Welcome! Come On In! Carefully!

Inbound Investment into the United States

Presentation to HLB International

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Overview

- Preliminary Zoological Thoughts
- Top Ten Things You Need to Advise About Inbound Transactions
- Residence and Pre-Residence Planning
- Foreign Investment in U.S. Real Estate

Foreign Direct Investment

Like making love to a porcupine . . .
do it carefully

Introduction

- At the recent SelectUSA Summit, Secretary of Commerce Penny Pritzker declared: "The U.S. Is Open for Business"
- Some choice quotes:
  - "We want to open that first door to making an investment here in the United States. Clearly, our investment climate is strong. America is open for business."
  - "For centuries, the U.S. has welcomed investment into the country and the domestic market has provided long-term stability and unmatched returns for investors."
  - "Today, the U.S. is the largest recipient of FDI in the world. Last year alone, foreign direct investment was more than $160 billion dollars and the total foreign stock and assets are measured not in billions, but in the trillions of dollars."

But . . . Someone Forgot to Tell the Secretary

- The tax laws on foreign investment present an outdated farrago of complex laws and regulations, multiple risks of double taxation, ferocious penalties for minor foot faults, understaffed and undertrained tax administrators and . . . that's before we get to the widely differing rules in 50 states, the District of Columbia and U.S. territories and possessions, and their political subdivisions
- At every turn, foreign investors are confronted with tax laws that are almost wilfully incomprehensible and therefore difficult or impossible to comply with
- There is little prospect of any of this getting better

Top Ten Things You Need to Advise About Inbound Transactions

The Top 10 Issues

1. Be aware of home country issues
2. Understand the residence rules for individuals
3. Understand the basic structure of U.S. taxation of various types of income of foreign persons
4. Be aware of transfer pricing laws and regulations
5. Learn the basics of U.S. income tax treaties
6. Be aware of the principal types of withholding
7. Be aware of the principal reporting rules
8. Understand the basic structure of U.S. estate and gift tax rules applicable to foreign persons
9. Be aware of what happens when an inbound investor becomes an outbound investor
10. Don’t ignore state taxes

1. Be Aware of Home Country Issues

- What works in the United States may be actively harmful in the home country. For example:
  - More and more foreign countries have adopted rules on transfer pricing and controlled foreign corporations
  - Many countries treat the LLC as a corporation and some, such as the United Kingdom, do not give credit to individual members for U.S. tax paid on their allocable share of LLC income
  - Creation of a revocable living trust by a U.K. resident may result in an immediate 20% inheritance tax
  - The marital deduction is only available for gifts and bequests to non-citizen spouses if channeled through a QDOT, but many civil law jurisdictions provide limited or no recognition of trusts

2. Understand the Residence Rules for Individuals

- The stakes are high:
  - U.S. residents are taxed on worldwide income and broad reporting requirements for foreign assets and income
  - Nonresident aliens are taxed on U.S. business income and U.S. source investment income, excluding non-real estate capital gains and most kinds of interest
  - Similar issues arise under state income tax laws
  - Big differences in the scope of U.S. estate and gift taxes
- Residence is defined differently for purposes of income tax, estate and gift tax and state tax, immigration law, inheritance laws and foreign taxes
- We'll cover this in more detail later

Coordinate planning with immigration counsel

3. Basic Structure of U.S. Income Taxation

- Foreign persons (NRAs and foreign corporations) are taxed only on two broad categories of income:
  - Income effectively connected with the conduct of a trade or business within the United States ("ECI")
    - Foreign corporations may also have to pay branch level taxes
  - Fixed or determinable annual or periodical income, e.g., interest, dividends, rents, royalties, that is not ECI ("FDAP income") but has a U.S. source
    - Many types of interest (bank interest, "portfolio interest") are exempt
- <u>Net</u> amount of ECI taxed at regular graduated rates
- <u>Gross</u> amount of FDAP income taxed at 30%
  - Under FIRPTA, income from the disposition of U.S. real property interests is deemed to be ECI
  - Other capital gains, e.g., sales of non-USRPI stock, are not taxed

4. Transfer Pricing

- Transfer pricing rules require use of the arm's length standard to related party transactions:
  - Sales of goods and services
  - Sales and licenses of intellectual property
  - Interest rates
- Capital structures must be reasonable or debt financing may be reclassified as equity
- Good records concerning pricing determinations are required – may require studies by economists, valuations and
- Consequences of getting it wrong can be high
  - Overpayment to foreign parent treated as a dividend, with potential double taxation
  - Accuracy-related penalties up to 40%

5. Tax Treaties

- The United States is party to income tax treaties with 65+ countries. Treaties reduce double taxation:
  - Clarify what income taxes are creditable
  - Declare that taxpayers who would otherwise be residents of both countries are resident of only one of them, using a series of tests that are consistent across most treaties
  - Limit taxation of business income by United States unless treaty resident has U.S. permanent establishment
  - Reduces withholding rates on interest and royalties (often to 0%) and dividends (typically 5% for corporations but 0% in some cases and typically 15% for individuals)
  - Special rules for employees, artists and athletes, teachers, students, pensions, government agencies

6. Withholding

- Tax on FDAP income generally collected by withholding *(§§1441-1442)*
- Tax on ECI generally paid by foreign person – estimated tax payments are required
- However, withholding is required as follows:
  - Payor to individual independent contractor for personal services must withhold 30%
  - Employer must withhold under usual domestic rules
  - Transferee of USRPI must withhold 10% of sale proceeds
  - Partnership must withhold on foreign person's share of partnership ECI, using estimated tax computation
- Numerous exceptions under statute and treaties
- Withheld tax must be deposited very quickly
- Coming in 2014 – FATCA withholding (see real estate slides)

7. Principal Reporting Rules

- Income tax returns
  - A foreign persons must file a U.S. income tax return unless only taxable income is FDAP income and all tax has been paid through withholding (or is exempt). If engaged in a trade or business, a return must be filed, even if there is no income
  - Form 8833 used to report most treaty-based positions
  - U.S. corporation with 25% foreign shareholder files Form 5472
- Information reporting
  - No 1099s (and no backup withholding) for payments to foreign persons; instead, use Form 1042-S
  - Foreign persons must provide Forms W-8BEN, W-8ECI, W-8IMY, W-8EXP or 8233 to establish foreign or treaty status
  - Foreign investors and the U.S. persons who deal with them cannot ignore FATCA – Form W-8 series being drastically revised to report status as one of many flavors of foreign financial institution (FFI) or non-financial foreign entity (NFFE)

