

IBA Annual Conference 2014 - Tokyo

Structuring ownership of luxury items: planes, yachts and Louis Vuitton handbags

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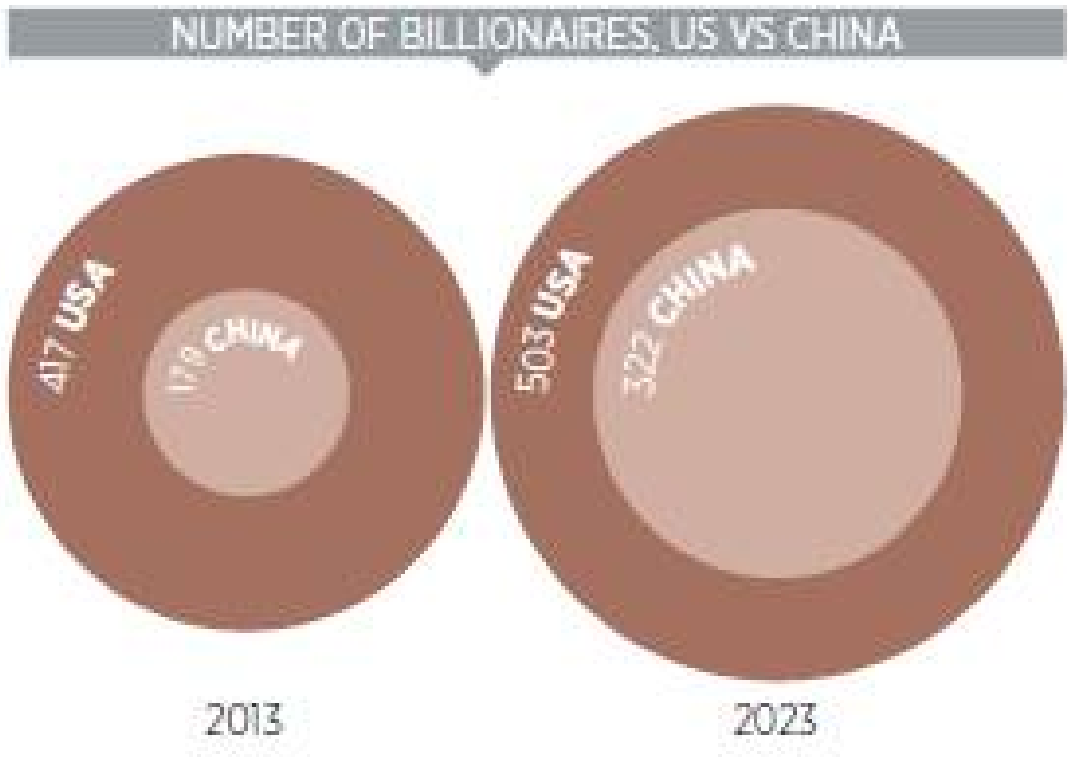
Chair:*

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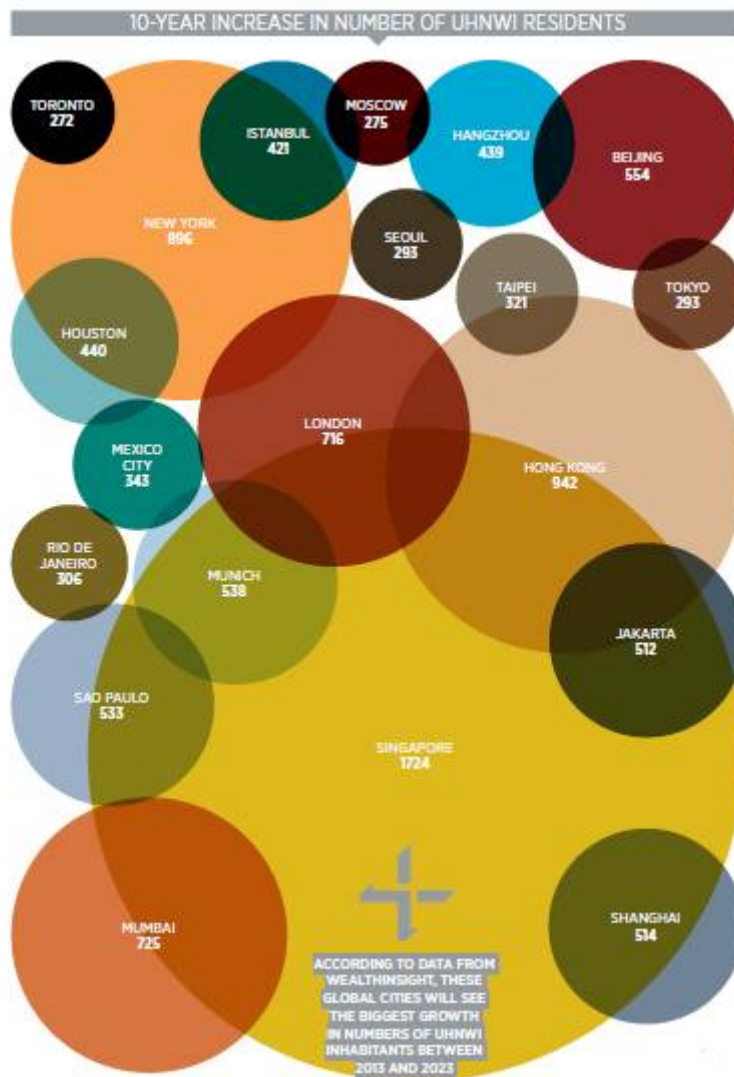


