

Business Migration

From South Africa to Silicon Valley



Cape Town, South Africa ~ October 2014

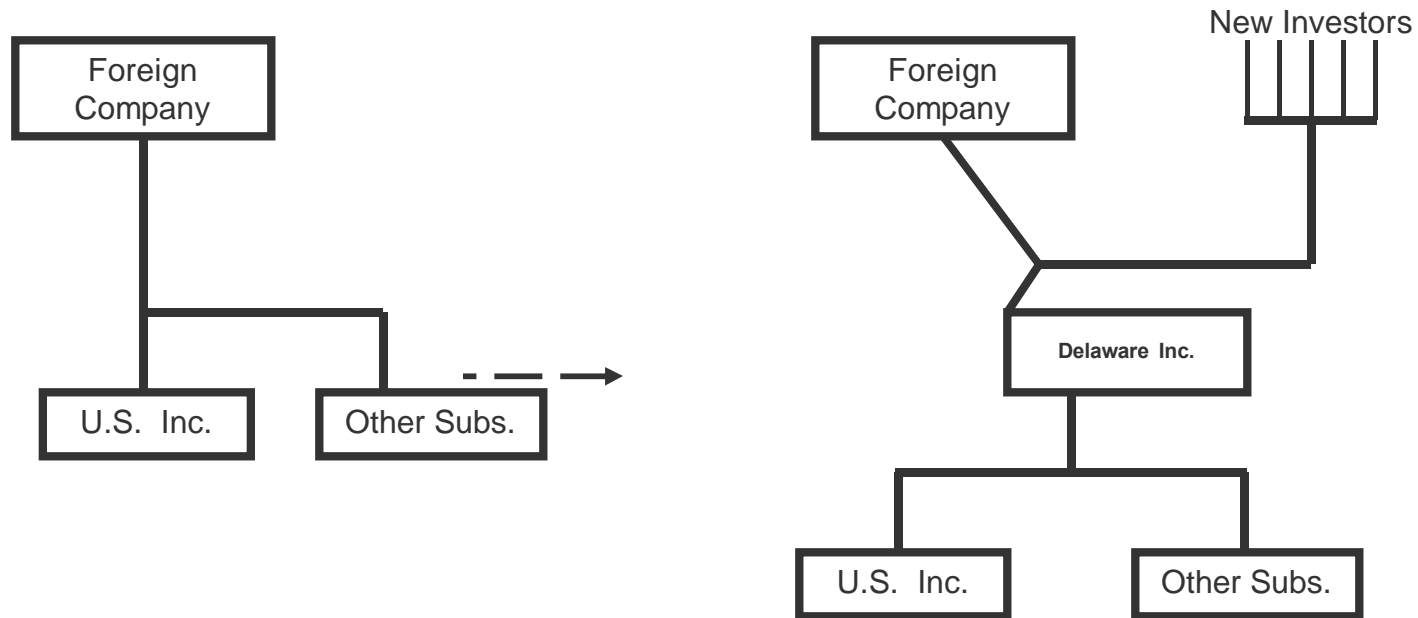
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Flipping into U.S. Structure



- ~ Raising Funds
- ~ Going IPO in U.S.
- ~ Tax-free Entry
- ~ Complex to Unwind

Federal Corporate Tax Rates

For regular income tax purposes, a system of graduated marginal tax rates is applied to all taxable income, including capital gains

Taxable Income (\$)	Tax Rate
0 to 50,000	15%
50,000 to 75,000	\$7,500 + 25% Of the amount over 50,000
75,000 to 100,000	\$13,750 + 34% Of the amount over 75,000
100,000 to 335,000	\$22,250 + 39% Of the amount over 100,000
335,000 to 10,000,000	\$113,900 + 34% Of the amount over 335,000
10,000,000 to 15,000,000	\$3,400,000 + 35% Of the amount over 10,000,000
15,000,000 to 18,333,333	\$5,150,000 + 38% Of the amount over 15,000,000
18,333,333 and up	35%

This rate structure produces a flat 34% tax rate on incomes from \$335,000 to \$10,000,000, gradually increasing to a flat rate of 35% on incomes above \$18,333,333.

