

Webinar Series:

U.S. LEGAL ISSUES
for Foreign Businesses in the United States



Presented by:
Reinhart
Attorneys at Law

Session three of a five-part webinar series

**U.S. TAX PLANNING
FOR FOREIGN BUSINESSES**

April 29, 2014

Robert J. Misy, Jr.
414-298-8135
rmisy@reinhartlaw.com

Jessica King
414-298-8202
jbking@reinhartlaw.com

Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Milwaukee, WI 53202
www.reinhartlaw.com



Robert J. Misy, Jr. chairs the International Practice and is a shareholder in the firm's Tax and Business Law Practices. He concentrates his practice in the areas of international taxation and tax controversies, and works with a wide range of clients from a variety of industries including manufacturing, service, energy, retail and entertainment.

Jessica King is a shareholder in the firm's Trusts and Estates, International and Tax-Exempt Organization Practices, where she serves the estate planning needs of closely held business owners, executives and professionals. She advises clients on estate planning; business succession planning; estate planning for non-U.S. citizens; foreign trusts; estate, gift and generation-skipping tax issues; prenuptial agreements; family limited partnerships and LLCs; and estate and trust administration. Jessica's practice also focuses on tax-exempt and charitable organizations, as she advises clients on the formation, administration and legal issues relating to private foundations and other tax-exempt organizations.



AGENDA

Times below are in Central European Time (CET)

11:45 a.m. CET Attendees Sign On

12:00 p.m. CET Webinar

12:50 p.m. CET Questions and Answers

Asking Questions

Throughout the webinar, type your questions using the "QUESTIONS" section in the webinar panel. We will answer as many questions as possible during our Q & A session at the end of the webinar.

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Webinar Housekeeping

Viewing the Slides

Today's slide presentation will advance automatically in synch with the live presentation.

Handouts

If you would like a hard copy of the slide presentation, a printable version was e-mailed to you yesterday.

Adjusting Your Volume

Volume can be adjusted using the volume control on your computer or phone.

Asking Questions

Throughout the webinar, type your questions using the "QUESTIONS" section in the webinar panel. We will answer as many questions as possible during our Q & A session at the end of the webinar.

Information

This webinar provides general information about legal issues. It should not be construed as legal advice or a legal opinion. Attendees should seek legal counsel concerning specific factual situations confronting them.

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Webinar Series

Thank you for attending the third in a series of five webinars.
Please consider joining us for the upcoming webinars in this series.
Each webinar starts at 12:00 p.m. Central European Time.

May 20: U.S. Dispute Resolution for Foreign Businesses

Laura A. Brenner / James N. Law / Andrew A. Price

June 17: U.S. Intellectual Property Issues for Foreign Businesses

Jeremy R. Bridge

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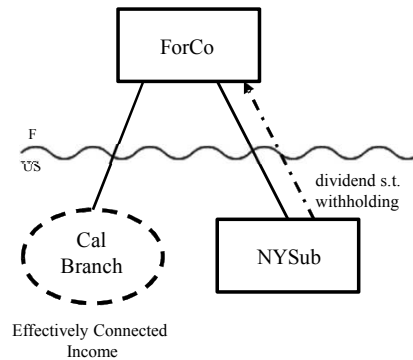
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U.S. Tax Planning for Foreign Businesses

Robert Misey
414-298-8135
rmisey@reinhartlaw.com

Partnering for your Success

U.S. Inbound Taxation



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Income Subject to Withholding

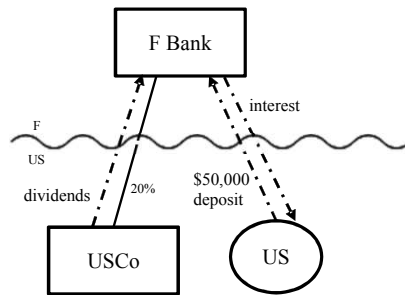
1. Dividends
2. Interest
3. Rents
4. Royalties
5. Compensation from services

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The FATCA Threat of Withholding



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Check-the-Box

1. The IRS decided it was too costly to challenge taxpayer characterization of entities
2. Taxpayers can now check-the-box by filing Form 8832
3. All entities except "per se" corporations are eligible entities

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Effectively Connected Income

Business Income
Branch Profits Tax

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Impact of Check-the-Box

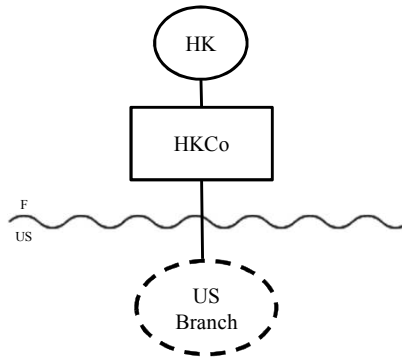
1. Companies are still companies for liability and foreign country tax purposes
2. Regardless of legal form, entities are corporations or pass-throughs (*i.e.*, partnerships or disregarded entities) as the owner chooses
3. Lots of planning opportunities

