International Tax Strategies

Understanding the necessities for creating and sustaining effective tax strategies for individuals and businesses operating in the international market place.

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WINDHAM BRANNON
offering more

Agenda

- TCJA International Tax Overview
- Reporting Requirements
- Tax Structure Planning Opportunities
- Other International Tax Considerations

TCJA International Tax Overview

Making the world a little smaller

- Signed into law on December 22, 2017
- Largest major tax reform since 1986
- International Tax Highlights:
  - Transition from Worldwide Income Tax regime to Participation Exemption Tax regime
  - One-time Transition Tax on accumulated earnings
  - Significant changes to the treatment of foreign income
  - Incentives for companies to keep (or bring back) business in the U.S.

International Tax Reform - Goals

Shift towards a territorial system

Protect the U.S. tax base from cross-border erosion

Incentive for economic investment in the U.S.

International Tax Reform

Corporate Tax Rate – 21%

-Decrease from top 35% Rate

CFC Rules

- U.S. Shareholder re-defined
- Partnership Attribution Rules
- Downward Attribution Rules (Repeal of §958(b)(4))

§962 Election

- Election to treat CFC Income as if received by corporation

Transition Tax

-Deemed repatriation

-15.5% Cash/cash Equivalents

-8% on remaining earnings

GILTI

-Tax on CFC's earnings

-C Corp 50% deduction

-New defined terms

FDII

-Opposite of GILTI

-37.5% tax deduction

-Disincentive to move IP

BEAT

-US C Corps only

-$500M avg gross receipts threshold

-related party transactions

CFC Status Determinations

CFC

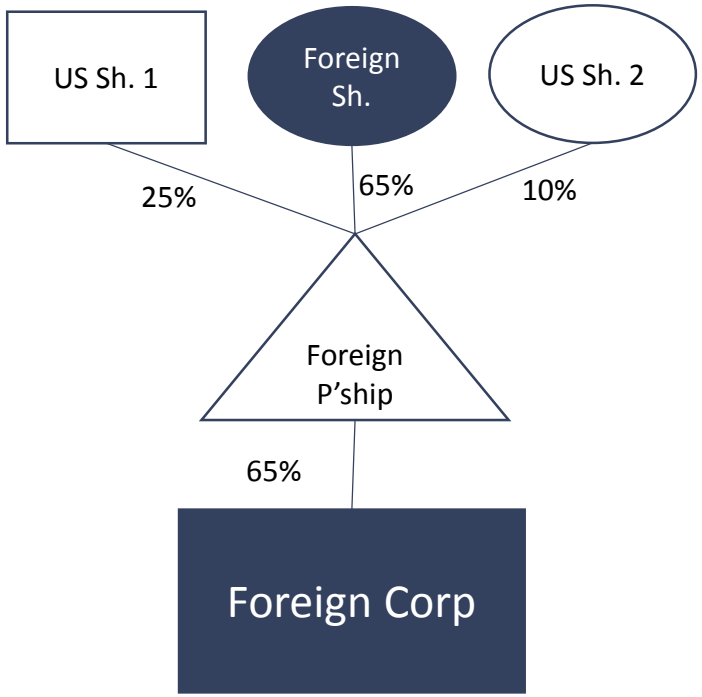
50%+ of vote or value owned by a U.S. shareholder (on any day)

USS

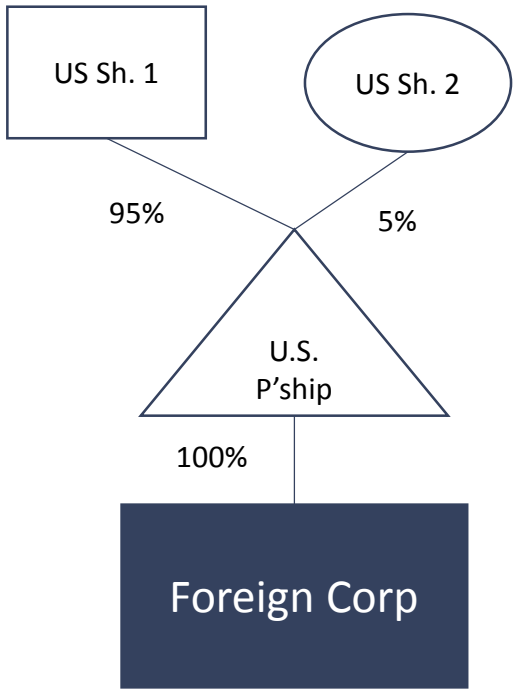
Pre-TCJA: US “person” with 10% of vote
Post-TCJA: US “person” with 10% of vote **or** value

The status of a foreign corporation as a CFC and whether US person is a US Shareholder, determines USS CFC income inclusion.