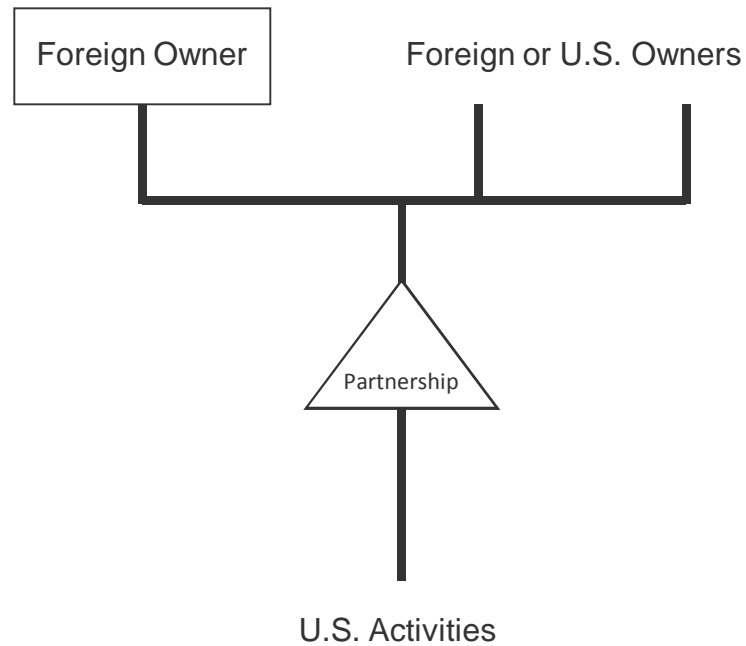
Foreign Corporation – Permanent Establishment

1. Foreign Parent Objective: Avoid RE+status
U.S. company will be subjected to U.S. tax if there is:
 - “ a place of management;
 - “ a branch;
 - “ an office;
 - “ a factory;
 - “ a workshop;
 - “ a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources;
 - “ Agent that habitually contracts (while in the U.S.) on behalf of foreign company.
2. Protective tax return to be filed.

Delaware Corporation (Fast, Cheap, Simple & Mainstream)

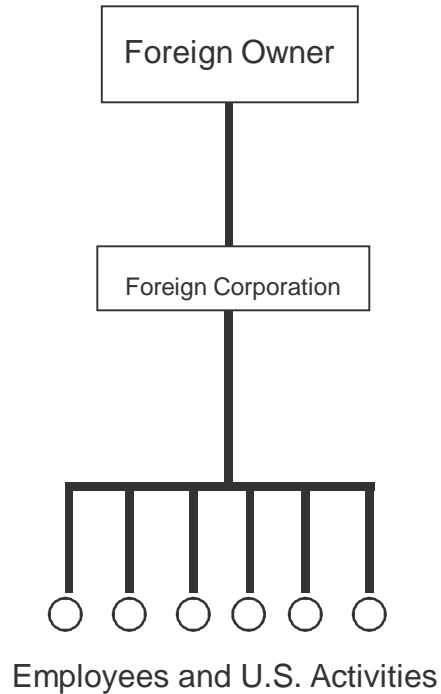
- “ One Shareholder
- “ One Director
- “ Officers President, Treasurer, Secretary
- “ Common Stock
- “ Timing: One Day . On Line
- “ Can Qualify in All Other States
- “ Caution: Easy to Enter, Complicated with Tax Risks to Unwind.

