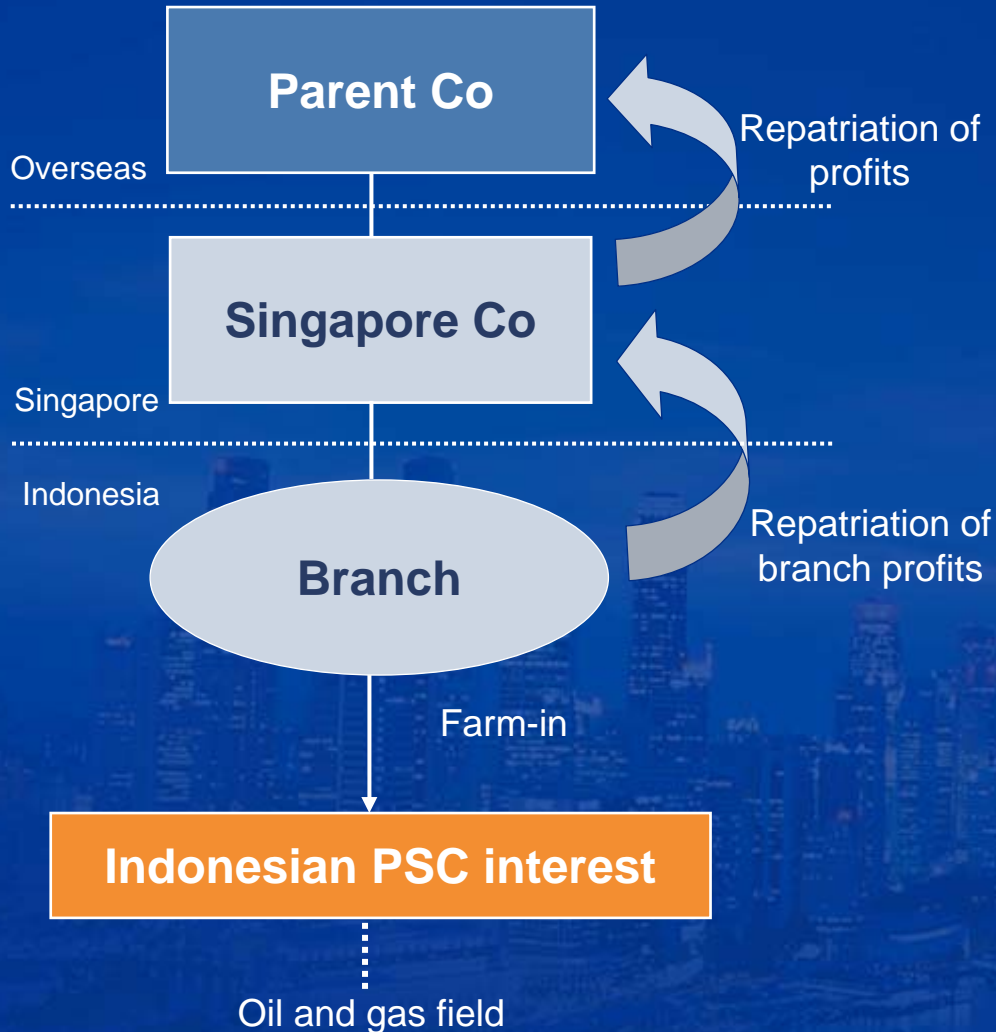


International Holding Structure

Example - Australia as a Holding Company Location



Singapore as an Intermediate Holding Jurisdiction



Benefits of this structure:

- Profits from Indonesian branch is exempt from Singapore tax subject to certain conditions
- Under the one-tier corporate tax regime, Singapore Co can pay tax exempt dividends to Parent Co
- Dividends repatriated to Parent Co is not subject to Singapore withholding tax
- Able to make use of the extensive treaty network of Singapore
- Gain on sale of Singapore Co is not subject to tax provided the gain is capital in nature

Singapore as an Intermediate Holding Jurisdiction



Benefits of this structure:

- Dividends from Indo Sub is exempt from Singapore tax subject to certain conditions
- Interest expenses incurred by Singapore Co to finance its investment in Indo Sub have no Singapore tax deduction benefit
- Under the one-tier corporate tax regime, Singapore Co can pay tax exempt dividends to Parent Co
- Dividends repatriated to Parent Co is not subject to Singapore withholding tax
- Able to make use of the extensive treaty network of Singapore
- Gain on sale of Singapore Co is not subject to tax provided the gain is capital in nature

