



US LLC - FOREIGN CORPORATE/TRUST STRUCTURES – POISON PILL OR GOLDEN CHALICE?

DARLENE HART

US TAX & FINANCIAL SERVICES
SÀRL

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PRIOR LAW

A US Limited Liability Company (US LLC):

1. A single owner: disregarded entity, assuming no election otherwise
2. Two or more members: classified as a partnership absent an election otherwise

Old Law - A foreign-owned single member US LLC did not have to file US income tax returns if:

- » The US LLC did not have US-sourced income, and
- » The US LLC was not engaged in a trade or business within the United States.

If US LLC has a foreign bank account FBAR filing requirements apply.

CURRENT LAW

All Foreign-Owned US LLCs must now file annually if owned by a single non-US person or entity:

- » The US LLC must:
 - Obtain an EIN
 - File a US proforma Form 1120 with Form 5472 disclosing reportable transactions
 - Maintain records (books & accounts) adequate to establish the accuracy of the Form 5472
- » Failure to file timely carries a \$25,000 penalty
- » You need designate a 'Responsible Party', in order to obtain an EIN (employer identification number)

IRS T.D. 9796

DIRECT VS. INDIRECT OWNERSHIP

Direct Ownership – when a person/entity directly owns the equity of a US LLC.

Indirect Ownership – defined as ownership by one person entirely through one or more other entities disregarded as entities separate from their owners or through one or more grantor trusts, regardless of whether any such disregarded entity or grantor trust is domestic or foreign. (Treasury Regulation §301.7701-2(c)(vi)(2)(B)(1)). Additionally, based on the preamble to the regulations, the IRS may ignore de minimis ownership interests. (BO of Foreign Trust)

A related Party is:

- Any direct or indirect 25% foreign shareholder of the reporting corporation
- Any Person who is related with in the meaning of IRC 267(b) or 707(b)(1) to the foreign corporation or a 25% foreign shareholder of the reporting corporation
- Any other Person who is related to the reporting corporation within the meaning of IRC 482
- Related party does NOT include any corporation filing a consolidated federal income tax return with the reporting corporation

REPORTABLE TRANSACTION

The Foreign-owned US LLC must list all reportable transactions between the US LLC and the Direct Owner, Indirect Owner and any Related Parties.

A reportable transaction includes any type of activity between a foreign owner and the US LLC, with no limit on value.

Examples:

- » Exchange of money or property, including payments
- » Rental income, sales transactions, remuneration, commission payments
- » Capital contributions, distributions
- » The use of company property
- » Loans & Interest payments

TAX RESIDENT STATUS & FILING REQUIREMENTS

The Form 5472, requires the following information on:

- » The US LLC
 - » Direct and Indirect owner(s)
 - » Related parties
-
1. Name, address and foreign taxpayer ID number
 2. US tax ID if assigned
 3. Country of tax residence
 4. Countries under whose laws an income tax return is filed as a tax resident
 5. Principal country where business is conducted

MANAGEMENT & CONTROL

Where is Management and Control?

Depends on the structure of US LLC:

- » If member-managed, and assuming the member is a non-US person, then the US LLC should not be subject to US reporting requirements other than those discussed here; or
- » If manager-managed and the manager is a US resident then the LLC may be subject to additional US state level filing requirements.

FATCA FORMS

US LLC with two or more members taxed as a partnership or a corporation:

- » US members – Form W-9
- » Foreign members – either Form W8-BEN or W8-BEN-E

US LLC with one US member:

- » Complete Form W-9 using member's US SSN

US LLC with one foreign member:

- » Complete Form W8-BEN (individuals) or W8-BEN-E (entity)

FATCA Filing Requirements:

- » If the beneficial owner of a foreign financial account is a US LLC, the account is generally a US reportable account.

EXAMPLE

Example – US LLC owns a rental property in Portugal:

- » The US LLC is owned by a non-US person
- » No US and No foreign bank Account
- » No US source income
- » No other assets in the US LLC
- » If the US LLC had a foreign bank account an FBAR must be filed

Under prior law, nothing was required to be reported to the IRS. Now, under current law, 'reportable transactions' of the US LLC must be reported.