8. Gift Tax

- Nonresident alien is taxed on gifts of tangible (but not intangible) property located in the United States
  - U.S. real property is subject to gift tax, top rate 40%
  - Stock (domestic or foreign corporation) *not* subject to tax
  - Gift of partnership interest probably *not* subject to tax
  - Cash:
    - Notes and coins are regarded as tangible
    - Only 100% safe method is foreign-to-foreign transfer
    - Wire transfer from abroad to U.S. account is probably safe
    - Gift of cash conditioned on use by donee to purchase donor's U.S. situs property may be subject to tax
  - Points to note:
    - No step-up in basis on *inter vivos* gift and no unified credit
    - Substance over form risk. For example:
      - Donee or trust is funded with cash and purchases real property from grantor –
      - Foreign owner contributes property to corporation or partnership and then makes gift of partnership interest or stock

8. Estate Tax

- NRA estate subject to tax on U.S. situs property. Top rate 40%; unified credit equivalent to $60,000 exemption:
  - U.S. real estate
  - Stock in U.S. (not foreign) corporation, publicly traded or not
  - Tangible personal property located in the United States, e.g., cash, short-term U.S. Treasury Bills, cars, furniture, jewelry, artwork (unless on loan to a non-profit gallery or museum)
  - Debt obligation, primary obligor of which is a U.S. person or the United States or state but not
    - Obligations where the interest qualifies as portfolio interest
    - Bank deposits
- Uncertain treatment of partnership interests
  - IRS position: Interest is located in the U.S. if partnership is engaged in U.S. trade or business. What if:
    - Partnership not ETB but decedent elected under §871(d)?
    - Partnership owns only residence for NRA's personal use?
  - Other theories: Place of organization or partner domicile

9. Inbound Investors Can Becomes Outbound Investors

And when this happens:

- Pre-residence E&P and appreciation may get taxed
- CFC rules and PFIC rules can apply:
  - If foreign corporation owns U.S. corporation, undesirable sandwich structures may be created – consider § 956 implications
- Adverse treatment of foreign pensions, with no rollover of foreign pension plans into U.S. plans
- FBARs, Forms 5471, 8865, 8858, 8938, etc.
- And back home . . .
  - Foreign tax law expatriation rules may be triggered
  - May get asked by foreign banks to close accounts

10. Don't Forget State Income Taxes

- Federal exemptions and tax treaties do not apply for state tax purposes (except for nondiscrimination provisions). For example:
  - Treaties bar taxation of U.S. business income unless attributable to a permanent establishment; states only require "doing business", a much lower threshold (lower even than "engaged in a trade or business")
  - Dual resident rules do not apply
  - No exemptions for students, teachers, short-stay employees
- An alien can become a resident for state income tax purposes before becoming a resident for Federal tax purposes

Becoming a Resident

Residence for Tax Purposes

- Residence means different things for purposes of different taxes and related regulatory requirements:
  - General Federal tax residence rules *(§ 7701(b))*
  - Federal estate and gift tax purposes (domicile)
  - State tax purposes
  - Regulatory and reporting requirements, e.g., foreign bank account reports, money laundering rules, etc.
  - Home country taxation (and other requirements)
- These rules are not uniform and coordination is erratic
- It is critical to determine when U.S. residence (and citizenship) begins and ends

RA for Income Tax Purposes – Two Tests

- **Lawful permanent resident (LPR) test** *(§ 7701(b)(6))*
  - Sometimes referred to as the green card test
  - Applies to LPRs
- **Substantial presence test** (*§ 7701(b)(3)*)
  - Sometimes referred to as the day counting test
  - Applies to non-immigrants

LPR Test

- Alien is resident with respect to any calendar year if he or she is an LPR at any time during such calendar year
- Definition of LPR:
  - Alien has been admitted with, or adjusted to, lawful permanent resident status with the right to reside and work without restriction in the United States, <u>and</u>
  - Status has not been revoked (and has not been administratively or judicially determined to have been abandoned) <u>and</u>
  - Alien is not tax resident of another country under the provisions of a tax treaty
- Many aliens hold green cards but live abroad – they remain tax residents so long as their LPR status has not been taken away

Substantial Presence Test

- Two possibilities:
  - Either 183 days of physical presence in current calendar year <u>*or*</u>
  - CY >= 31 days *and* $CY+(PY_1/3)+(PY_2/6)=183$, where
    - CY = days of physical presence in current calendar year
    - PY_1 = days of physical presence in preceding calendar year
    - PY_2 = days of physical presence in 2nd preceding calendar year

    unless taxpayer shows closer connection to a foreign tax home in current year (see next but one slides)
- If CY < 31, not resident under this test
- Not all days of presence are counted (see next slide)