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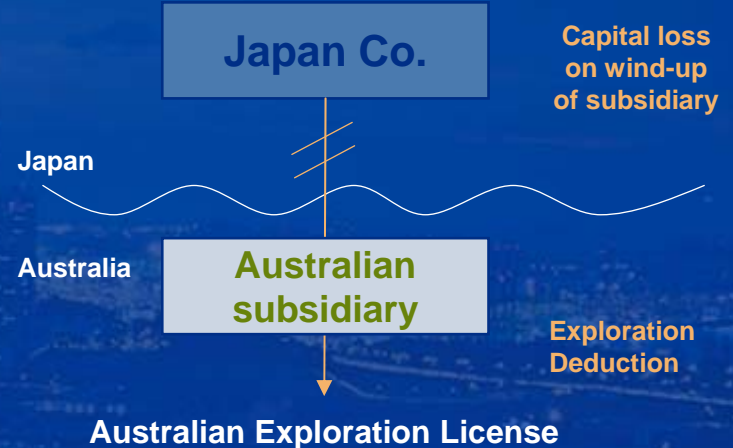
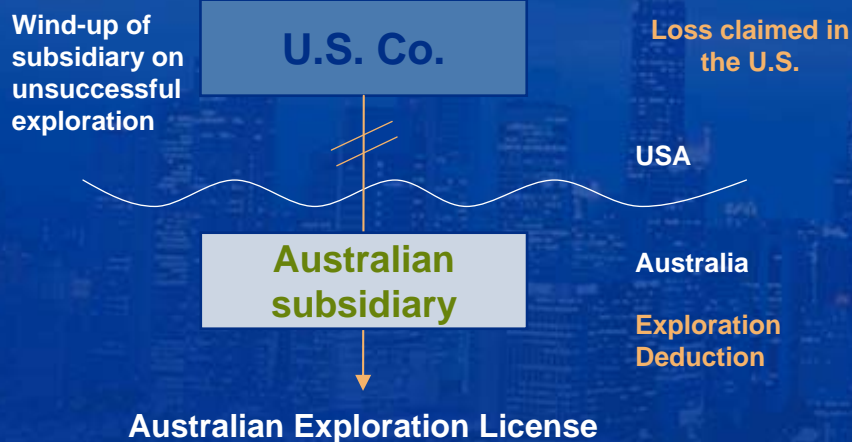
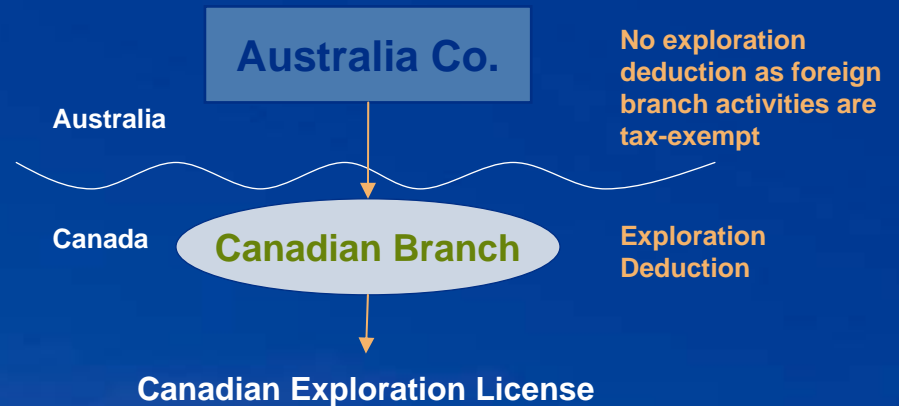
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Exploration Structures

Key Tax Objectives

- Obtaining an exploration deduction in the country of exploration
- Utilizing exploration losses against taxable income from other sources
- Utilizing exploration losses in a second country, recognizing that exploration often fails, resulting in the trapping of losses in isolated jurisdictions
- Obtaining a capital gains tax loss for discontinued exploration activities

