

UK and European Real Estate Investment and Finance

Sukuk - the UK taxation issues

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Mohammed Amin has specialised in the taxation of foreign exchange, derivatives and corporate debt for over a decade, and leads the PwC Islamic Finance Taxation Network in the UK. He is a Council member of the Chartered Institute of Taxation (CIOT) and serves on the Technical Committee of the Association of Corporate Treasurers (ACT).

Amin graduated in mathematics from Clare College, Cambridge. He is the only person in the UK who is a fellow of the Institute of Chartered Accountants in England & Wales, an associate member of the ACT and a fellow of the CIOT.

Amin regularly contributes articles on taxation for *The Treasurer* and other UK professional magazines. He wrote the sections on Alternative Finance Arrangements in *Butterworths Finance Act Handbook 2005 & 2006*, and in *Simons Taxes*. His web log (“blog”) on finance and treasury taxation (address http://pwc.blogs.com/mohammed_amin) is the first blog from any Big 4 firm in the UK.

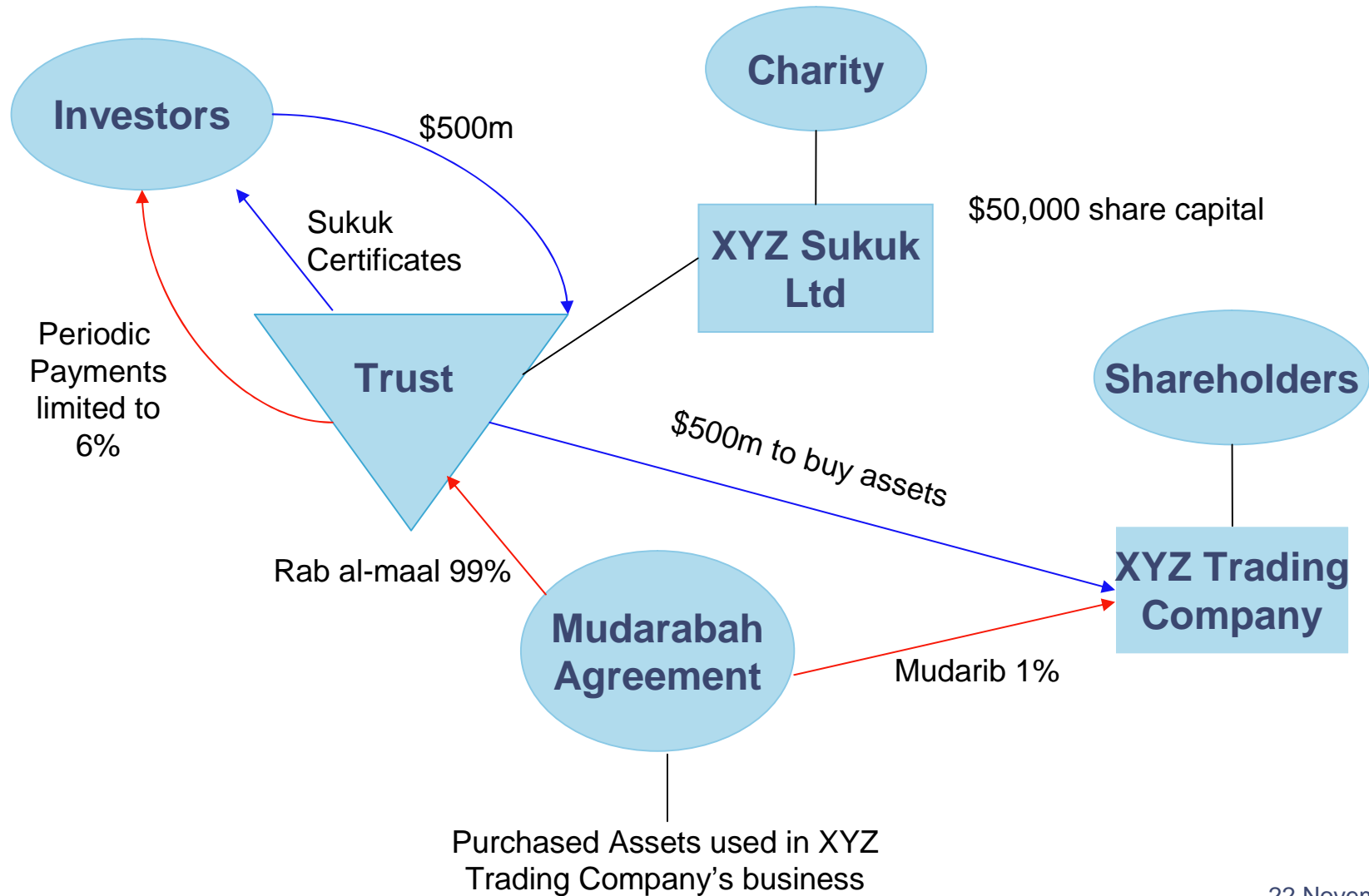
Outline

- Sukuk illustration
- UK tax problems
 - disallowance of finance costs
 - transaction taxes