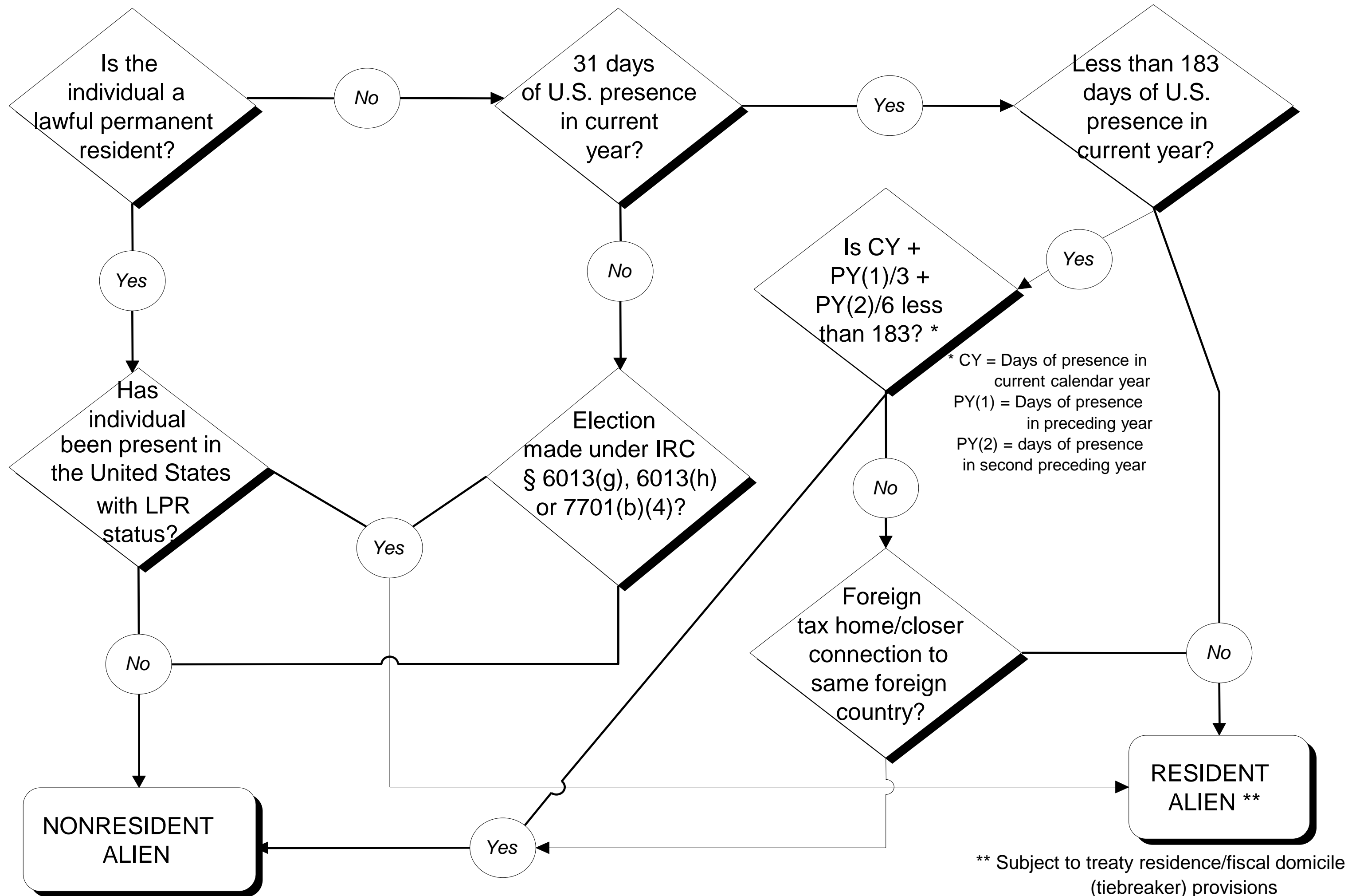
Days of Presence

- Tested on calendar year basis
- Presence during any part of day counts as full day
- Days in transit between two foreign points excluded if stay is less than 24 hours
- Days don't count for some classes of nonimmigrants
  - Students, teachers, diplomats, international organization employees, some professional athletes, regular commuters from Canada or Mexico (special rules for each class)
  - Alien unable to leave because of medical condition which arose while present in the United States
    - <u>Not</u> illness known to alien before coming to United States – so this should be taken into account by medical tourists
    - <u>No</u> exclusion if alien remains beyond reasonable period for making arrangements to leave
    - <u>No</u> exclusion for family members

Foreign Tax Home/Closer Connection

- "Tax home" does not mean tax residence under foreign country's law. It is defined as the taxpayer's regular or, if more than one, his/her principal place of business
- Closer connection focuses on personal connections (location of home, family, belongings, social organizations, bank accounts, driver's license, statements on non-tax documents, etc.)
- Important but not absolutely required that number of days in foreign country exceed number of days in the United States

Diagram of Income Tax Residence Rules



Beginning of Residence

- Substantial presence test: First day of presence in first year in which test is met
- LPR test: First day of physical presence in the United States with the status of an LPR (unless already a resident under substantial presence test)
- Elective residence is possible under:
  - § 7701(b)(4): During testing period beginning on date specified by taxpayer and ending on December 31, 31 days of continuous presence and days of presence in the United States equal to 75% of all days
  - § 6013(g): If at close of year NRA is married to U.S. citizen or resident, both may file joint return with NRA treated as resident for whole year
  - § 6013(h): Two married individuals one or both of whom were nonresident at the beginning of the year but both resident at end of the year may elect to file joint return as residents for the whole year

Tax Treaty Tiebreakers

- What if an individual would be a tax resident of the United States and another country?
- Tax treaties almost always provide a tiebreaker based on the U.S. Treasury Model Income Tax Convention (based on OECD Model)
- First, apply domestic tax laws of each country without regard to treaty
- Then, apply series of tests (see next slide)
- U.S. citizens may escape residence of a foreign country under these tests, but:
  - U.S. citizens living abroad remain subject to U.S. taxation on worldwide income
  - U.S. citizens cannot make treaty claim to foreign country unless they are also "resident" in the United States

Tax Treaty Tiebreakers (cont'd)

- If taxpayer would be resident of both "contracting states" under their respective laws:
  - Deemed resident only of the State in which he has a **permanent home available to him**
  - If he has a permanent home available to him in both States, deemed resident only of the State with which **personal and economic relations are closer (center of vital interests)**
  - If centre of vital interests cannot be determined, or if no permanent home is available to him in either State, deemed resident only of the State in which he has an **habitual abode**;
  - if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the **State of which he is a national**
  - if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by **mutual agreement**

Nonresident Aliens

- *Section 7701(b)(1)(B)*
  - Any individual who is not a U.S. citizen or U.S. tax resident
  - Residence may be affected by treaty residence ("tiebreaker") provision (*U.S. Model Treaty, Art. 4(2)*)
  - Note laws applicable to long-term LPRs who give up their status or cease to be resident under a treaty – see later slides

No special provision for new or temporary residents

Transfer Taxes (Estate, Gift, GST)

- RAs and U.S. citizens taxed on worldwide assets; NRAs taxed on assets with U.S. situs
  - Note that gift tax does not apply to gifts of intangible assets, including stock of U.S. corporation or interest in a partnership
- Note special GST rules *(Treas. Reg. § 26.2663-2)*
  - Transfer by an NRA is a direct skip only to the extent transfer is subject to estate or gift tax
  - GST applies to taxable distribution or taxable termination only to the extent the initial transfer to trust by an NRA transferor, whether during life or at death, was subject to estate or gift tax
- Tax on gifts and bequests by "covered expatriates" *(§ 2801)*

Residence for Transfer Tax Purposes

- The residence of aliens is based on "domicile"
  - "A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal." *Treas. Reg. §§ 20.0-1(b) and 25.2501-1(b)*
  - Intent is key – immigration status can be an important but not decisive indicator of intent

Residence for Transfer Tax Purposes (cont'd.)