Examples of Exploration Structures



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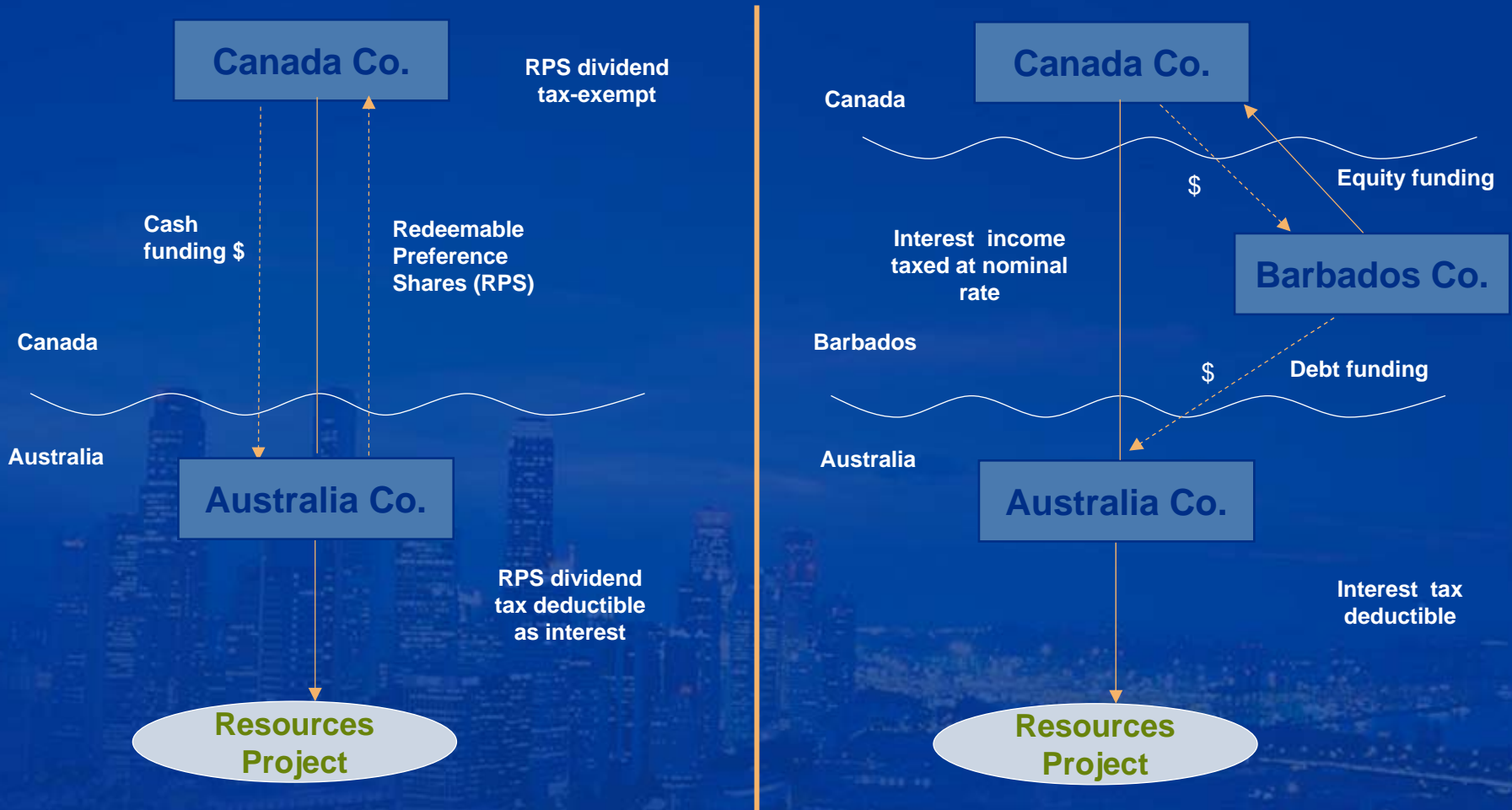
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Project Funding Structures

Key Tax Issues

- Debt/equity definitions and entity classifications differ between jurisdictions, sometimes resulting in arbitrage opportunities
- Thin capitalization rules will determine maximum gearing levels
- Transfer pricing principles will determine an arm's-length interest rate
- Interest withholding tax (subject to tax treaty limits)
- Parent guarantee fees may not be subject to withholding tax (subject to tax treaties)
- Foreign currency exchange rate movements