- Recent UK tax law changes
- Legislating for sukuk

Sukuk illustration

- New company owned by a charity
- Creates a trust
- Issues trust certificates to investors for cash
- Purchases assets from sponsor
- Assets contributed to mudarabah
- Sponsor as mudarib
- Income paid to sukuk investors
- Repurchase obligation

Sukuk illustration



Is there a finance cost?

- Mudarabah looks like a partnership
- Partnership profit shares non-deductible

Disallowance of finance costs

- Anti-avoidance rules to stop equity finance being disguised as debt
 - ICTA 1988 s.209(2)(e)(iii) “securities under which... the consideration given... is ... dependent on the results of the company’s business”
 - interest treated as distribution (not tax deductible)

Transaction taxes

- Sponsor sells assets to new company
- New company sells assets to sponsor on expiry
- Possible transaction taxes on each sale

UK legislative adaptation : FA 2005 & 2006

- Language religion free
- Key concepts
 - Profit share return
 - “Equate(s), in substance, to the return on an investment of money at interest”
 - Financial Institution

Financial Institution (FI)

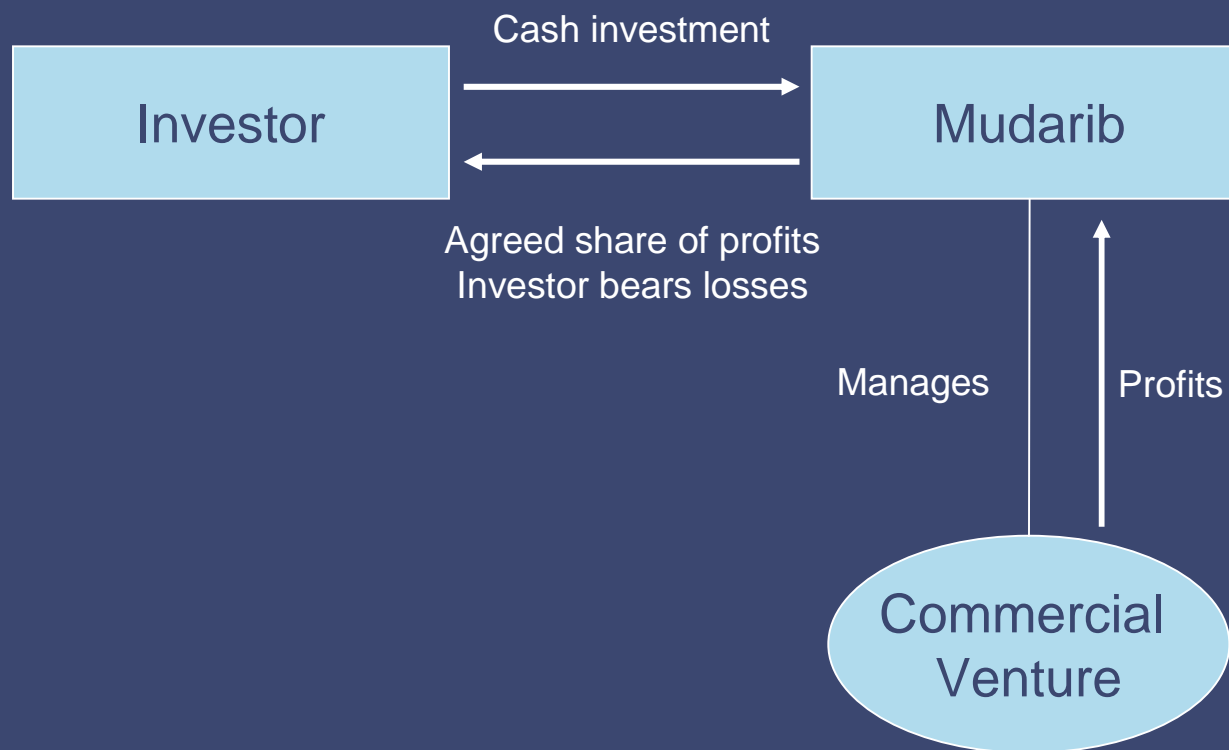
One of the parties must be a financial institution