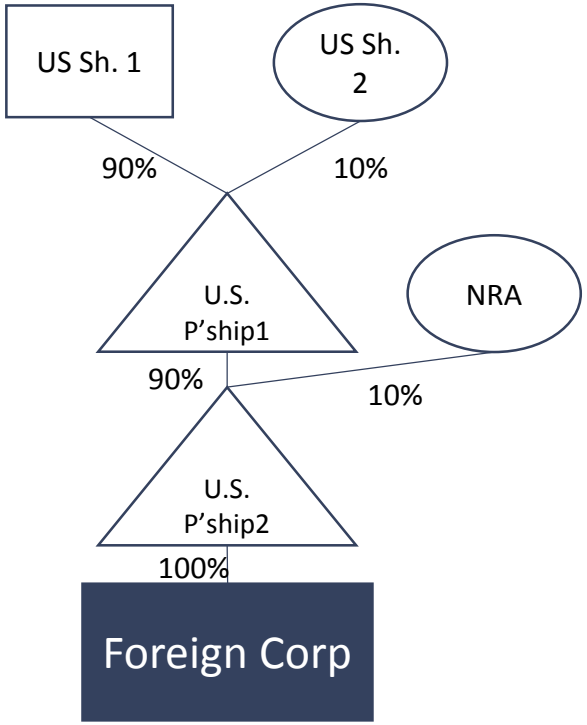
CFC Rules : Attribution from Partnerships



- US Sh. 1 and 2 are US Shareholders (USS)
- Foreign Corp is not a CFC
- No GILTI inclusion for US Sh. 1 or 2
- Form 8865 and Form 5471 Reporting

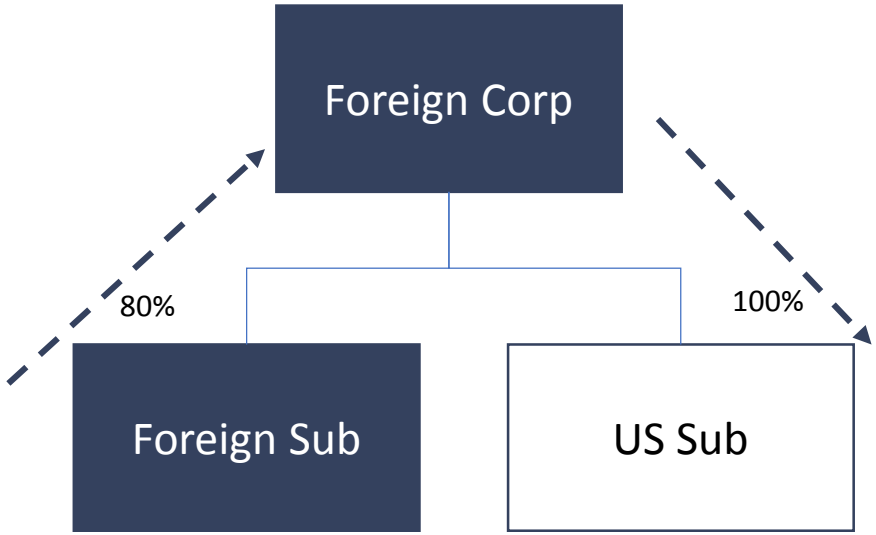


- US Sh. 1 is a USS
- US Sh. 2 is not a USS
- Foreign Corp is a CFC
- No GILTI inclusion for US Sh. 2
- Form 5471 and 8992 Reporting



- US Sh. 1 and 2 are USS
- Foreign Corp is a CFC
- Pro-rata share of GILTI inclusion for US Sh. 1 and 2
- Form 5471 and 8992 Reporting

CFC Rules : Downward Attribution



- Pre-TCJA: No attribution of foreign corporations to U.S. corporations
- Post-TCJA: §958(b)(4) repealed, and now attribution applies to foreign corporations.
- If corporation is 50% owned by another corporation, attribution applies
- Not Congressional Intent (Sen. Perdue, R-GA)
- Reporting Relief
- Possible planning