Partnership (U.S. or Foreign)



- (1) Foreign Owner Considerations
 - “ Presence in U.S.
 - “ Tax Treaty Considerations . Same as Before (Permanent Establishment)
- (2) Impact of Partnership
 - “ Does It Create U.S. Permanent Establishment?
- (3) Withholding required by partnership on U.S. source income

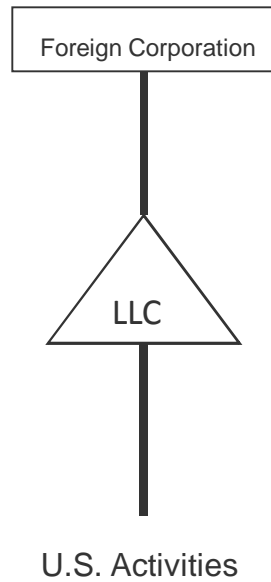
Foreign Branch



- " Federal Tax Rates
- " State Tax Rates
- " Potential Branch Profits Tax

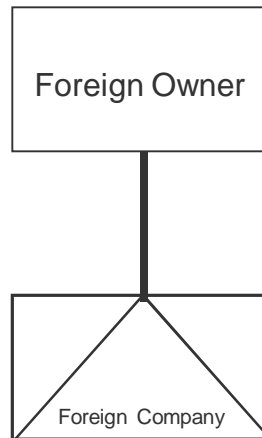
- (1) Business Activities Taxed in U.S.
 - " Activities that Create U.S. Tax Nexus
 - " Income Tax Treaty . Article 4
 - " Residency
 - " Permanent Establishment
- (2) Branch Profits Tax
- (3) Complicated Allocations of Income and Expense

Limited Liability Company



- (1) Business Activities Taxed in U.S.
 - " Activities that Create U.S. Tax Nexus
 - " Income Tax Treaty . Article 4
 - " Residency
 - " Permanent Establishment
- (2) Branch Profits Tax
- (3) Complicated Allocations of Income and Expense

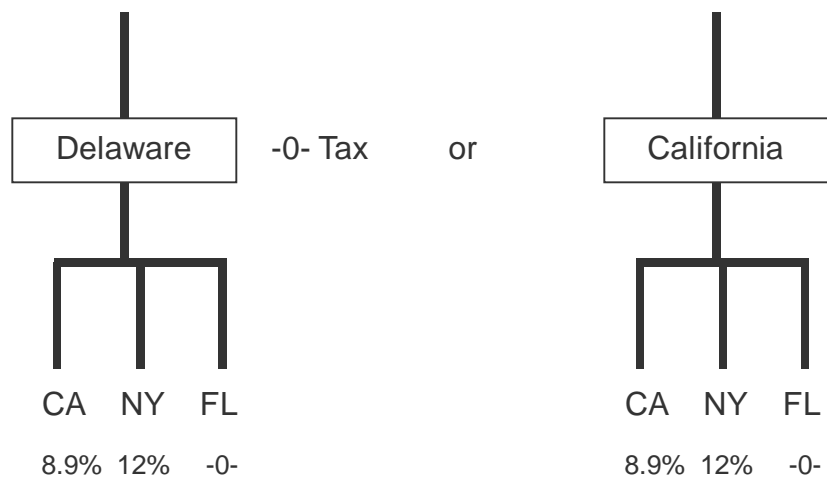
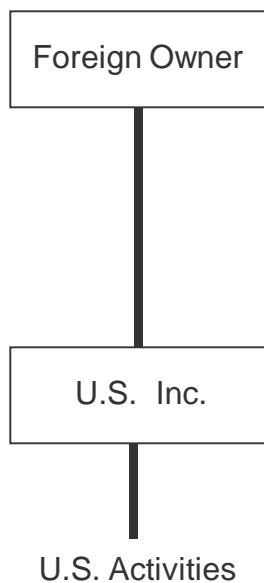
Hybrid Structure



- (1) Election allowed to treat foreign company as a corporation or pass-through (disregard) entity.

State Taxes

- “ Corporations are formed under state law
- “ State Tax Rates



- “ Most corporations are formed in Delaware, and then register to do business in the various states where business activities are conducted.

Executive Transfers to U.S.