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U.S. Branch Profits Tax on Foreign Corporation

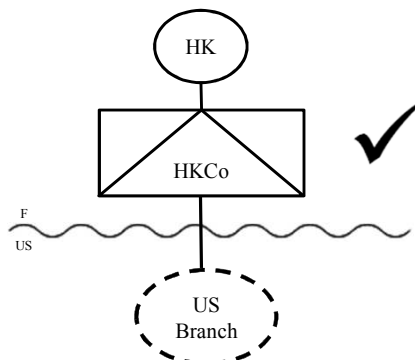


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No U.S. Branch Profits Tax on Individuals

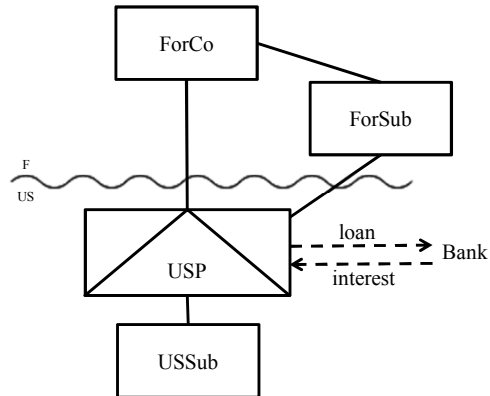


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Double Dip Interest Structure with a U.S. Partnership Checked as a U.S. Corporation

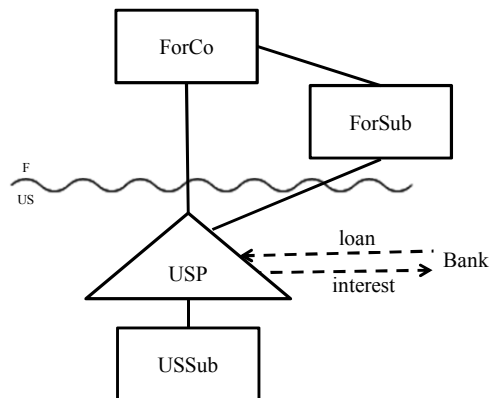


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Foreign View: Interest Deduction of USP Flows Through to Foreign Owners

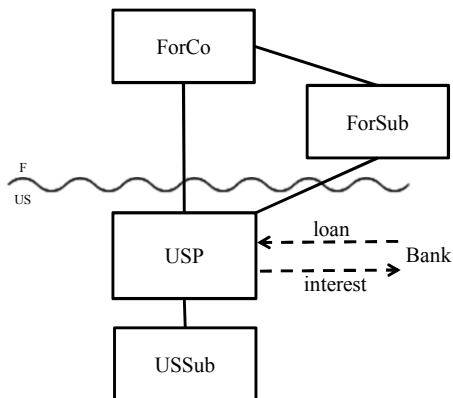


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U.S. View: Interest Deducted by USP as Part of Consolidated Group with USSub



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IC-DISCs

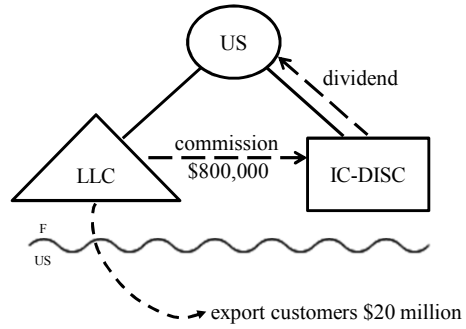
1. U.S. Congress loves exporters
2. IC-DISCs encourage exports by not paying taxes on commissions received
3. In the United States, dividends are taxed at a lower rate of tax than ordinary income
4. Commissions can be up to 4% of gross exports or 50% of pre-tax income from exports

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Traditional IC-DISC Structure

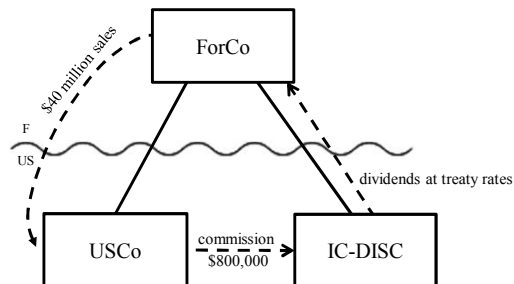


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IC-DISC Structure for Foreign Companies



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Limitation on Benefits Prevents Treaty Shopping