- So what effect does immigrant or non-immigrant status have on determination of domicile?
  - LPR – strong indicator of intent to remain indefinitely
  - Nonimmigrant or lack of status – indicates intent to leave but:
    - Undocumented alien - Rev. Rul. 80-209, 1980-2 C.B. 248 and *Estate of Robert A. Jack v. United States*, 54 Fed. Cl. 590 (2002) (granting government's summary judgment motion that it should be allowed to show that the decedent intended to stay in the United States in violation of his visa)
    - Multiple renewals of nonimmigrant visas – *Elkins v. Moreno*, 435 U.S. 647 (1978) (non-tax case involving domicile for succession purposes of holder of G-4 visa for employee of international organization who remained in the United States for many years), cited by IRS in Rev. Rul. 80-36, 1980-2 C.B. 249

Pre-Residence Planning

- Wherever possible, planning should be undertaken and executed before an alien becomes a U.S. resident
- It is critical to determine exactly when he or she will become a resident and to carry out any tax planning steps that can best be undertaken before residence begins
  - Sometimes, it is possible for an individual to cease to be resident in home country before becoming a U.S. resident and planning can be done during this interim period
- Planning should be coordinated with home country counsel, especially if the country has a departure tax (outside the scope of this presentation)

Principal Pre-Residence Steps

- Accurately time when U.S. tax residence begins for both income tax and transfer tax purposes
- Consider what immigration status is appropriate, given punitive rules applicable to immigrants who become green card holders and become "covered expatriates" if they later leave the United States
- Income timing (consider home country tax effects)
  - Accelerate collection of non-U.S. income
  - Accelerate realization of gains not subject to U.S. tax
  - Basis step-up transactions (U.S. does <u>not</u> have landed basis)
  - Defer realization of losses
  - To the extent necessary and possible, deal with income and gains held in deferred compensation plans

Principal Pre-Residence Steps (cont'd)

- Deal with holdings in foreign corporations, especially corporations that might become controlled foreign corporations (CFCs) or passive foreign investment companies (PFICs) once residence begins
- Deal with trusts that are already in existence, whether formed by the prospective resident or by the new immigrant's family members
- Make gifts and create trusts for spouse and children

Foreign Investment in U.S. Real Estate

Before Planning Begins

- Understand investor characteristics - type, location
- Ascertain investment characteristics and objectives:
  - Use – personal use, business, investment
  - Types of income generated: Rent, interest, dividends, capital gains, services and others
  - Capital – equity, debt (many different flavors and sources)
  - Exit – anticipated timing, method
- Consider choice of entity – wholly-owned, joint ventures, passive investment vehicles (e.g., REITs)
- Withholding and compliance
- Estate and gift taxes