Immigration

- “ L-1 Visa
- “ E Visas
- “ H1-B Visas
- “ O Visa
- “ EB5
- “ Green Card

Tax Residence

- “ Substantial Presence
- “ Legal Permanent Resident
- “ U.S. Citizenship

Example of U.S. Payroll

Employee Relocation
 L-1 transferee, or H1-B or E-2 Employee
 \$10,000 Gross Monthly Payroll [San Francisco]

Gross Pay	\$10,000	
Withholding		
Federal income tax	2,000	} Federal and state Withholding tables based on number of dependents Form W-4 completed by employee
State income tax	700	
Social security tax ⁽¹⁾	<u>855</u>	- 8.55% on gross wages up to \$117,000 base amount - 2.35% on wages over base amount
	<u>\$3,575</u>	
Net pay	<u><u>\$6,445</u></u>	

(1) Employer pays equal amount of social security taxes

Appendix

Start Up Checklist for New Businesses in the U.S.

- ❖ Subsidiaries or Branches of Foreign Corporations
- ❖ Corporations
- ❖ Partnerships
- ❖ Trusts

Page

2. Information Requested
3. Business Formation
4. Employee Matters
5. Foreign Companies Expanding Into The U.S.
6. Foreign Investment In U.S. Real Property
7. Tax Filings – Domestic
8. Tax Filings – International
9. Pre-Arrival Checklist

Start Up Checklist for New Businesses in the U.S.

1. Information Requested

- Federal Tax Identification Number
- Articles of Incorporation
- Partnership Agreements
- Trust Documents
- Business Plan
- Prior Two Years Federal and State Tax Returns
- Cap Table
- Financial Statements [Audited or Unaudited]
- List of Current Officers

Current Information

- Name
- Address for Correspondence

- Business Phone
- Mobile Phone
- Other Phone
- Correspondence Sent To

- Name of Attorney
- Name of Banker
- Rowbotham & Company Contact

Services Requested

- Accounting
- Tax
- Consulting

Start Up Checklist for New Businesses in the U.S.

6. Tax Filing – Domestic

- _____ Individual Income Tax Returns
 - _____ (Form 1040) Federal
 - _____ (Form 540) California
 - _____ (Form 1040-ES) Estimates
 - _____ (Form 1041) Trust & Estate

- _____ Corporate Income Tax Returns
 - _____ (Form 1120) Federal
 - _____ (Form 100) State

- _____ Partnership Income Tax Returns
 - _____ (Form 1065) Federal

- _____ State
 - _____ K-1 Reporting
 - _____ (Form 990) Private Foundation

- _____ Other Forms
 - _____ (Form 2848) Power Of Attorney
 - _____ (Form SS-4) Application For EIN
 - _____ (Form W-2) Wage and Tax Statement
 - _____ (Form W-4) Employee’s Withholding Allowance Certificate
 - _____ (Form W-7) Individual Taxpayer Identification Number
 - _____ (Form W-9) Taxpayer Identification Number
 - _____ Officers, Directors Annual Report
 - _____ (Form 541-L) Property Tax
 - _____ Local City Tax
 - _____ Sales Tax

Start Up Checklist for New Businesses in the U.S.

7. Tax Filing – International

- _____ (Form 1040NR) Federal Individual Income Tax Returns
(Nonresident Aliens and Foreign Trust)
- _____ (Form 540NR) California
- _____ (Form 1120F) Foreign Corporation Income Tax Returns
- _____ (Form 1065) Foreign Partnerships Doing Business In The U.S.
- _____ (W-8BEN) Certificate Of Foreign Status Of Beneficial Owner
For United States Tax Withholding
- _____ (W-8ECI) Certificate Of Foreign Person’s Claim For Exemption From
Withholding On Income Effectively Connected With Conduct Of A
Trade of Business In The U.S.
- _____ (W-8IMY) Certificate Of Foreign Intermediary, Foreign Partnership
Or Certain U.S. Branches Of U.S. Tax Withholding
- _____ (Form 926) Return By A U.S. Transfer Of Property To A Foreign Corporation
- _____ (Form 1042) Annual Withholding Tax Return For U.S. Source Income
Of Foreign Person
- _____ (Form 1042S) Foreign Person’s U.S. Source Income Subject To Withholding
- _____ (Form 3520 Or Form 3520A) Annual Return To Report Transactions With
Foreign Trusts And Receipt Of Certain Foreign Gifts

Start Up Checklist for New Businesses in the U.S.