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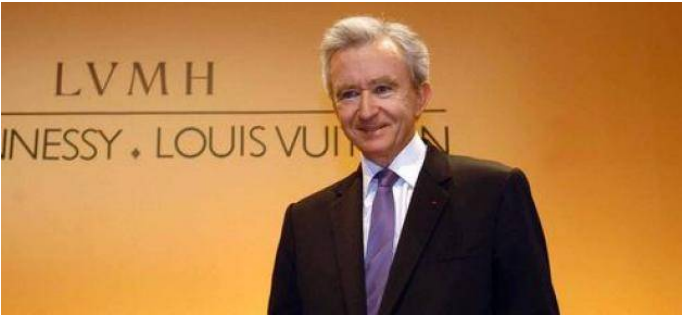
Introduction



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Bernard Arnault (LVMH)





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Introduction



**Donald Trump
(Trump Organization)**



Introduction



Structuring ownership of luxury items: planes, yachts and Louis Vuitton handbags

1. Adult's toys: cars, planes and yachts
2. Art collections

Q&A and break

3. Hotels and wineries
4. One ring to rule them all

Q&A

Justification for indirect ownership

- **Confidentiality**
- **Tax planning**
 - ✓ **Income tax**
 - ✓ **Wealth / capital taxes**
 - ✓ **Estate tax**
- **Liability**
- **Ego**
- **Management**

1. Adult's toys: cars, planes and yachts

Planes and Yachts

- **Registration and regulation**
- **Crew and Maintenance**
- **Safety and security**
- **Liability issues**
- **Tax**
- **Conclusions**
- **Alternatives to ownership?**

Planes and Yachts Registration and regulation

- **Registration**
- **Flagging**
- **Regulatory issues**
 - **Commercial or personal?**
 - **Commercial Yacht Code 2010**

Planes and Yachts Crew and Operational Costs

- **Legal arrangements**
 - ✓ **Contracts (e.g. Maritime Labour Convention 2006)**
 - ✓ **Grievance and disciplinary procedure**
 - ✓ **Payroll**
- **Separate ownership from crew arrangements**
- **Outsourcing**
- **Cost-Efficient Personnel and Maintenance Arrangements**
- **Fuel and Other Provisions**
- **Fees – Slip, Wharfage, Landing, Etc.**

Planes and Yachts Safety and Security

- **Ensure Safety of Passengers and Crew**
 - ✓ **Compliance with Safety Regulations**
 - ✓ **Proper Training and Procedures**
 - ✓ **Regular Maintenance**
- **Avoiding Weather or Other Natural Risks**
- **Protection From Theft, Unauthorized Use, Pirates, Etc.**
 - ✓ **Appropriate Security While on the Ground or in Port**
 - ✓ **Crew with Appropriate (Military) Training**
 - ✓ **Arms and Armament**



Planes and Yachts Liability

- **Commercial or personal?**
- **Structures**
 - ✓ **Limited company**
 - ✓ **LLP or LP**
 - ✓ **Trust**
- **Insurance**

Planes and Yachts Tax (1)

- **Value Added Tax**
 - ✓ **VAT recovery if commercial**
 - ✓ **Temporary importation if non-EU owner**
- **Taxable remittances by UK res non-doms**

Planes and Yachts Tax (2)