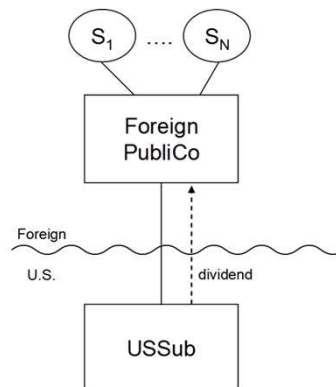
- Publicly-traded companies
- Subsidiaries of publicly-traded companies
- Stock ownership/base erosion test
- Active trade or business that is substantial
- Derivative benefits

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Publicly-Traded Parent

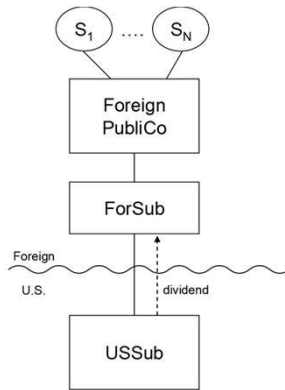


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Subsidiary of Publicly-Traded Parent

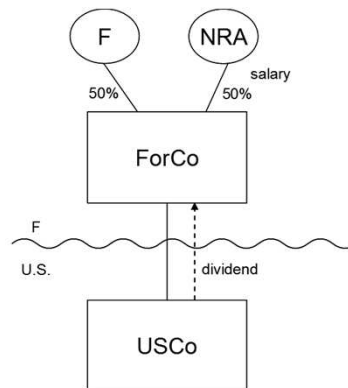


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Stock Ownership/Base Erosion Test

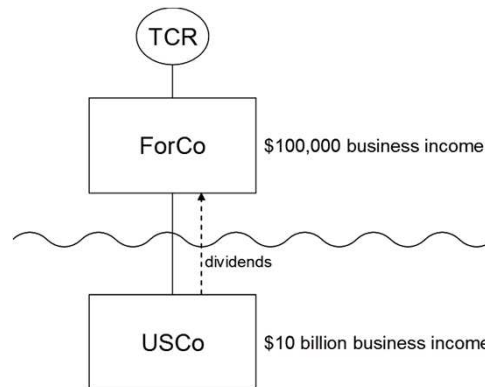


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Active Trade or Business That Is Substantial

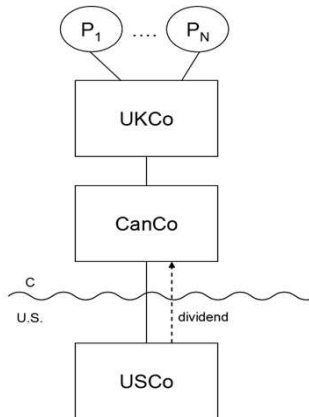


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Derivative Benefits

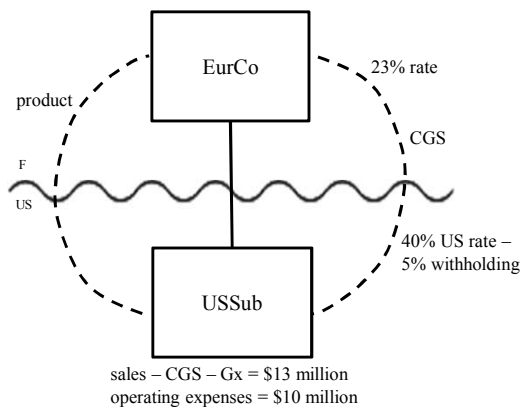


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Comparable Profits Method

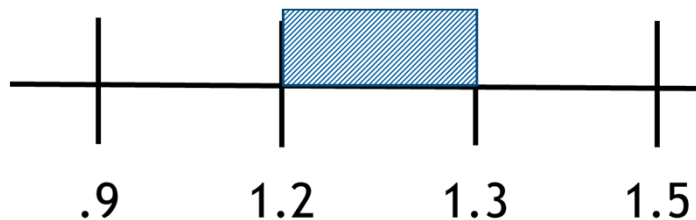


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The Arm's-Length Range

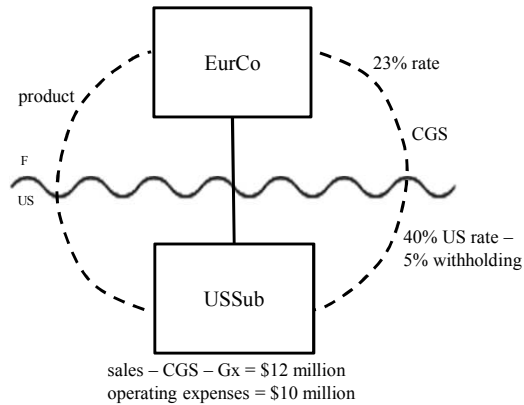


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Comparable Profits Method



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Biography

Robert Misey is Chair of the International Department for Reinhart Boerner Van Deuren s.c. A graduate of the law schools at Vanderbilt University and Georgetown University, he is a former trial attorney for the Internal Revenue Service Chief Counsel (International) in Washington, DC. He is also the author of the book *A Practical Guide to U.S. Taxation of International Transactions*. Rob can be reached via phone at either 312-207-5456 or 414-298-8135 or via e-mail at rmisey@reinhartlaw.com.