7. Tax Filing – International – Continued

- _____ (Form 5471) Information Return Of U.S. Persons With Respect To Certain Foreign Corporations
- _____ (Form 5472) Information Return Of 25% Foreign Owned U.S. Corporation Or A Foreign Corporation Engaged In A U.S. Trade Or Business
- _____ (Form 8804) Annual Return For Partnership Withholding Tax
- _____ (Form 8805) Foreign Partner’s Information Statement of Section 1446 Withholding Tax
- _____ (Form 8813) Partnership Withholding Tax Payment Voucher
- _____ (Form 8832) Entity Classification Election
- _____ (Form 8833) Treaty-Based Return Position Disclosure
- _____ (Form 8854) Initial And Annual Expatriation Statement
- _____ (Form 8858) Transactions Between Foreign Disregarded Entity Of A Foreign Tax Owner And the Filer Or Other Related Entities
- _____ (Form 8865) Return Of U.S. Persons With Respect To Certain Foreign Partnerships
- _____ (Form 8873) Extraterritorial Income Exclusion
- _____ (Form 8913) Credit For Federal Telephone Excise Tax Paid
- _____ (FinCEN Form 114) Report Of Foreign Bank And Financial Accounts

Start Up Checklist for New Businesses in the U.S.

8. Pre-Arrival Checklist

Consider establishing a foreign or U.S. trust for estate planning purposes. If assets are located in one’s country of origin, it may be necessary to consult with local counsel to coordinate legal and tax issues. The use of trusts may not work in civil law jurisdictions, e.g. France and Germany

Determine if accelerating gift planning or contemplated sales of assets prior to entering the U.S. will save global tax

Explore tax strategies that will step up the tax basis of assets to their fair market value so only appreciation after becoming a U.S. resident will be taxable in the U.S.

Review existing investment structures to determine whether there will be adverse tax impacts under U.S. tax laws

Stock options, when exercised, usually generate ordinary income in the U.S. that is taxable at the top rate of 39.6% Consider exercising options prior to arrival.

Review deferred compensation and retirement benefits, to determine how to efficiently access these sources with minimum tax before and after arrival. If you have a foreign stock plan, you should check whether vesting will be taxable to you after entering the U.S.

Start Up Checklist for New Businesses in the U.S.

8. Pre-Arrival Checklist – Continued

Plan the proper timing for arrival. Arriving in the last half of the calendar year will usually result in nonresident status for the full year. Foreign income and capital gains during the year should then be exempt from U.S. tax.

If you are being relocated to the U.S., consider whether you should be employed by the U.S. or foreign affiliate and whether you should be covered by social security in the U.S. or in your home country.

If you are in the U.S. for a short period of time, you may be exempt from U.S. tax under the relevant income tax treaty.

Transferring appreciated assets to a foreign trust or foreign company will usually trigger current income tax on the appreciation if the transfer is made when you are a U.S. resident.

Expatriation: If after 7 years of residence as a green card holder, you relinquish your green card and leave the U.S., you may be subject to an exit tax on appreciated assets. To minimize this risk, you may wish to defer getting your green card if your stay in the U.S. is not permanent.

Reporting bank balances and foreign investments is required under Federal and State rules.