- **Tax charges on benefits received**
 - ✓ **From trust/company structures**
 - ✓ **From corporate entities – benefits in kind**
- **Central management and control of corporate structures**
- **Inheritance and gift taxes**
- **Tax on income / gains**

Planes and Yachts Conclusion

- **Try to keep it simple**
- **Do not mix business with pleasure**
- **Consider personal ownership (if not chartering out)**
- **Beware of complications caused by commercial use/chartering out**

Planes and Yachts Alternatives

- **Chartering**
- **Leasing**
- **Fractional ownership**

Cars

- **Classic cars**
- **Practical issues on acquisition**
 - ✓ **Bespoke sale & purchase agreement – warranties and indemnities**
 - ✓ **Detailed description and registration documentation**
 - ✓ **Restoration works?**
 - ✓ **Certificate of authenticity**
- **Tax**
 - ✓ **Taxable remittances by UK res non-doms**
 - ✓ **Tax on any gain realised on a subsequent sale?**

2. Art Collections

US Taxation of Art

- **Income tax - 28% on long-term gain (30% for non-US persons)**
 - ✓ **Sales tax - L. Dennis Kozlowski, former CEO of Tyco International**
- **Gift tax – rates max at 40%**
 - ✓ **Related use test**
- **Estate tax - rates max at 40%**
 - ✓ **\$5.34 Million exemption v. \$60,000 exemption**
 - ✓ **Applies to tangible property physically situated in the US**
 - ✓ **Valuation of art – IRS art panel, blockage discounts**
 - ✓ **Use of a corporation or trust to block US situs**

US Estate tax

- **Situs Exceptions**
 - ✓ **Property in transit**
 - ✓ **Specific exemption for art on loan for exhibition**
 - ❖ **Imported solely for exhibition purposes**
 - ❖ **Public gallery or museum – no private inurement**
 - ❖ **On exhibition, or en route to / from exhibition**
- **Restrictions on bequests**
 - ✓ **Barnes and Corcoran**
 - ✓ **Cy Pres**

Swiss taxation of Art How to hold Art Work

- **In Switzerland a lot of valuable art work is held directly by the owners, structures (i.e. foundations) are used rarely mostly if there are no direct heirs.**
- **If art work / art collections are gifted to museums, no gift taxes are due if the museums are tax exempt (most museums are).**
- **For the donors it is important that the art work donated to the museums are in fact exhibited. This is often part of an agreement / negotiation with the receiving museum.**

Swiss taxation of Art Wealth, income and inheritance taxes

- **General rules:**
 - ✓ **As long as art works are a part of household effects, no wealth tax is due (difficult differentiation)**
 - ✓ **As long as the sale of artwork is not considered as part of a business of the owner no capital gains tax is triggered by a sale**
 - ✓ **At the moment no inheritance / gift tax is due if art work is transferred from partens to childern or between spouses (pending inheritance tax initiative)**

Swiss taxation of Art Tax ruling

- **Rulings can be obtained as to:**
 - ✓ **wether art work of wealthy persons are considered household effects as well as ;**
 - ✓ **whether someone is considered to be an art dealer.**
- **Dissenting opinions between the tax authority for direct taxes and the VAT tax authority have occured.**
- **According to one of our recent cases VAT does not consider it a business if only paintings of familiy members are sold even though numerous and valuable.**

Swiss taxation of Art VAT

- **The sale of art work by the artist himself is exempt from VAT.**
- **All other sale of art work is subject to VAT; no reduced tariff is available.**
- **Thus the import of purchased art work is generally subject to import VAT for every buyer (no notional input VAT possible any more); a museum open for the public can however obtain an exemption.**
- **No VAT for temporary import of art work if handled correctly.**

Understanding Copyrights

- **Visual artwork - copyright ownership separate from physical work**
- **Artist retains right to reproduce the work and display it publicly**
- **Privacy issues for clients**
- **Visual Artists Rights Act – how does this affect your client?**

New Diligence and New Markets

- **Provenance, certificates of authenticity, insurance and storage**
- **Amazon's Fine Art Marketplace / Ebay & Sothebys**
- **Lending against artwork**

Any questions ?