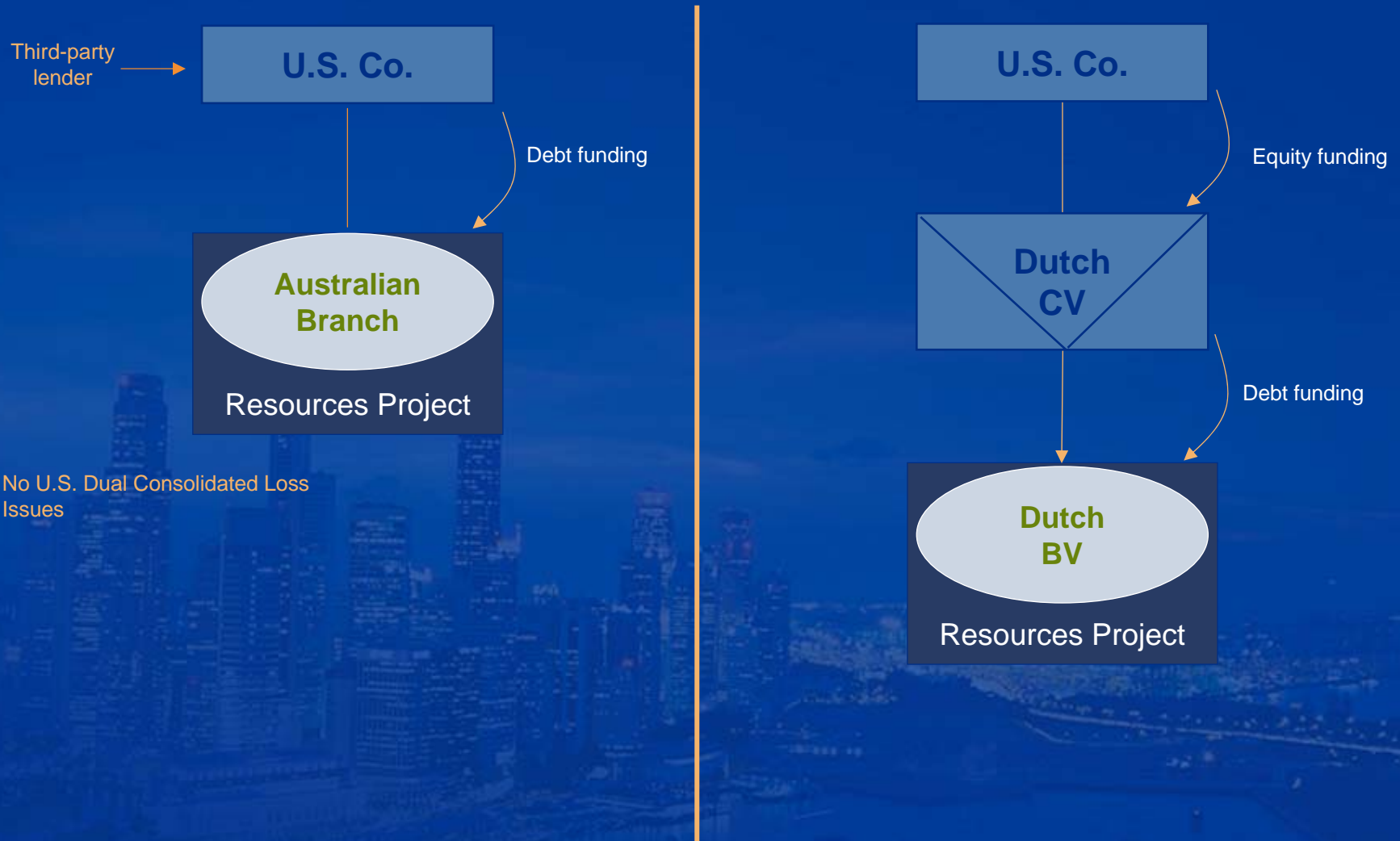
Examples of Project Funding Structures Used in the Past



CAUTION: The above structures need to be reviewed for changes in the tax laws of the relevant countries.