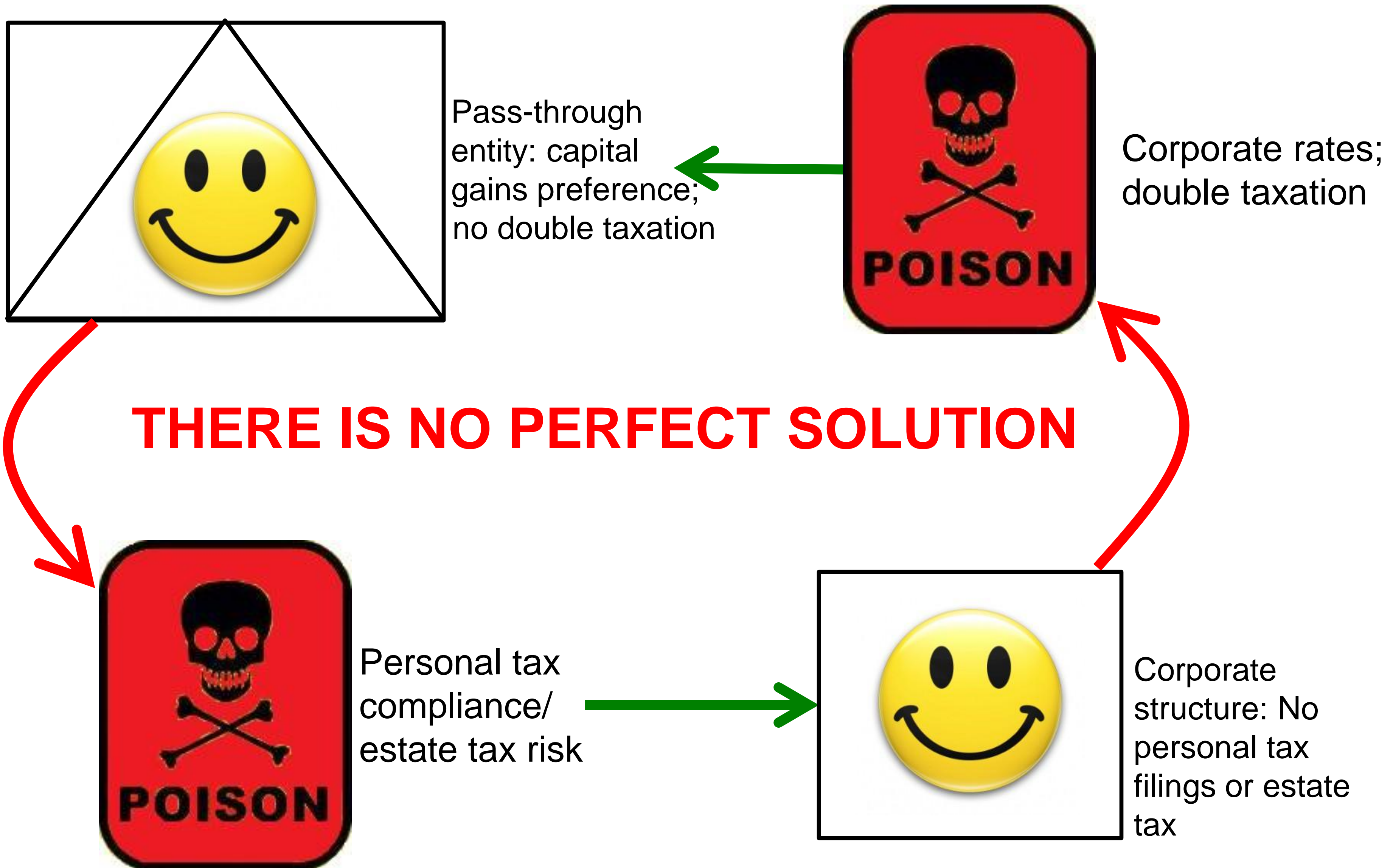
Home Country Taxation

- No planning should be undertaken before considering whether home country taxation is relevant
- U.S. taxation of foreign investors may be modified by treaty
  - No exception from U.S. taxation of gain from real estate but treaties can reduce or eliminate tax on interest and dividends
  - Almost all treaties contain “limitation on benefits” provisions to counteract abusive use of treaties

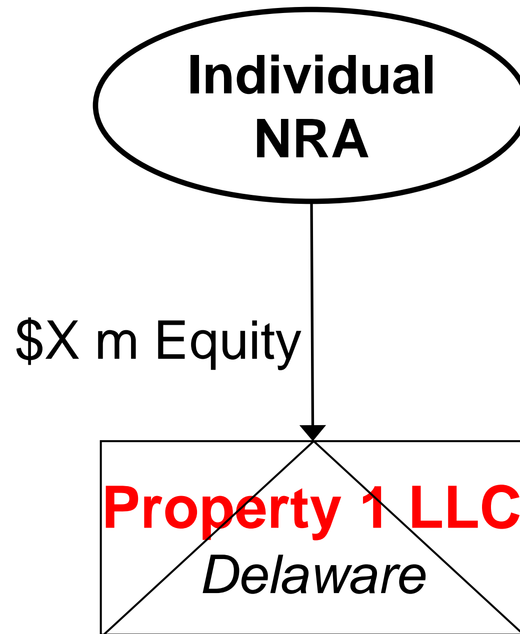
Objectives Drive Structure

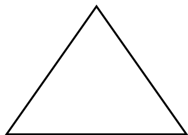
- Tax objectives:
  - Avoid cross-border double taxation (U.S./foreign)
  - Mitigate taxation of operating income
  - Avoid double taxation of corporate earnings
  - Obtain long-term capital gains treatment on sale
  - Avoid gift and estate taxes
  - Limit overwithholding
  - Limit contact with U.S. tax system
- Nontax objectives
  - Preserve confidentiality
  - Facilitate inter-family transfers
  - Limited liability

Structuring May Mean Picking Your Poison



Individual Ownership





Indicates "tax transparent" entity for U.S. tax purposes

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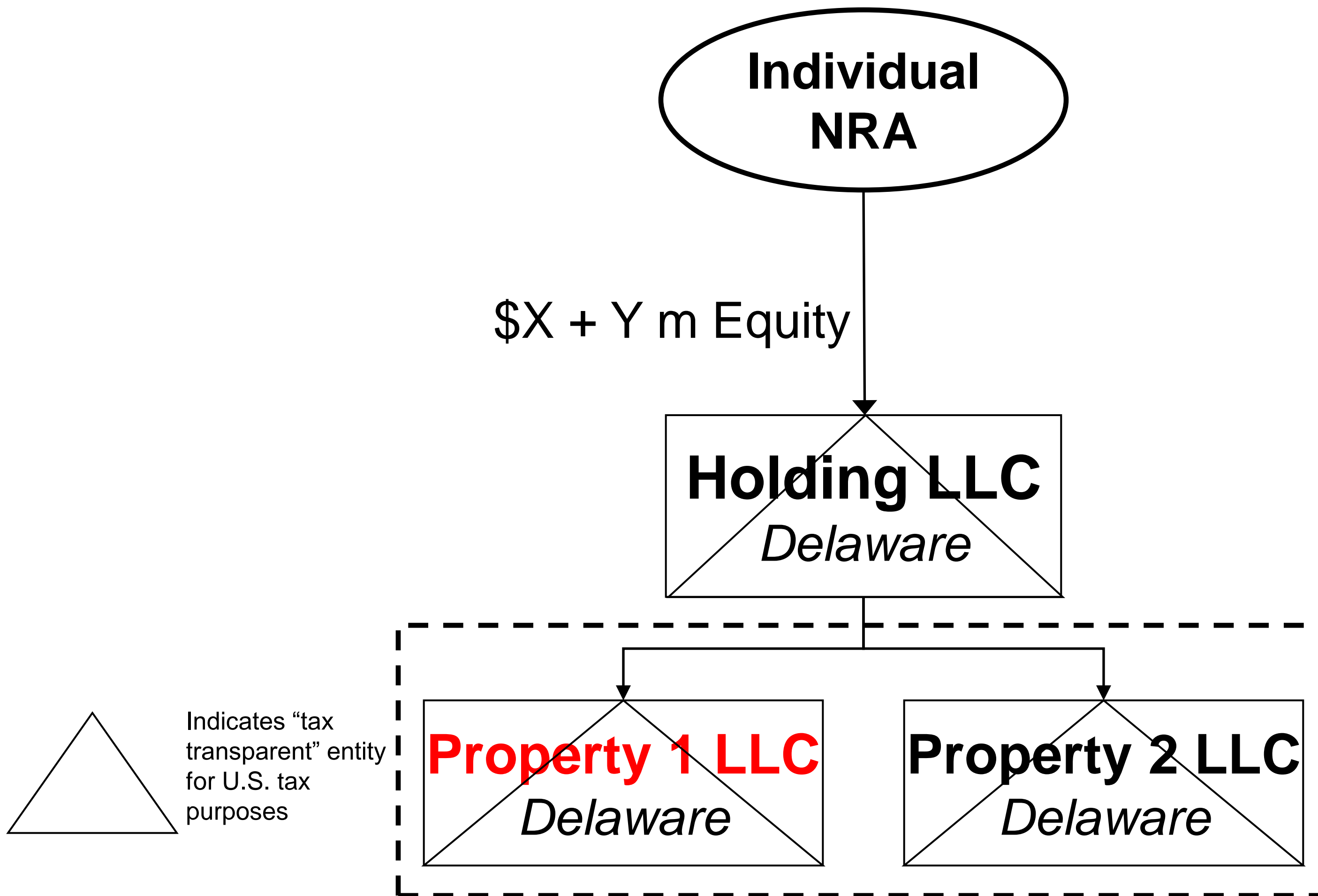
Individual Ownership