3. Hotels and Wineries

Hotels and Wineries

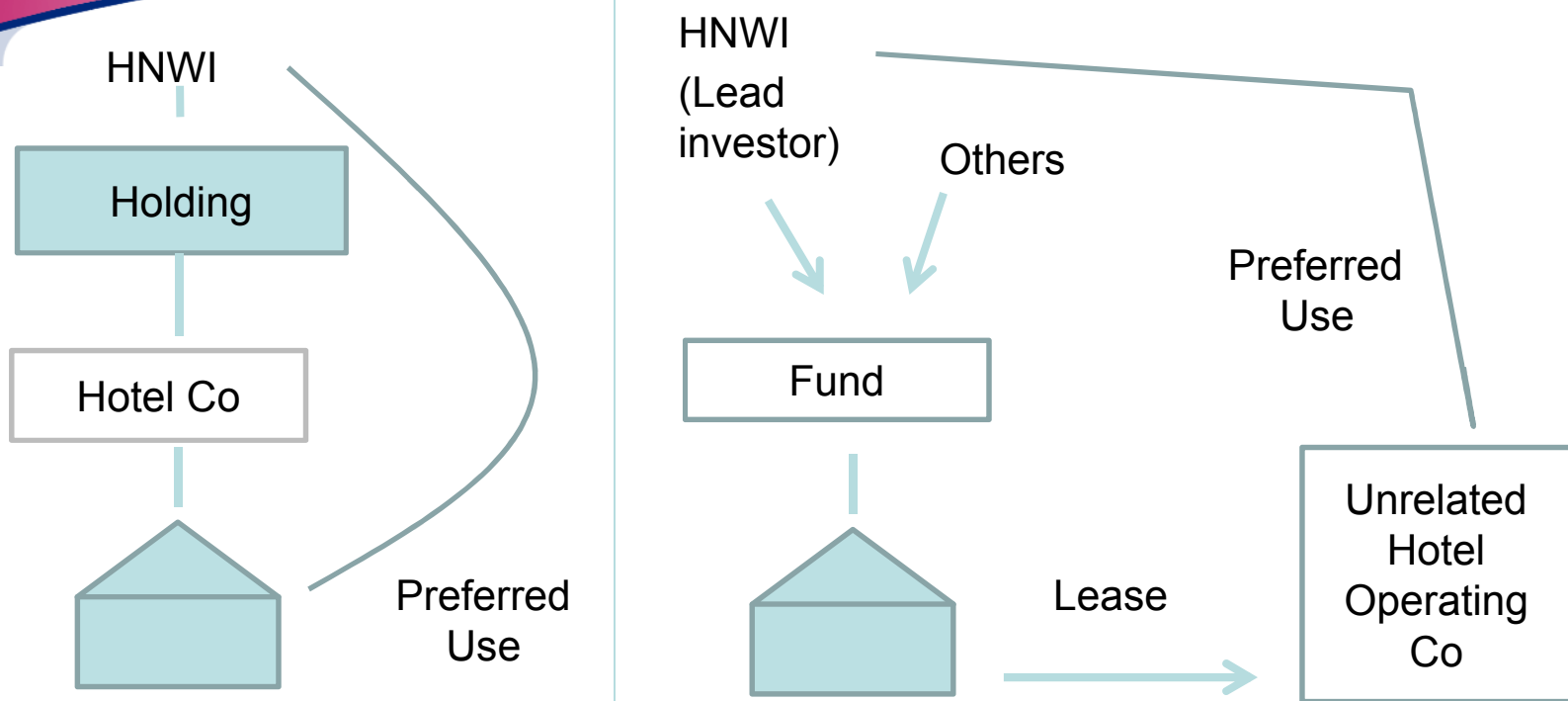
Particularities compared to other luxury assets

- **Professional operation required for asset to ‘bear fruit ’**
- **Assets constitute immovable property**
- **Hotels and wineries are income generating assets**
- **Distinction between personal and commercial use of asset required**