IRS International Reporting Requirements

Information Reporting

- Form 5471 – CFC
- **Form 8992 – GILTI**
- **Form 8993 – GILTI/FDII**
- Form 5472 – 25%+ foreign owner (now includes U.S. Disregarded Entities)
- Form 8865 – Foreign Partnership
- Form 8858 – Foreign Disregarded Entity
- **Form 965 – Transition Tax**

- Form 1099 Reporting
  - CFC's are considered U.S. payers and are required to file

Other Common International Tax Forms

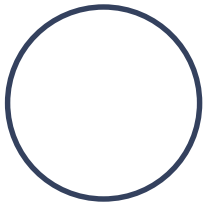
Form	Form Name
Form 926	*Return by a U.S. Transferor of Property to a Foreign Corporation*
Form 8804/8805	*Annual Return for Partnership Withholding Tax/Foreign Partner's Information Statement of Section 1446 Withholding Tax*
Form 2555	*Foreign Earned Income*
Form 1042-S	*Foreign Person's U.S. Source Income Subject to Withholding*
Form 8832	*Entity Classification Election*
Form 8833	*Treaty-Based Return Position*
Form 5713	*International Boycott Report*
Form 8288, 8288-A, 8288-B	*(FIRPTA) U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests*
Form W-8's	*Certificate of Foreign Status*

Failure to File International Forms

- Common errors
- High Penalties
  - Form 5471 - $10,000 initial penalty (per corporation), plus $10,000 for each 30-day period info is not filed, beginning 90-days after initial IRS notice (max of $50,000).
  - Form 5472 - $25,000 initial penalty (per corporation), plus $25,000 for each 30-day period info is not filed, beginning 90-days after initial IRS notice
- May be able to argue reasonable cause to abate penalties

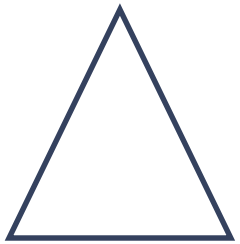
Tax Structure Planning Opportunities

Taxpayer Overview



37%

21%



% based
on ultimate owner

37%

Planning Example

- Foreign wine business looking for direct investors
- WB Client, who is a U.S. individual, wants to invest along with other U.S. and foreign investors (who are all unrelated)
- WB Client calls their WB advisors **PRIOR** to investing, to ask what is the best route to invest.
- WB Team modeled out four scenarios

Planning Example

- Foreign wine business looking for direct investors
- WB Client, who is an individual, wants to invest along with other U.S. and foreign investors (who are all unrelated)
- Based on projections provided by wine business, WB Client plans to exit the business and sell within 10 years.
- WB Client calls their WB advisors **PRIOR** to investing, to ask what is the best route to invest.

- Questions to Consider:
  - Is foreign country in a treaty-friendly jurisdiction?
  - Applicable tax rates of foreign jurisdiction? (Income and withholding tax)
  - Is the foreign wine company a foreign corporation or foreign partnership?
  - How much is our client investing?
  - When are they planning to exit?

Facts and Assumptions:

- Jurisdiction: Ireland
  - 12.5% Corporate Rate,
  - US/Irish Treaty In-Force
  - Withholding Tax:
    - Corporate Treaty Rate: 5%
    - Individual Treaty Rate: 15%
- WB Client's Ownership: 33%
- Exit Date: In 6-7 years, approx. Year 2025
- Individual Rate: 37%
- US C corp Rate: 21%
- Dividend distributions subject to NIIT @ 3.8%
- Assumed net available income will not be distributed to US individual
- There are no other CFCs or foreign branches
- Foreign corporation not expected to make significant profit until year 3 All income earned from foreign corp is subject to GILTI

Scenario 2 – This was most favorable option based on exit plan, and no yearly distributions, with recommendation to analyze each year if a §962 election is necessary.