Individual Ownership

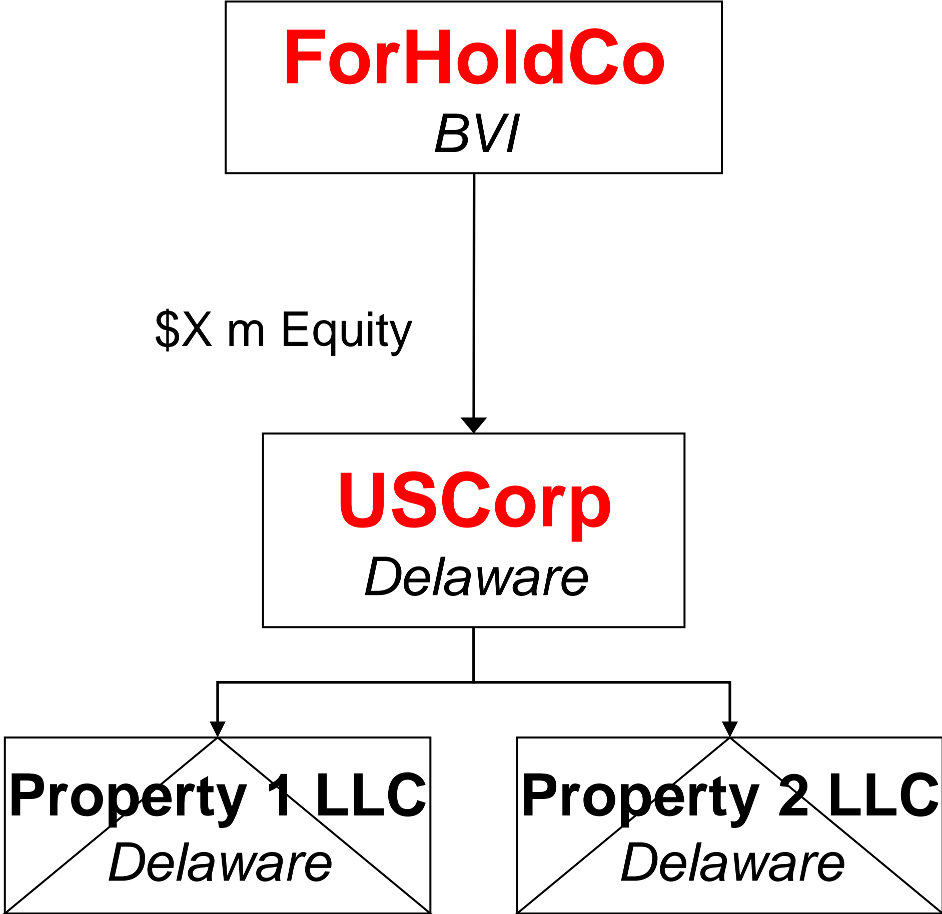
Advantages

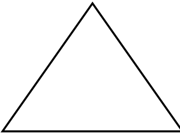
- Capital gains preference
- Consolidation of U.S. profits and losses
- Buyer gets step-up on purchase of property or LLC
- No U.S. double taxation of profits; in many cases credit at home for U.S. tax (but caution if using LLC rather than actual partnership)
- Structure preferred by U.S. partners of foreign investor
- No gift tax on gift of LLC interest

Disadvantages

- Possible/likely estate tax on death of NRA
- Individual NRA must make income tax filings
- Top individual rates may now be significantly higher than corporate rates:
  - Top rate on ordinary income 39.6% v. 34/35%
  - Top rate of California tax 13.3% v. 8.84%

Corporate Structure





Indicates “tax transparent” entity for U.S. tax purposes

Corporate Structure

Advantages

- No estate or gift tax on transfers of foreign stock
- No branch profits tax
- Consolidation of U.S. profits and losses
- No individual income tax filings

Disadvantages

- Corporate tax rates on sale of properties (no capital gains preference)
- Taxfree sale of stock of ForHoldCo but may be impractical and buyer will discount because no step-up at USCorp level
- Double taxation of profits at corporate and shareholder level except on liquidation of structure following sale of all properties

Corporate Structure (with multiple corporations)

Advantages

- No estate or gift tax on transfers of foreign stock
- No branch profits tax
- Can sell property of one U.S. corporation and pay corporate level tax but liquidation is then taxfree

Disadvantages

- Corporate tax rates on sale of properties (no capital gains preference)
- Taxfree sale of stock of ForHoldCo but may be impractical and buyer will discount because no step-up at USCorp level
- No consolidation of U.S. profits and losses
- Double taxation of operating profits at corporate and shareholder level

Corporate Structure (with financing)

ForHoldCo
BVI

Finance Company
BVI

$Y/4 m Equity

$Z/4 m Equity

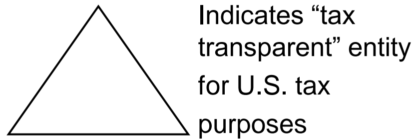
USCorp 1
Delaware

USCorp 2
Delaware

$Y x ¾ m Loan to USCorp 2
$Z x ¾ m Loan to USCorp 2

Property 1 LLC
Delaware

Property 2 LLC
Delaware



Foreign Corporate Structure (with financing)