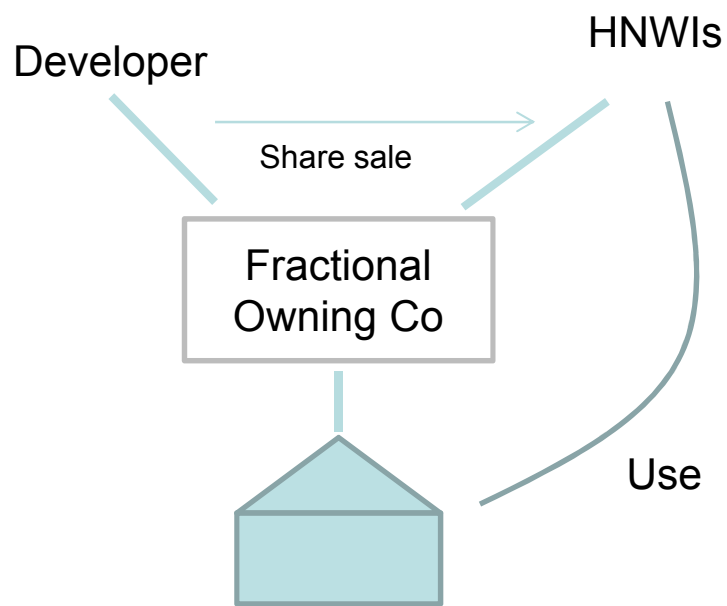
Hotels and Wineries

Hotels – Common investment structures

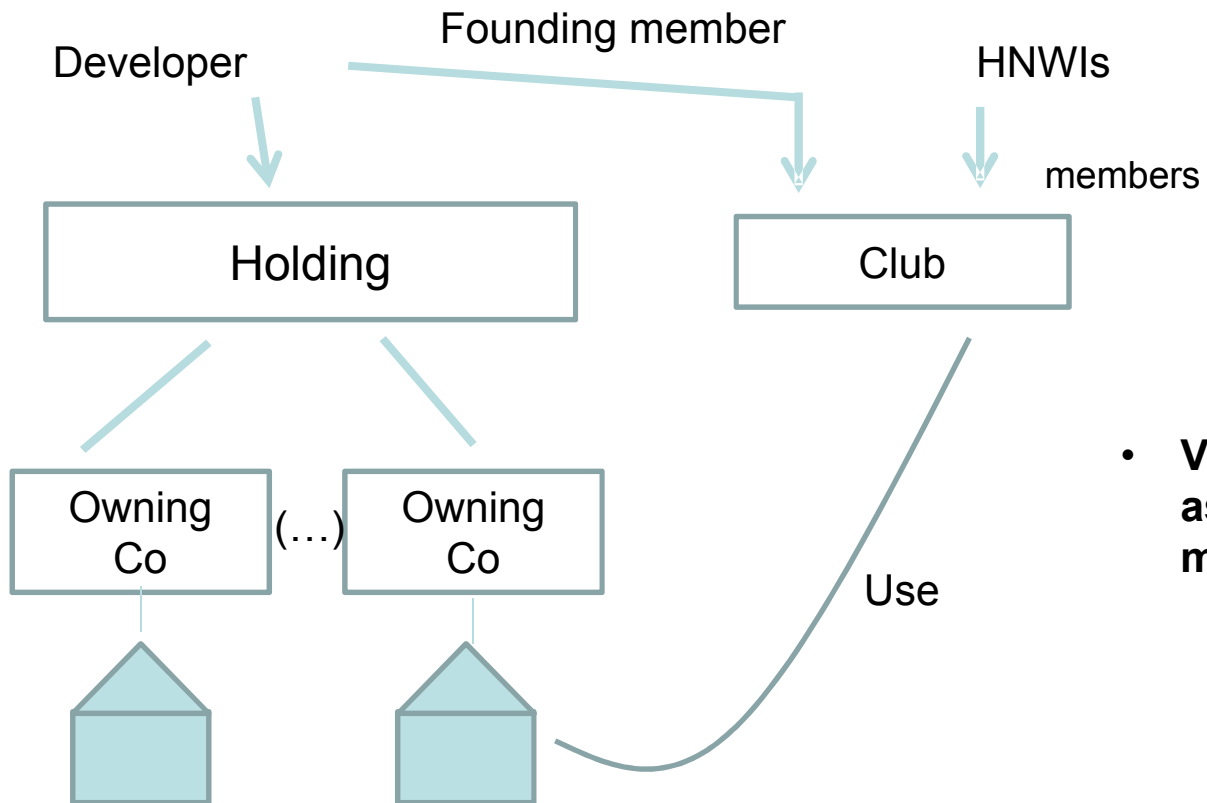
- **Single or Co-ownership of investor/s in land and building, rented out to professional hotel operator (large hotels)**
- **Hotel serviced detached villas / apartments sold to investors by piece and rented to hotel operator**
- **Hotel serviced villas sold under fractional ownership (club model)**
- **Hotel funds for professional investors**
- **Single ownership of hotel, managed by professional staff employed by owner (small luxury hotels)**



- 1) Corporate income tax
- 2) Deemed dividend / benefit in kind
- 3) VAT
- 4) Personal income tax / inheritance tax?