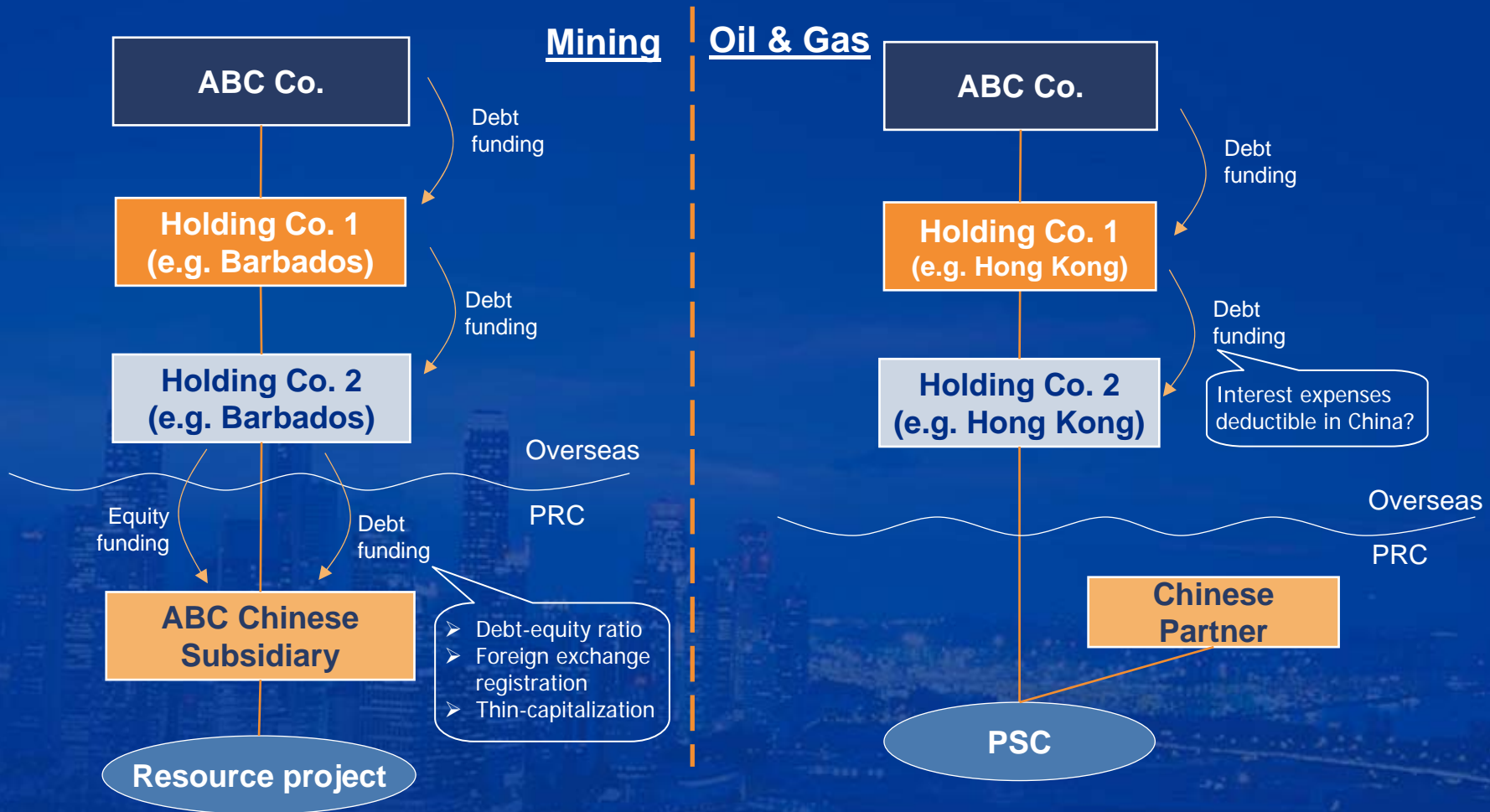
Examples of Project Funding Structures

U.S. Hybrid Entity Structures



Examples of Project Funding Structures

PRC Funding Structure



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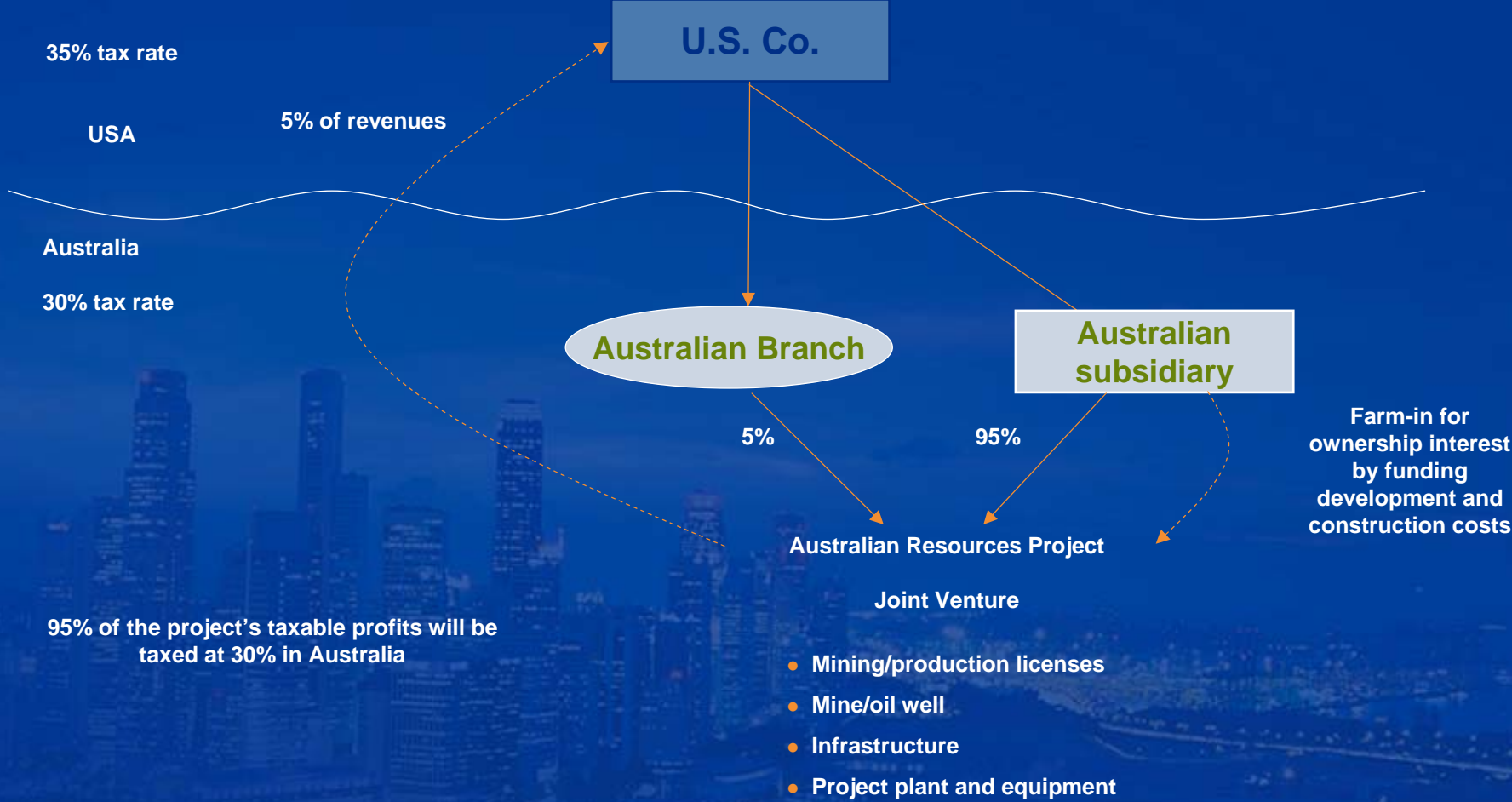
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- Marketing the Output from the Resource Project

Development and Project Holding Structures

Key Tax Issues

- Determine tax depreciation and capital allowance including depreciation rate, method, and any concessions (e.g., R&D)
- Holding in a company or branch?
 - If company, need to consider the tax consequences of converting branch into subsidiary (Is there any immediate gain to the branch?)
 - Exploration tax benefits of a branch may reverse during production phase
- Traditional unincorporated resources joint venture structure
- Hybrid joint venture structures – to introduce new JV partners
- Consider availability of treaty benefits as well as various other taxes that could apply in addition to income taxes