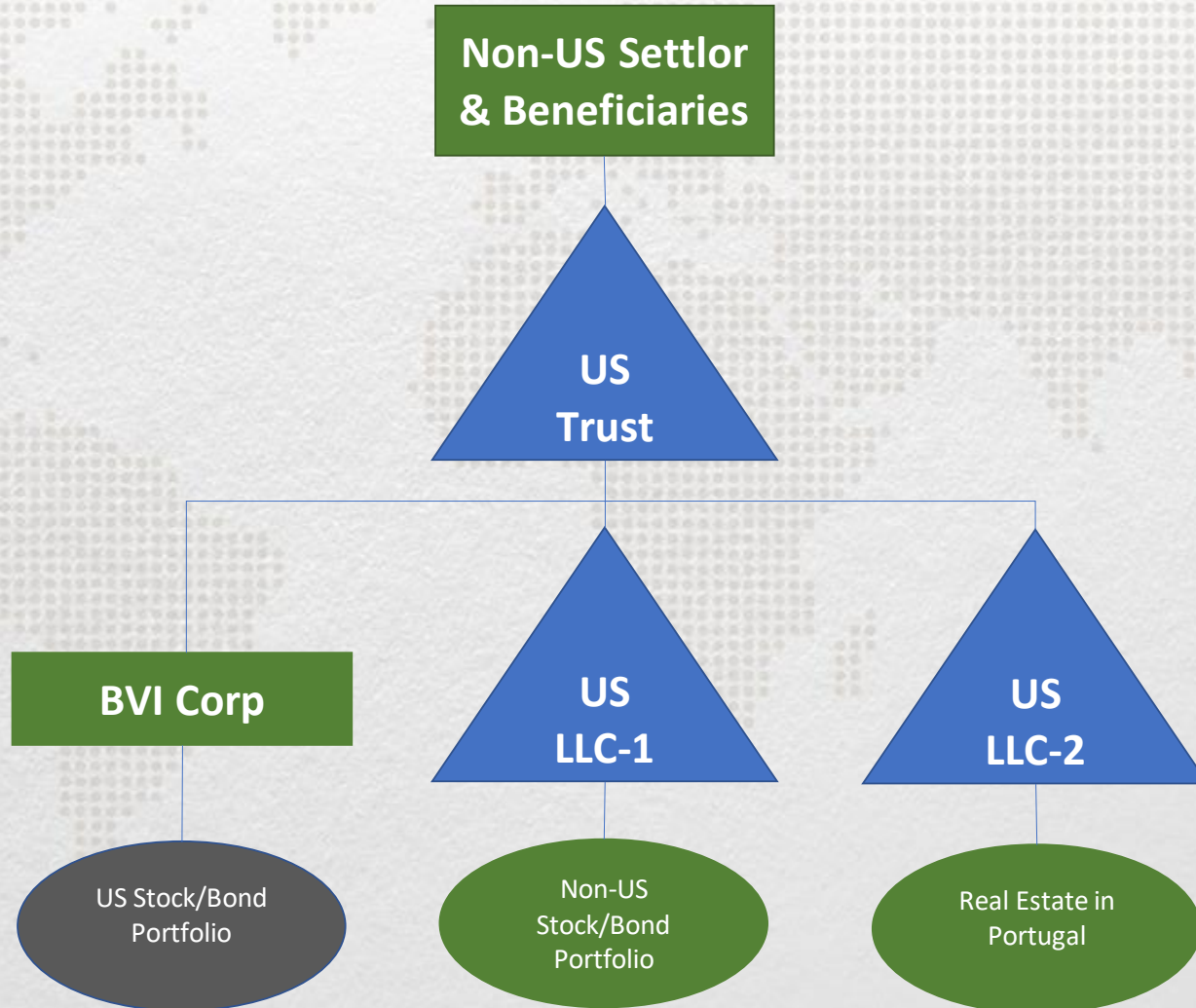
Foreign-Owned US LLC's in offshore Trust or Corporate Structures

- » Reporting of foreign direct, indirect (BO) and related parties: tax and resident status
- » This information is not shared today, may be in future
- » Historically, single member US LLCs were used as vehicles to hide foreign assets from foreign governments or as blockers in various corporate structures, because they had no reporting requirements
- » Under CRS, if you have a foreign-owned US LLC, you must look to the owner of the US LLC to determine CRS reporting requirements.