- **Prepaid use upon purchase of shares**
- **How does Owing Co account for revenue?**
- **How is VAT assessed?**
- **Common maintenance and upkeep expenses**
- **Can structuring allow developer to shift gains away from source country?**

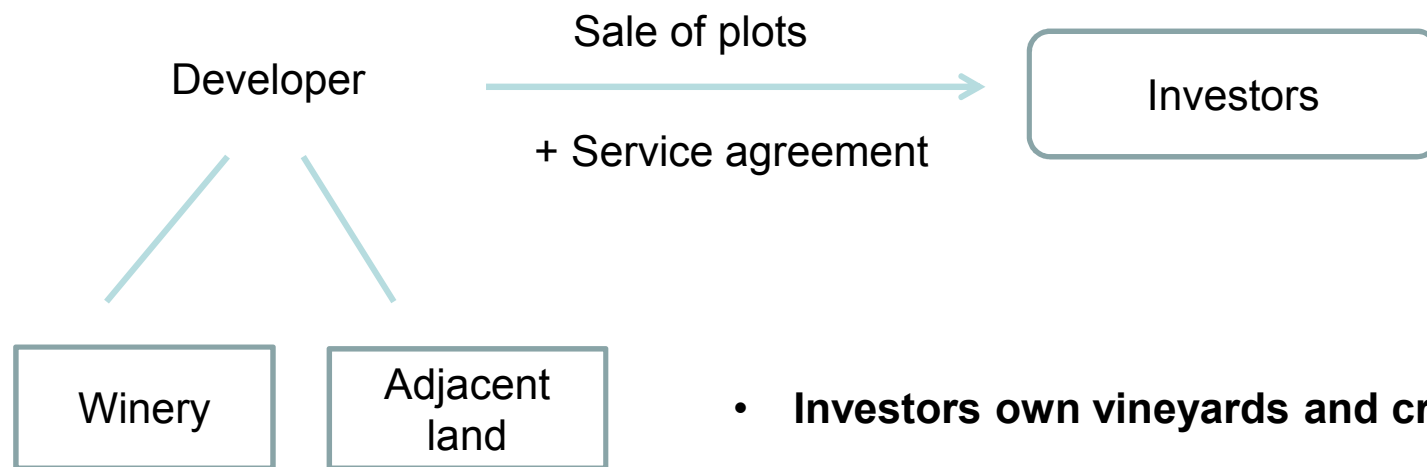


- **Very much the same issues as in the fractional ownership model**

Hotels and Wineries

Wineries – Common investment structures

- **Single or Co-ownership of investor/s in vineyard, operated by professional wine producer , professional brand marketing**
- **Single ownership in vineyard, operation by professional staff employed by owner, personal or professional brand marketing**
- **Mere debt financing of professional wine producer via jouissance rights, interest (and principal) repaid in wine bottles**
- **Funds investing in promising start-up businesses**
- **Factual (or virtual) ownership in grapevines or small pieces of land, operated by professional wine producer, allotment of wine bottles for personal use**



- **Investors own vineyards and crops**
- **Developer provides “toll manufacturing” type of services to investors: they own the grapes and get bottled wine**
- **Are investors conducting a business / agriculture in the country?**

Hotels and Wineries Selective tax and legal issues

- (1) Commercial risk exposure / Confidentiality**
- (2) Current income taxation in general**
- (3) Tax aspects of personal use of assets**
- (4) Sale of assets**
- (5) Succession planning**

Ownership structures to be discussed:

- ✓ **Foreign corporation,**
- ✓ **Domestic corporation,**
- ✓ **Individual / partnership,**
- ✓ **Trust/foundation**

Hotels and Wineries

Discussion of ownership structures for inbound German investments

- **Foreign corporation**
advantages under (1), (2) and (5)
- **Local corporation**
advantages only under (1) in Germany
- **Individual / non commercial partnership**
advantages possibly under (4) and (5) in Germany
- **Trust / foundation**
foundation only: advantages under (1) and possibly (5) in Germany
trust: no advantages, may even be risky under inheritance tax aspects

4. One ring to rule them all ?

One ring to rule them all

- **Is this advisable in your jurisdiction ? Trust ? Foundation ? Holding company ?**
- **Impact of a change of residence on the structure**

Any questions ?

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