Example of Development Project Holding and Operating Structure



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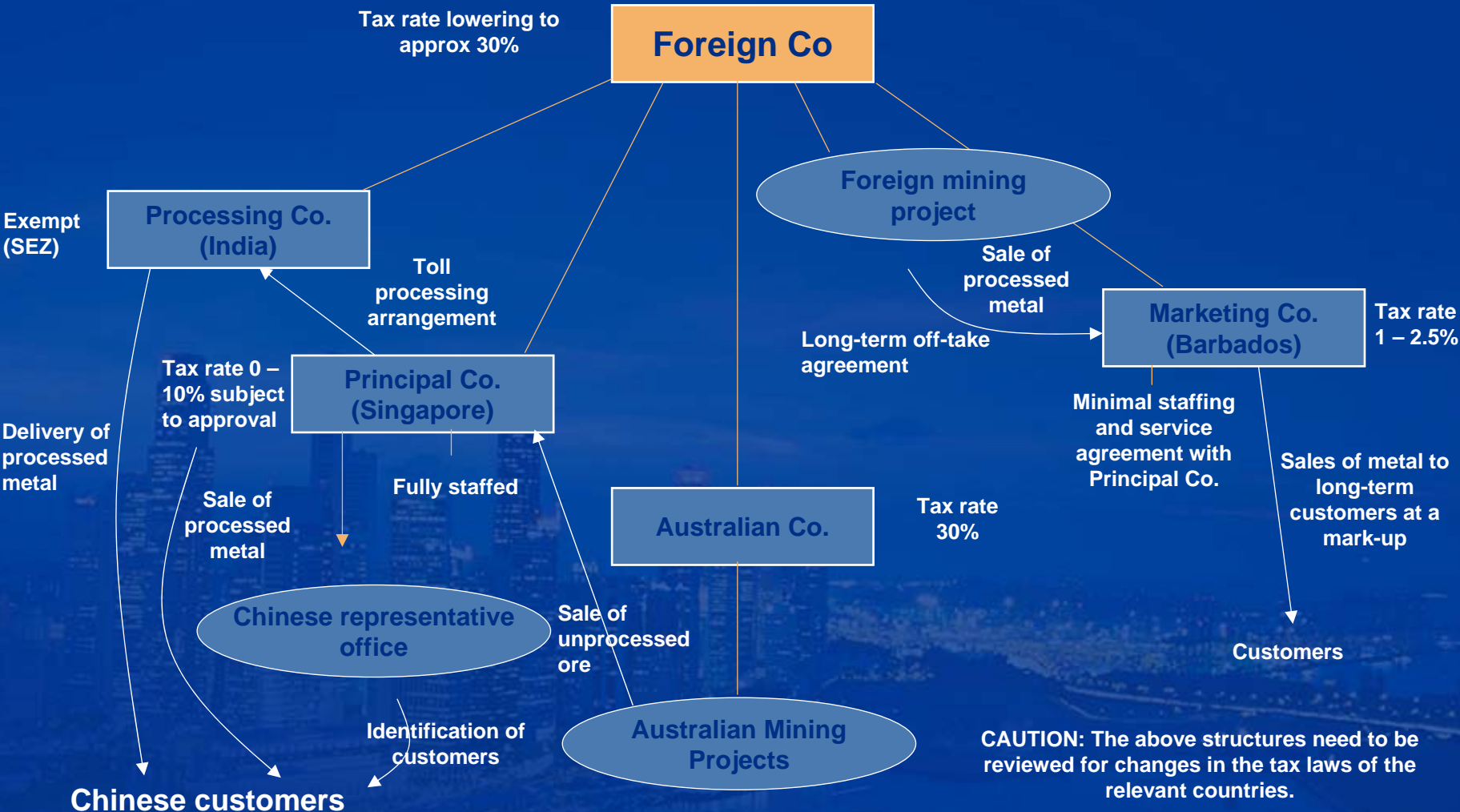
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- **Marketing the Output from the Resource Project**

Marketing Structures for Resource Projects

Key tax issues

- Centralized or regional marketing companies in favorable tax jurisdictions:
 - Off-take agreement to be supported by arm's-length transfer pricing principles (consider obtaining an advanced pricing agreement (APA))
- Offshoring and outsourcing of minerals processing:
 - Sell unprocessed ore to offshore refinery company
 - Use tolling arrangements to process ore on behalf of the marketing company, which maintains risk and ownership of the product
- Use of representative offices to identify customers in other countries while minimizing any taxable presence, with sales contracts concluded separately

Example of Global Resources Marketing Structure



CAUTION: The above structures need to be reviewed for changes in the tax laws of the relevant countries.

Questions

Thank you for participating.
Please complete your feedback form.

Presenter's contact details

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