Pre-Arrival Tax Planning Checklist for Executives

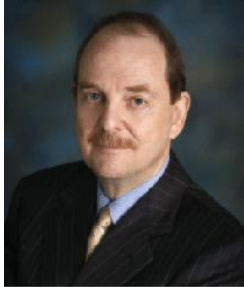
1. Consider establishing a foreign or U.S. trust for estate planning purposes. If assets are located in one's country of origin, it may be necessary to consult with local counsel to coordinate legal and tax issues. The use of trusts may not work in civil law jurisdictions, e.g. France and Germany.
2. Determine if accelerating gift planning or contemplated sales of assets prior to entering the U.S. will save global tax.
3. Explore tax strategies that will step up the tax basis of assets to their fair market value so only appreciation after becoming a U.S. resident will be taxable in the U.S.
4. Review existing investment structures to determine whether there will be adverse tax impacts under U.S. tax laws.
5. Stock options, when exercised, usually generate ordinary income in the U.S. that is taxable at the top rate of 39.6%. Consider exercising options prior to arrival.
6. Review deferred compensation and retirement benefits, to determine how to efficiently access income minimum tax before and after arrival.
7. Foreign stock plan: Check whether vesting will be taxable after entering the U.S. 83(b) election time may have expired.
8. Plan your timing for arrival. Arriving in the last half of the calendar year will usually result in nonresident status for the full year. Foreign income and capital gains during the year should then be exempt from U.S. tax.
9. If you are being relocated to the U.S., consider whether you should be employed by the U.S. or foreign affiliate and whether you should be covered by social security in the U.S. or in your home country.

Pre-Arrival Tax Planning Checklist for Executives (Cont.)

10. If you are in the U.S. for less than 183 days in the year, you may be exempt from U.S. tax under the relevant income tax treaty.
11. Transfer appreciated assets to a foreign trust or foreign company prior to arrival to avoid triggering tax will on the appreciation.
12. Expatriation: If after 7 years of residence as a green card holder, you relinquish your green card and leave the US, you may be subject to an exit tax on appreciated assets. To minimize this risk, you may wish to defer obtaining your green card if your stay in the US is not permanent.
13. Reporting bank balances and foreign investments is required under federal and state rules. The following IRS forms need to be filed:
 - FinCEN 114 Foreign Bank Account Report – For balances in excess of \$10,000
 - Form 3520 Receipt of any distributions or benefits from a foreign trust
 - Form 3520 Receipt of gifts or bequests over \$100,000 from a foreign person
 - Form 3520A Annual return for a foreign trust
 - Form 5471 Return of U.S. person in certain foreign corporations
 - Form 8865 Return of U.S. person in certain foreign partnerships
 - Form 8621 Investment in a passive foreign investment company (e.g. foreign mutual fund)
 - Form 8938 New in 2011 – Statement of foreign financial assets

Caution: Many foreign holding structures may fall within these reporting requirements. Significant penalties will be assessed if appropriate reporting is not done.

Speakers Bio



Brian Rowbotham is the founder and partner in charge of the firm's international tax practice. Mr. Rowbotham has 35 years of experience in advising businesses and individuals on complex domestic and international income and estate tax planning. He is the founding partner of Rowbotham & Company LLP which is almost exclusively dedicated to businesses and investors needing domestic and international tax and accounting services. His clients include private and public companies around the globe which consist of: U.S. and foreign institutional investors, multinational families and executives and non-U.S. investors doing business in the U.S. Mr. Rowbotham has advised clients in major domestic and international litigation and has also served on the boards of both privately held and publicly traded companies.

He has given presentations on cross border tax strategies in Hong Kong, Shanghai, Guangzhou, Mumbai, Singapore, and throughout Europe and the U.S. He is a frequent guest speaker at the Haas Business School, UC Berkeley on international tax where he received his bachelors and MBA degrees. In 2012 he was awarded the Distinguished Service Award by the California CPA Society for support of the profession and was featured on the cover of the California CPA for doing business in China.

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Rowbotham & Company is based in San Francisco. Its practice is unique with its global clientele in Asia and Europe with many of its clients being foreign institutions and ultra high net worth families investing in U.S. real estate. Clients include large institutional investors in the U.S., and real estate funds in the U.S. and foreign countries. Projects in the past include real estate structures for joint ventures by foreign governments from Middle East (Kuwait, Qatar) and Germany. Private investment structures involve large investment funds based in Europe and Asia and with publicly traded enterprises and high net worth families.

The firm's practice in this area was established in 1990 and is well recognized as one of the premier firms on the West Coast with its consulting and advisory group of experienced accountants and lawyers. The firm is a member of Geneva Group International, an organization of professional firms in over 100 locations worldwide.