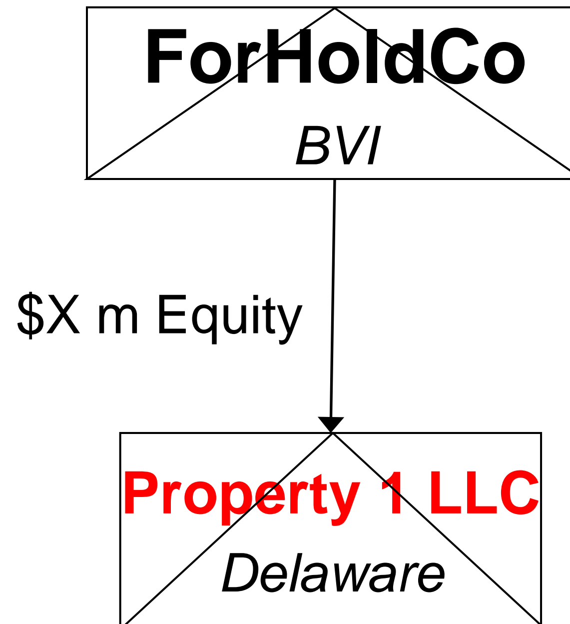
Advantages

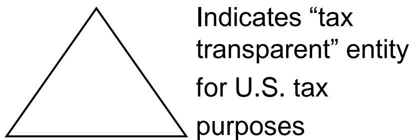
- Deduction for interest (including contingent interest)
- Can avoid withholding on non-contingent interest if qualified for portfolio interest exemption
- No withholding on repayment of loan principal

Disadvantages

- Withholding on interest if lender is a "10-percent shareholder" or "10-percent partner" of borrower
- Debt:equity issues must be properly managed
- Potential earnings stripping limitations

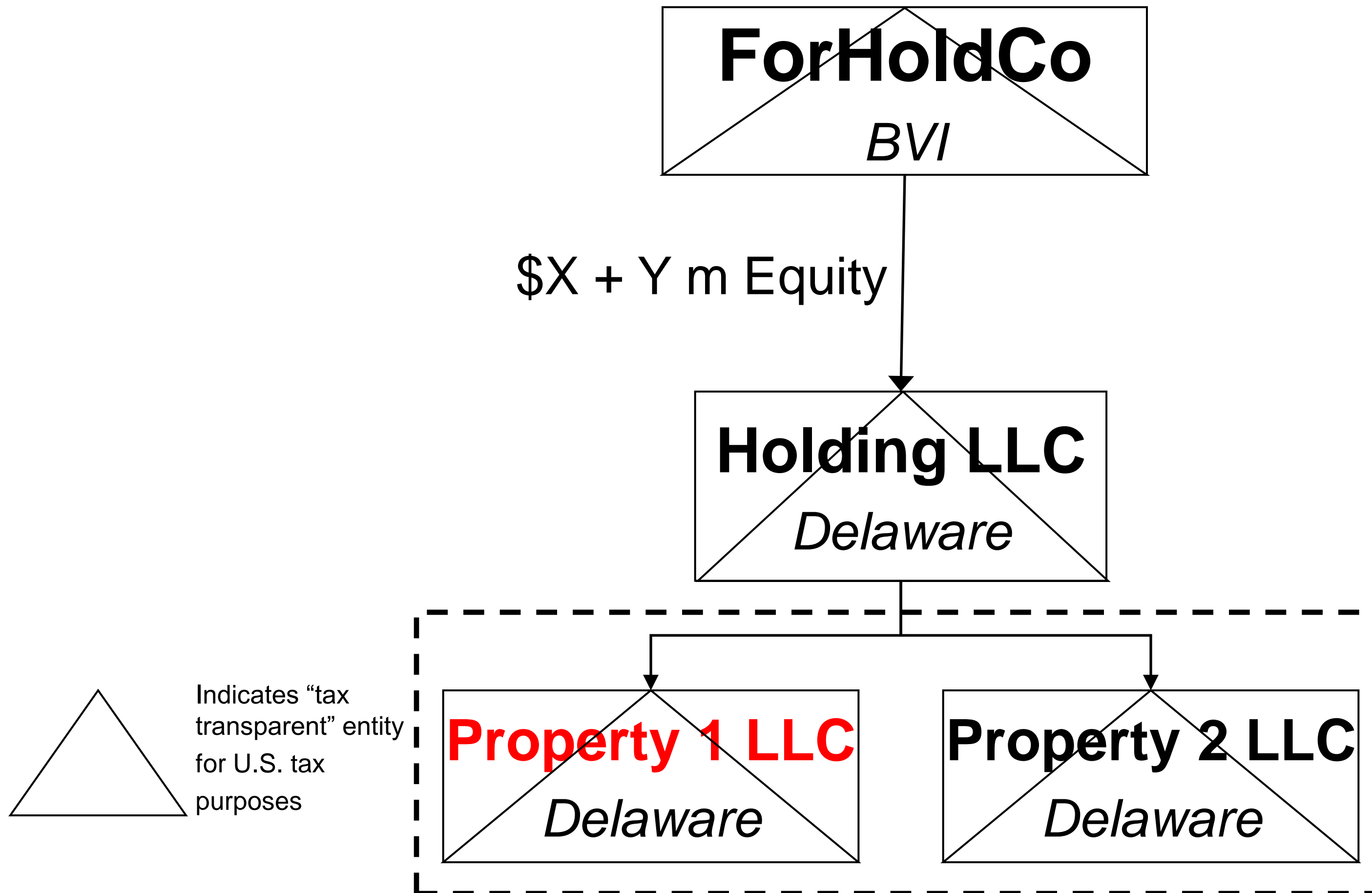
Foreign Corporate Structure (initial property)