- Bank (ICTA 1988 s.840A)
- Building Society (BSA 1986)
- Person licensed under Part 3, Consumer Credit Act 1974, to carry on consumer credit business or consumer hire business
- Person authorised outside UK to receive deposits from public
- Wholly owned subsidiary of a bank or building society

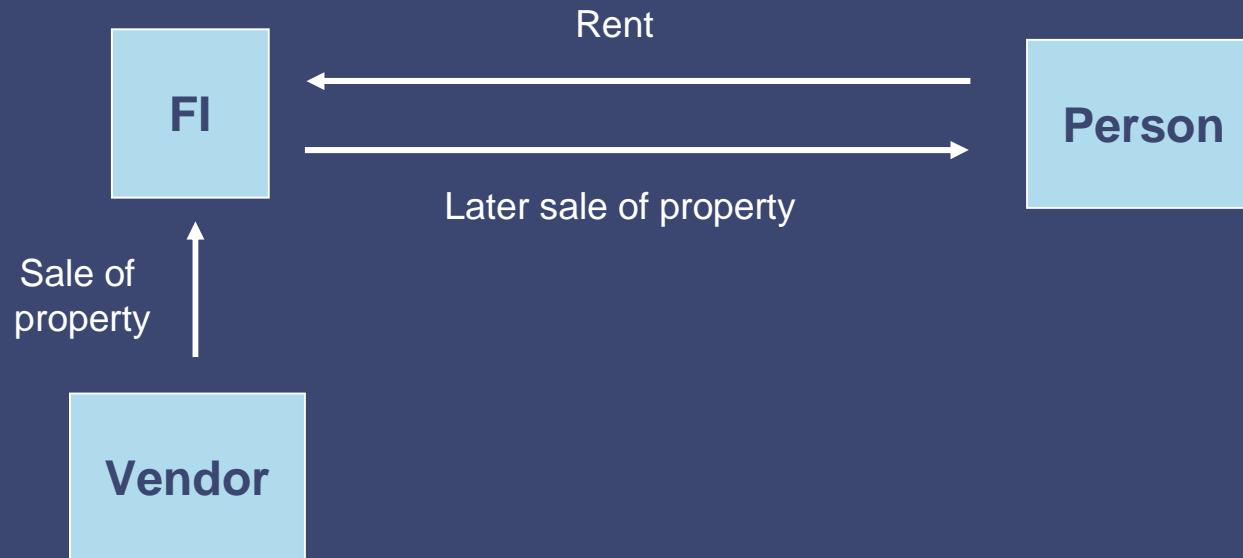
New tax law consequences : overview

- If within statutory definitions
 - Customer's expense treated for tax purposes in the same way that interest is treated
 - Same for financial institution
- Tax definitions are precise

Mudarabah



Stamp Duty Land Tax (SDLT) relief



- Eliminates multiple SDLT charges
- No SDLT charge on sale with repurchase

Legislating for sukuk

- Precedent for special rules: securitisation companies (FA 2005)
- Simple sukuk equivalent to vanilla eurobonds
- Impact of conversion rights?
- Impact of participation in project upside?

Questions?

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