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Overview of U.S. Estate and Gift Tax Regime

Jessica King
414-298-8202
jbking@reinhartlaw.com

Partnering for your Success

Transfer Taxes

- Nature of U.S. Transfer Taxes: A governmental charge upon the passage of property from one person to another

Transfer Taxes (cont.)

- Kinds of U.S. Transfer Taxes
 - Estate tax
 - Gift tax
 - Generation-skipping transfer tax
- State Transfer Taxes: Some states impose their own transfer taxes

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Scope of Taxes

- U.S. Citizens and U.S. Resident Aliens
 - Estate Tax: Bequests or transfers of worldwide assets are subject to U.S. estate tax
 - Gift Tax: Gifts of worldwide assets are subject to U.S. gift tax

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Scope of Taxes (cont.)

- Non-Resident Aliens
 - Estate Tax: Bequests or transfers of U.S. situs real property, U.S. situs tangible personal property and shares of stock of U.S. corporations are subject to U.S. estate tax
 - Gift Tax: Gifts of U.S. situs real property and U.S. situs tangible personal property are subject to U.S. gift tax

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Citizen, Resident Alien or Non-Resident Alien?

- Citizen: Citizenship is easy to determine; if a person is a U.S. citizen (regardless of whether he or she may have dual citizenships), worldwide assets are taxed

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Citizen, Resident Alien or Non-Resident Alien? (cont.)

- Resident: Residency is not always as easy to determine; the concept of residency for estate and gift tax purposes is different than residency for income tax purposes
 - For estate and gift tax purposes, a person is a U.S. resident if the person is domiciled in the U.S.
 - A person is considered domiciled in the U.S. if he or she lives here with the intention of remaining indefinitely
 - Material factors to determine domicile include permanent home, presence of family and community ties

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Estate and Gift Tax Exemption Amounts

- U.S. Citizens and U.S. Resident Aliens
 - The combined estate and gift tax exemption amount for U.S. domiciliaries is \$5,340,000 for 2014 (an amount which is adjusted for inflation each year)
 - In addition, there is a \$14,000 annual gift tax exclusion available (adjusted for inflation)

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Estate and Gift Tax Exemption Amounts (cont.)

- Non-Resident Aliens
 - Non-resident aliens are not entitled to a gift tax exclusion amount (although the gift tax annual exclusion amount is available to a non-resident alien)
 - Non-resident aliens are entitled to a \$60,000 estate tax exemption

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Transfers Between Spouses

- Unlimited Marital Deduction: The availability of the unlimited marital deduction depends on the citizenship of the **donee** spouse

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Transfers Between Spouses (cont.)

– Gifts

- If the donee spouse is a U.S. citizen, there is an unlimited marital deduction available to the donor spouse (regardless of whether the donor spouse is a U.S. citizen, a U.S. resident alien or a non-resident alien)
- If the donee spouse is not a U.S. citizen, the marital deduction is limited to \$145,000 (adjusted for inflation each year)

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Transfers Between Spouses (cont.)

– Estates

- Likewise, if the surviving spouse is a U.S. citizen, the marital deduction is unlimited
- However, if the surviving spouse is not a U.S. citizen, there is no marital deduction available unless the distribution is made to a Qualified Domestic Trust ("QDOT"), in which case the marital deduction is unlimited

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Transfers Between Spouses (cont.)

- QDOTs: If a transfer is made to a QDOT, no estate taxes will be due on the first spouse's death
 - To qualify as a QDOT, at least one trustee must be a U.S. citizen or domestic corporation, the decedent's executor must make the applicable election and the trust instrument must prohibit distributions where the U.S. trustee does not have the power to withhold QDOT taxes

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Transfers Between Spouses (cont.)

- Distributions of income are not subject to QDOT tax
- There is a QDOT tax imposed on all lifetime distributions of principal to the surviving spouse
- At the surviving spouse's death, the fair market value of the remaining trust assets are subject to QDOT taxes

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Questions?



Asking Questions

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THANK YOU!

Thank you for attending the third in our series of five webinars.
Please consider joining us for part four in this series:

May 20: U.S. Dispute Resolution for Foreign Businesses

~Laura A. Brenner, James N. Law, Andrew A. Price

Laura, James and Andrew will discuss the pros and cons of litigation in court compared to resolving cases by mediation or arbitration prior to or instead of litigation in court.

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