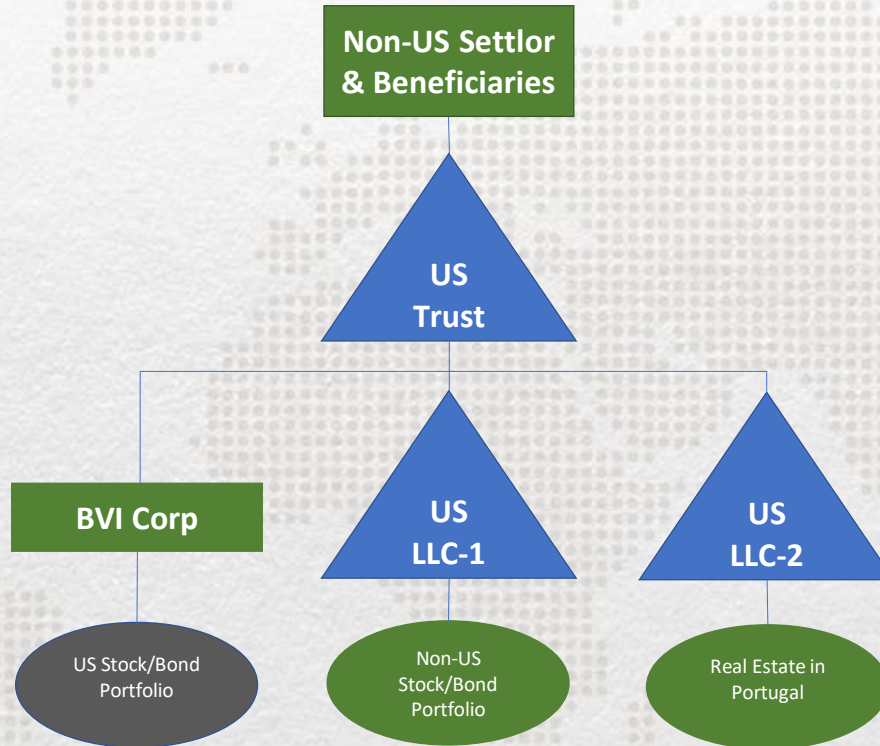
GOLDEN CHALICE







1. US LLCs can be used to own US assets, specifically US trade or business assets, reporting and paying US tax.
2. US LLC's can be used to hold US Residential or Commercial Real estate, as well as other US investments.
3. If you wish to avoid US estate tax on US assets owned by a US LLC, structure the US LLC (corporate entity) should be owned by a foreign corporate entity or an Irrevocable Trust.
4. US LLC's should not automatically be used to hold and own foreign assets without considering exposure to US tax law, corporate law and potential US legal issues.

MANAGEMENT & CONTROL – US TRUST WITH SWISS SETTLOR - CHART



MANAGEMENT & CONTROL – US TRUST WITH SWISS SETTLOR - CHART



	Non-US entity or asset, no US reporting required		Non pass-through entity (corporation or person)
	US entity, must file and report in US		pass-through entity
	US asset, reporting depends on entity		asset(s)

	Country of Tax Residence	Management and Control
Non-US Owner	Outside of US, resident jurisdiction (UK, Switzerland, etc.)	Any non-US
US Trust	???	United States (trustee), any (for advisory roles)
British Virgin Is. Corp	???	Any
US LLC-1	???	Any
US LLC-2	???	Any

THANK YOU. ANY QUESTIONS?



US TAX & FINANCIAL SERVICES

London

US Tax & Financial Services Ltd

3 Harbour Exchange Square
London E14 9GE
United Kingdom

T: +44 (0) 20 7357 8220
F: +44 (0) 20 7357 8225

US Individual Tax

Helena Turner
h.turner@ustaxfs.com

Estates and Trusts

Andrew Aldridge
a.aldridge@ustaxfs.com

Corporation and Partnerships

Bradley Albin
b.albin@ustaxfs.com

Geneva

US Tax & Financial Services, SARL

Boulevard Helvétique 36
(entrance rue du Petit-Senn)
CH-1207 Geneva
Switzerland

T: +41 (0) 22 700 25 00
F: +41 (0) 22 700 25 26

Catherine Querio

c.querio@ustaxfs.com

Zurich

US Tax & Financial Services, SARL

Löwenstrasse 28
PO Box 1367
CH-8021 Zurich
Switzerland

T: +41 (0) 44 387 80 70
F: +41 (0) 44 387 80 79

Patrick Hoza

p.hoza@ustaxfs.com

Darlene Hart

d.hart@ustaxfs.com

Larry Churnovic

l.churnovic@ustaxfs.com

USTAXFS.COM
@ustaxfs