Scenario 1

US C-Corp Owner;
Sale of Stock

Scenario 2

Individual Direct Owner;
Sale of Stock;
§962 Election

Scenario 3

Individual Direct Owner;
Sale of Stock;
No §962 Election

Scenario 4

US C-Corp Owner;
Sale of Assets

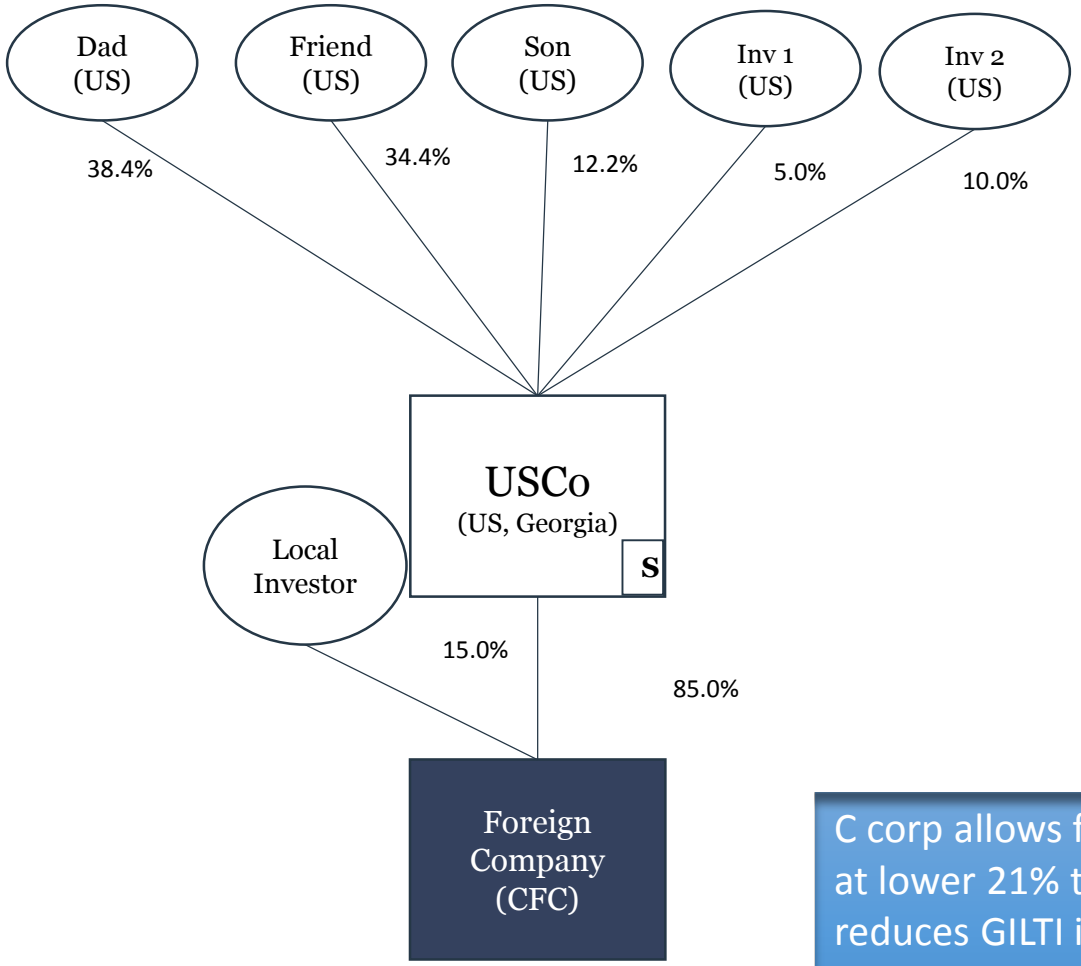
Planning Example 2

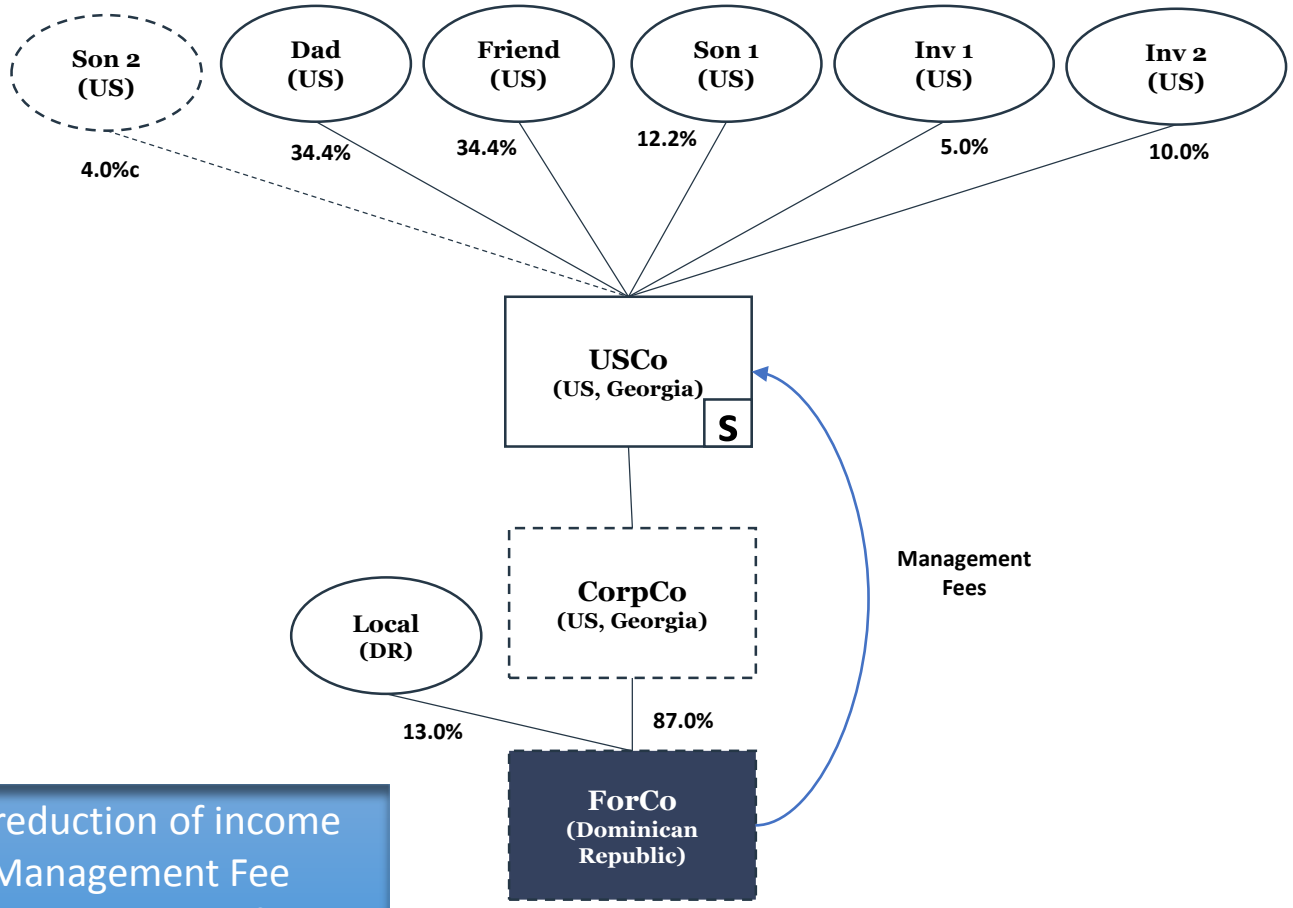
- USCo is Georgia based S Corporation that manufactures soccer balls.
- Owners include Dad, Son, Friend, Investor 1, and Investor 2
- In June 2015, USCo formed ForCo in Dominican Republic as the manufacturing center. USCo owns 85% of ForCo, the other 15% is owned by a local resident.
- Both USCo and ForCo make sales
- ForCo currently has a Free-Zone Credit, and thus is not subject to any taxes in Dominican Republic
- ForCo is profitable, and expects to increase profits each year
- Management fee is paid from ForCo to USCo
- Dad wants to bring other son into the business

Planning Example

- US Company (USCo)is Georgia based S Corporation that manufactures soccer balls.
- Owners include Dad, Son, Friend, Investor 1, and Investor 2
- In June 2015, USCo formed Foreign Company (ForCo) in Dominican Republic as the manufacturing center. USCo owns 85% of ForCo, the other 15% is owned by a local resident.
- Both USCo and ForCo make sales to customers
- ForCo currently has a Free-Zone Credit, and thus is not subject to any taxes in Dominican Republic
- ForCo is profitable, and expects to increase profits each year
- Management fee is paid from ForCo to USCo
- Dad wants to bring other son into the business

- Questions to Consider:
  - Any restructuring opportunities?
  - Transition Tax
  - GILTI
  - Withholding Tax
  - Management Fees
  - Section 199A Deduction
  - Do any of the U.S. Shareholders own any other foreign corporations?
  - Estate and Gift Planning
  - Valuation requirements
  - Transfer Pricing





C corp allows for GILTI reduction of income at lower 21% tax rate, Management Fee reduces GILTI income, and still allows for 199A deduction at individual shareholder level. No current/future plans to exit.

Other International Tax Items

Other International Tax Considerations

- Common Reporting Standards
- FIRPTA
- Foreign Tax Credit
- Section 199A for Non-Residents
- Entity Classification (CTB Election)
- Expats and Inpats
- Technology
- Global Tax Policy

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