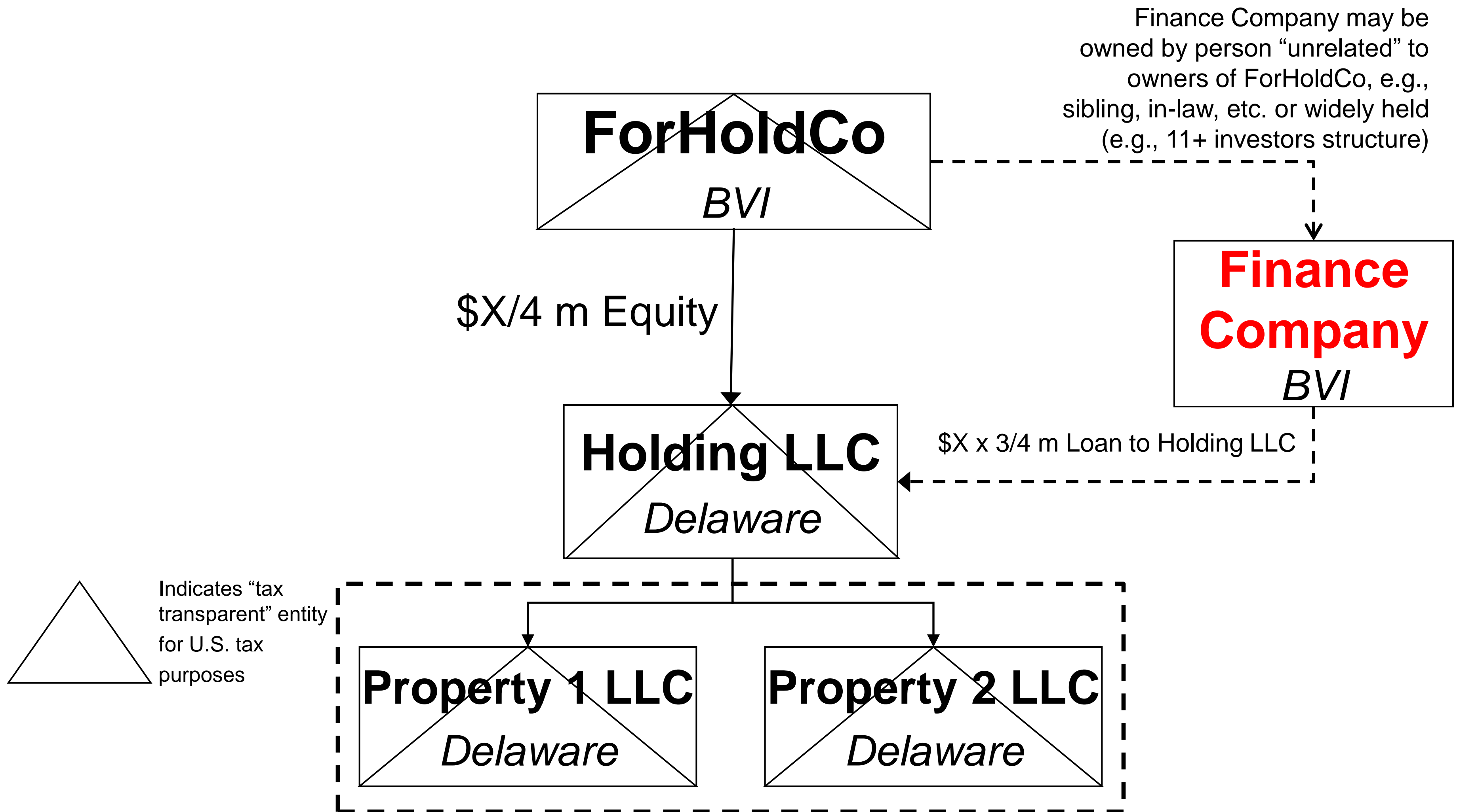


Indicates "tax transparent" entity for U.S. tax purposes

Foreign Corporate Structure (additional properties)



Foreign Corporate Structure (with financing)



Foreign Corporate Structure (with financing)

Advantages

- No gift or estate tax
- No capital gains tax on sale of stock (but as practical matter may need to have one corporation per property)
- Consolidation of U.S. profits and losses
- No individual income tax filings

Disadvantages

- Corporate rates
- Branch level taxes on "dividend equivalent amount" and branch interest – very difficult to manage

FATCA (§§ 1471-1474)

- FATCA can require withholding at 30% on payments of U.S.-source income to foreign financial institution (FFI) or non-financial foreign entity (NFFE)
  - FFI very broadly defined and includes professionally managed "investment entities" – vague (and therefore unreliable) exception for holding companies
- No FATCA withholding on payments to individuals
- New IRS forms (not yet finalized) will replace Form W-8BEN and related forms

FATCA: Application to Real Estate

- FFI: 30% withholding on withholdable payments under §1471 will be imposed unless FFI:
  - Signs agreement with IRS (“PFFI Agreement”);
  - Is resident of country that has signed a FATCA Model 1 intergovernmental agreement (IGA);
  - Is exempt from FATCA under existing IRS guidance
- NFFE: 30% withholding on withholdable payments under §1472 will be imposed unless NFFE:
  - Certifies that it has no substantial U.S. owner”; or
  - Provides the name, address, and TIN of each substantial U.S. owner; and
  - In either case, withholding agent (a) neither knows nor has reason to know certification is incorrect and (b) provides the substantial U.S. owner to IRS

FATCA: Application to Real Estate (cont'd)

Withholdable payments – real estate-related income:

- FDAP:
  - U.S.-source interest (e.g., interest from mortgage loan),
  - Dividends (e.g., dividend from USRPHC),
  - Rents and other types of payments from the U.S. (e.g., rent on U.S. real estate)
- Proceeds from U.S. securities:
  - Gross proceeds from the sale of any property that could produce U.S.-source dividends or interest
  - This includes USRPHC stock and loan principal repayments from a U.S. borrower
  - Withholding on gross proceeds will not begin until 2017

FATCA: Application to Real Estate (cont'd)

- In all these structures, must consider whether ForHoldCo is an FFI or an NFFE
  - This may depend on what ForHoldCo does – anything beyond passively holding shares of USCorp (e.g., making loan to US Corp or Property LLC) may cause it to be an FFI that must register as FFI
- In many cases, ForHoldCo may be held by a trust or trust-like vehicle such as a foundation
  - If the trustee is an FFI (often the case, especially with offshore corporate trustees), this may affect treatment of ForHoldCo, for example by making it part of an "expanded affiliated group"

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To ensure compliance with requirements imposed by the IRS, we inform you that, unless and to the extent we otherwise state, any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

The above presentation is based on the completeness and accuracy of facts and assumptions stated above and of any other information provided to us. If any of the foregoing is not entirely complete or accurate, it is imperative that we be informed immediately, as the inaccuracy or incompleteness could have a material effect on our conclusions. We are relying upon the relevant provisions of the Internal Revenue Code of 1986 as amended, the regulations thereunder, any applicable treaty, and the judicial and administrative interpretations thereof, which are subject to change or modification by subsequent legislative, regulatory, administrative, or judicial decisions. Any such changes also could have an effect on the validity of our conclusions. Unless you specifically request otherwise, we will not update our advice for subsequent changes or modifications to the law and regulations or to the judicial and administrative interpretations thereof.

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